

**MCKINNEY COMMUNITY DEVELOPMENT CORPORATION
AND
CITY OF MCKINNEY, TEXAS**

GRANT AGREEMENT

Application #17-01

This **AGREEMENT** is by and between the **CITY OF MCKINNEY, TEXAS**, a Texas home-rule municipality, including its successors and assigns (hereinafter referred to as the “City”), and the **MCKINNEY COMMUNITY DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as the “MCDC”), and is made and executed on the following recitals, terms and conditions.

WHEREAS, the City submitted Application #17-01 to the MCDC for assistance in the financing of a Dr Pepper StarCenter Expansion Project to be located at 6993 Stars Avenue, McKinney, Texas; and

WHEREAS, on **February 23, 2017**, the Board of Directors of the MCDC approved Application #17-01 in the amount of **Three Million Five Hundred Thousand and No/100 Dollars (\$3,500,000.00)** to assist with the financing of the Dr Pepper StarCenter Project; and

WHEREAS, the City’s contribution towards the Dr Pepper StarCenter Project is **Eight Million Five Hundred Thousand and No/100 Dollars (\$8,500,000.00)** for the Dr Pepper StarCenter Project; and

WHEREAS, Section 505.152 of the Texas Local Government Code, in pertinent part, defines the term “project” to mean “land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for use for professional and amateur sports, including children’s sports, athletic, entertainment, tourist, convention, and public park purposes and events, including stadiums, ball parks, auditoriums, amphitheatres, concert halls, parks and park facilities, open space improvements, museums, exhibition facilities, and related store, restaurant, concession, and automobile parking facilities, related area transportation facilities, and related roads, streets, and water and sewer facilities, and other related improvements that enhance any of the items described by this section”; and

WHEREAS, the Board of Directors of the MCDC has determined the financial assistance provided to the City to fund certain expenditures meets the definition of “project” as contained in Sections 505.152 of the Texas Local Government Code; and

WHEREAS, the City understands and agrees that: (a) in granting, renewing, or extending this grant, MCDC is relying upon City’s representations, warranties, and agreements, as set forth and provided for in this Agreement; (b) the granting, renewing, or extending of this grant by MCDC at all times shall be subject to MCDC’s sole judgment and discretion; and (c) such grant shall be and shall remain subject to the following terms and conditions.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, warranties, and agreements of the parties, it is agreed as follows:

SECTION 1. TERM.

This Agreement shall be effective as of the Effective Date, as specified in Section 2 of this Agreement, and shall continue thereafter until all obligations of City and MCDC have been performed in full, and the parties terminate this Agreement in writing, or on **December 31, 2018**, unless terminated sooner under the provisions hereof.

SECTION 2. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Act.** The word "Act" means Chapters 501 to 505 of the Texas Local Government Code, as amended.
- (b) **Agreement.** The word "Agreement" means this Grant Agreement, together with all exhibits and schedules attached to this Grant Agreement from time to time, if any.
- (c) **Borrower.** The word "Borrower" means *The City of McKinney Texas*, a Texas home-rule municipality, its successors and assigns, and whose address for the purposes of this Agreement is 222 N. Tennessee Street, McKinney, Texas 75069.
- (d) **Event of Default.** The words "Event of Default" mean and include any of the Events of Default set forth below in the section entitled "Events of Default."
- (e) **Lender.** The word "Lender" means the *McKINNEY COMMUNITY DEVELOPMENT CORPORATION*, a Texas non-profit corporation, its successors and assigns, and whose address for the purposes of this Agreement is 5900 S. Lake Forest Boulevard, Suite 110, McKinney, Texas 75070.
- (f) **Design/Builder.** The words "Design/Builder" mean the contractor for the Dr Pepper StarCenter Expansion Project,

_____, whose principal address is _____.

- (g) **Dr Pepper StarCenter Expansion Project.** The words "Dr Pepper StarCenter Expansion Project" mean the expansion of Dr Pepper Stars Center consisting of one (1) ice surface, locker room facilities, at least 1,770 bleacher seats, at least 36 suite seats, 2 viewing suites, a warmup room, and a shooting room, comprising approximately 46,117 square feet of new, gross floor area, as shown and/or described in *Exhibit A* attached hereto, including 455

additional parking spaces constructed south of the Facility Expansion building improvements and as such description is further hereafter amended and modified by the Approved Plans.

- (h) **Effective Date.** The words “Effective Date” mean the date of the later to execute this Agreement by the City and MCDC.
- (i) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”
- (j) **Indebtedness.** The word “Indebtedness” means and includes without limitation all loans, together with all other obligations, debts and liabilities of City to MCDC, or any one or more of them, as well as all claims by MCDC against City, or any one or more of them; whether now or hereafter existing, voluntary or involuntary, due or not due, absolute or contingent, liquidated or unliquidated; whether City may be liable corporately or jointly with others; whether City may be obligated as a guarantor, surety, or otherwise; whether recovery upon such Indebtedness may be or hereafter may become otherwise unenforceable.
- (k) **MCDC.** The word “MCDC” means the *MCKINNEY COMMUNITY DEVELOPMENT CORPORATION*, a Texas non-profit corporation, its successors and assigns, and whose address is 5900 S. Lake Forest Drive, Suite 110, McKinney, Texas 75070.
- (l) **Property.** The word “Property” refers to the Dr Pepper StarCenter located at 6993 Stars Avenue, McKinney, Texas 75070.
- (m) **Qualified Expenditures.** The words “Qualified Expenditures” mean those expenditures, consistent with Section 505.152 of the Act, made by the City for the Dr Pepper StarCenter Expansion Project, with related improvements, and parking facilities.
- (n) **Related Documents.** The words “Related Documents” mean and include without limitation all promissory notes, loan agreements, and all other instruments and documents, whether now or hereafter existing, executed in connection with City’s Indebtedness to MCDC.

SECTION 3. COMPLIANCE WITH THE ACT.

The City submitted Project Application No. 17-01 to the MCDC requesting that the MCDC grant the City funding in the amount of **Three Million Five Hundred Thousand and No/100 Dollars (\$3,500,000.00)**. The MCDC published notice of the public hearing held on **January 26, 2017**. In accordance with the Act, its bylaws and policies, the MCDC held a public hearing on **January 26, 2017**, and granted the request for funding on **February 23, 2017**. In compliance with the statutory sixty (60) day notice requirement, the funding is available after **March 22, 2017**.

SECTION 4. AFFIRMATIVE OBLIGATIONS.

- (a) **Funding for the Dr Pepper StarCenter Expansion Project.** Within thirty (60) days of the

Effective Date of this Agreement, the MCDC shall provide to the City **Three Million Five Hundred Thousand and No/100 Dollars (\$3,500,000.00)** for Qualified Expenditures related to the construction of the Dr Pepper StarCenter Expansion Project. Funding shall be by direct account transfer.

- (b) **Funding of Construction Draws.** During the construction of the Dr Pepper StarCenter Project, and the Term of this Agreement, the Design/Builder shall submit applications for construction draws to the City. The City shall make the payment to the Design/Builder based upon the application for payment and the terms of the Design/Build Agreement. The total payments to Design/Builder from MCDC for the Dr Pepper StarCenter Project shall not exceed **Three Million Five Hundred Thousand and No/100 Dollars (\$3,500,000.00)**.

SECTION 5. CESSATION OF FUNDING.

If the MCDC has made any commitment to make any grant to the City whether under this Agreement or under any other agreement, the MCDC shall have no obligation to fund any grant Request or disburse any proceeds from the grant allocation if an Event of Default occurs. In addition, the City may not apply for and shall not be eligible to receive any future grants, if it fails to comply with all of the affirmative covenants set forth in this Agreement.

SECTION 6. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **Funding for the Dr Pepper StarCenter Project.** The failure of the MCDC to fund by direct account transfer to the City in the amount of **Three Million Five Hundred Thousand and No/100 Dollars (\$3,500,000.00)** within thirty (60) days of the Effective Date of this Agreement.
- (b) **Funding of Construction Draws.** The failure of the City to use MCDC grant proceeds provided pursuant to Section 4(a) of this Agreement towards the Dr Pepper StarCenter Expansion Project. Further, the failure of the City to make payments to the Design/Builder consistent with Section 4(b) of this Agreement.
- (c) **False Statements.** Any warranty, representation, or statement made or furnished to the MCDC by or on behalf of the City under this Agreement or the Related Documents that is false or misleading in any material respect, at whatever time made or furnished.
- (d) **Other Defaults.** Failure of the City or MCDC to comply with or to perform any other term, condition, affirmative covenant or obligation contained in this Agreement or in any of the Related Documents, or failure of the City or MCDC to comply with or to perform any other term, obligation, affirmative covenant or condition contained in any other agreement between the MCDC and the City.

SECTION 7. EFFECT OF AN EVENT OF DEFAULT.

Failure of either party to comply with or perform any term, obligation, or condition of this Agreement shall constitute an Event of Default. The non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to begin to cure said default. Should said default remain uncured, the non-defaulting party shall have the right to terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the Event(s) of Default.

SECTION 8. BORROWER'S REPRESENTATIONS.

By execution hereof, the signators warrant and represent that they have the requisite authority to execute this Agreement and that the representations made herein are true and accurate in all respects.

SECTION 9. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Collin County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Collin County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon the Effective Date. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. MCDC warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind MCDC to the same. Each party represents and warrants that it is duly authorized to enter into this Agreement and to perform the obligations contemplated hereunder.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which

shall be deemed an original and all of which shall constitute one and the same document.

- (g) **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown in Section 2 of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, City agrees to keep MCDC informed at all times of City's current address.
- (h) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.
- (i) **Survival.** All warranties, representations, and covenants made by City in this Agreement or in any certificate or other instrument delivered by City to MCDC under this Agreement shall be considered to have been relied upon by MCDC and will survive the making of this Agreement and delivery to MCDC of the Related Documents, regardless of any investigation made by MCDC or on MCDC's behalf.
- (j) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (k) **Undocumented Workers.** The City certifies that City does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, City is convicted of a violation under 8 U.S.C. § 1324a(f), City shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of eight percent (8%), not later than the 120th day after the date the MCDC notifies City of the violation.

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CITY ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND CITY AGREES TO ITS TERMS. THIS AGREEMENT IS DATED AS OF THE EFFECTIVE DATE.

CITY:

CITY OF MCKINNEY

a Texas home-rule municipality,

By: _____



PAUL G. GRIMES

City Manager

Date Signed: _____

9/13/17

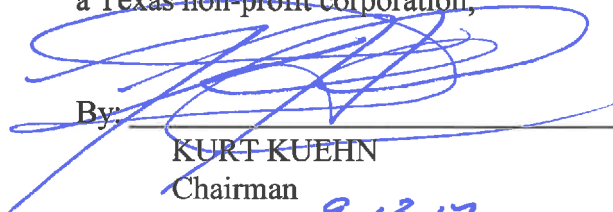
MCDC:

MCKINNEY COMMUNITY

DEVELOPMENT CORPORATION,

a Texas non-profit corporation,

By: _____



KURT KUEHN

Chairman

Date Signed: _____

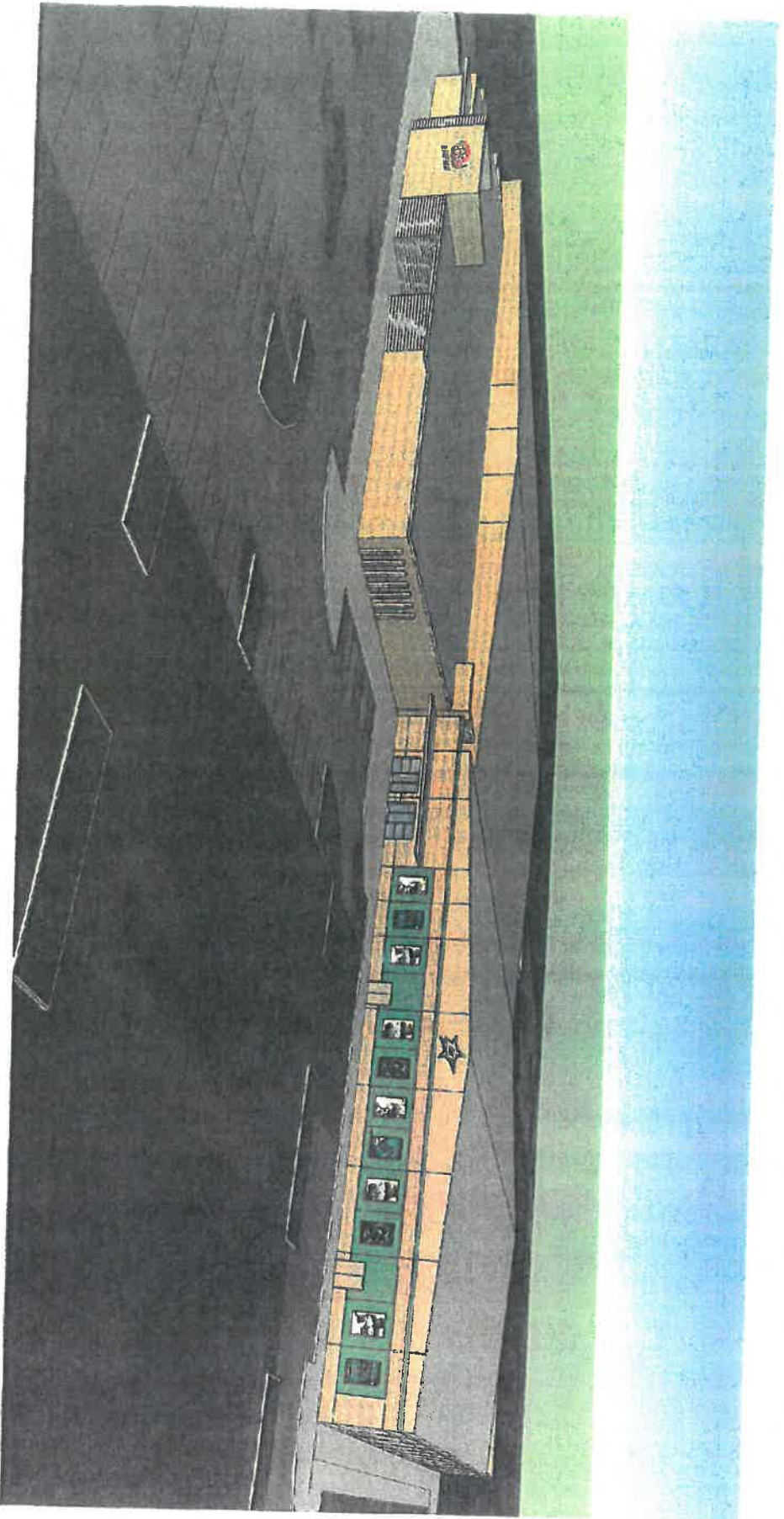
9.13.17

Exhibit A

[Dr Pepper StarCenter Expansion Project Depiction]

Exhibit A

[Dr Pepper StarCenter Expansion Project Depiction]



DR. PEPPER STARS CENTER - MCKINNEY

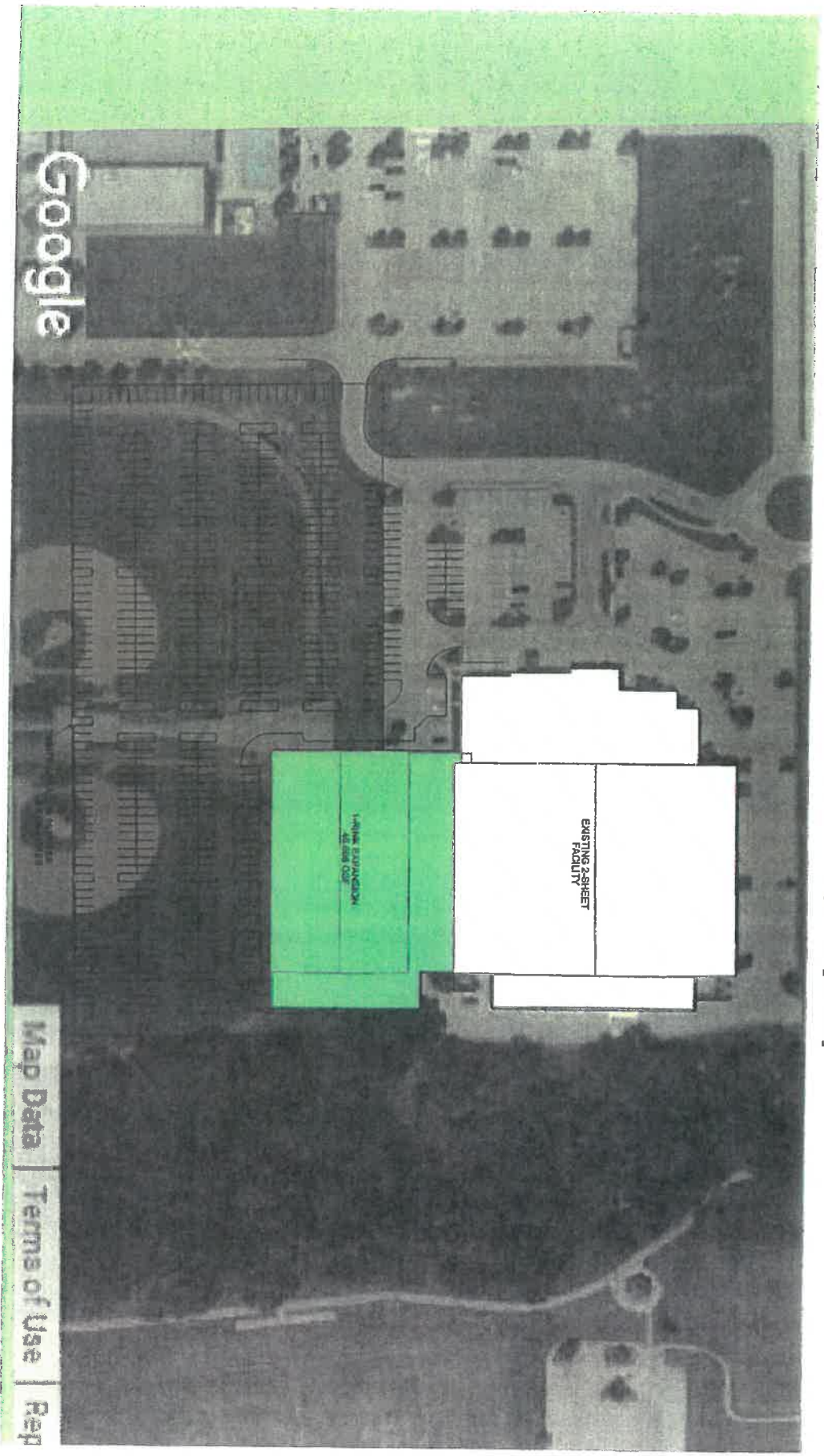


Donald B. Powell, Jr.
Reg. No. 22708
Chris W. Adams
Reg. No. 10142
John F. ...
Reg. No. 11794
A. ...
Reg. No. 38123

Image 2
01.18.17
Project No.
16154.000

Exhibit A

[Dr Pepper StarCenter Expansion Project Depiction]



DR. PEPPER STARS CENTER - MCKINNEY



Demolition by
S.J. No. 27
2017 Budget
Est. No. 101285
2017 Credit
Est. No. 11360
K. Ammerlaan
Est. No. 10128

Site Plan
01.12.17
P.O. # 16
16154.000

10/19/18 AP 48 481.1 1/18 41 5.8

