Effective March 16, 2020, Governor Greg Abbott authorized the temporary suspension of certain statutory provisions of the Texas Open Meetings Act. This meeting of the City Council of the City of Midland is being held pursuant to such authorization and will limit face-to-face interactions for the purpose of slowing the spread of the coronavirus (COVID-19).

CITY OF MIDLAND, TEXAS
AGENDA FOR CITY COUNCIL MEETING
August 24, 2021 - 10:00 AM
300 North Loraine
Midland, Texas
Council Chamber - City Hall

Videoconference Information

Please click this URL to join. https://us06web.zoom.us/j/86134147419?pwd=cUlNaGJUa1VVQ1RnK1IxdVlzeVF0QT09

Passcode: 286818

Or One tap mobile:

+13462487799,,86134147419# US (Houston)

+17207072699,,86134147419# US (Denver)

Or join by phone:

Dial(for higher quality, dial a number based on your current location):

US: +1 346 248 7799 or +1 720 707 2699 or +1 253 215 8782 or +1 301 715 8592 or +1 312 626 6799 or +1 646 558 8656

Webinar ID: 861 3414 7419

International numbers available: https://us06web.zoom.us/u/kkMY6WCjx

The City Council may discuss, consider, and take action on any item listed on this agenda.

OPENING ITEMS

1. Invocation – Father Timothy Hayter, St. Ann's Catholic Church

2. Pledge of Allegiance

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:

   3a. Presentation of Proclamation for Daniel Kirwan Day

CONSENT AGENDA

4. MOTION APPROVING THE FOLLOWING MINUTES:

   4a. REGULAR MEETING OF AUGUST 10, 2021

5. 2021-100 – RESOLUTION ACCEPTING A GRANT IN THE AMOUNT OF $24,988,224.00 FROM THE U.S. DEPARTMENT OF THE TREASURY CORONAVIRUS STATE FISCAL RECOVERY FUND ESTABLISHED UNDER THE AMERICAN RESCUE PLAN ACT OF 2021; AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS; AND APPROPRIATING THE FUNDS (DISTRICT: NONE) (FINANCE)

6. 2021-101 – RESOLUTION APPROVING A GRANT OF FUNDS TO THE MIDLAND COUNTY HOSPITAL DISTRICT ("MIDLAND HEALTH") IN THE AMOUNT OF $4,776,000.00 FOR THE PURPOSE OF FUNDING PROJECTS RELATED TO MIDLAND HEALTH'S RESPONSE TO THE COVID-19 PANDEMIC; AUTHORIZING THE MAYOR AND THE CITY MANAGER TO EXECUTE ALL DOCUMENTS NECESSARY AND APPROPRIATE TO EFFECTUATE THE ADMINISTRATION OF SAID FUNDS; AND AUTHORIZING PAYMENT OF SAID FUNDS (DISTRICT: NONE) (FINANCE)

7. 103-2021 – MOTION ALLOCATING CARES GRANT PROJECT FUNDS IN THE SUM OF $1,900,000.00 TO PROVIDE A 3% ONE-TIME MERIT PAYMENT TO CRITICAL SERVICE PERSONNEL WHO PROVIDED SERVICES DURING THE COVID PANDEMIC. (DISTRICT: ALL) (ADMINISTRATIVE SERVICES)

8. 104-2021 – MOTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH COMMEMORATIVE AIR FORCE, INC., PROVIDING FOR THE 2021 AIRSHO AT MIDLAND INTERNATIONAL AIR & SPACE PORT (DISTRICT 4) (AIRPORTS)

9. 105-2021 – MOTION RATIFYING THE MAYOR'S AND CITY ATTORNEY'S EXECUTION OF THE FEDERAL AVIATION ADMINISTRATION'S CORONA VIRUS AID, RELIEF AND ECONOMIC SECURITY ACT DEVELOPMENT ADDENDUM FOR TERMINAL BUILDING GRANT FOR THE AIRPORT MULTIFACILITY PROJECT AT MIDLAND INTERNATIONAL AIR & SPACE PORT (DISTRICT 4) (AIRPORTS)

10. 106-2021 – MOTION AUTHORIZING THE EXECUTION OF AN ENGAGEMENT AGREEMENT WITH THE LAW FIRM OF BICKERSTAFF HEATH DELGADO ACOSTA LLP FOR LEGAL SERVICES RELATED TO THE REDISTRICTING OF COUNCIL MEMBER DISTRICTS BASED ON A REVIEW OF THE 2020 CENSUS DATA (CITY ATTORNEY)

11. 107-2021 – MOTION APPROVING A CONSULTING SERVICES AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND KIMLEY-HORN AND ASSOCIATES, INC., FOR AIRSPACE MODELING SERVICES RELATED TO THE INTEGRATION OF A ROUNDTRIP, POINT-TO-POINT FLIGHT OF A REUSABLE LAUNCH VEHICLE BETWEEN MIDLAND INTERNATIONAL AIR & SPACE PORT AND

SPACEPORT AMERICA (DISTRICT: NONE) (CITY MANAGER)

12. 108-2021 – MOTION APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND MOTRAN ALLIANCE, INC. (DISTRICT: NONE) (CITY MANAGER)

13. 109-2021 – MOTION APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND THE UNIVERSITY OF TEXAS PERMIAN BASIN TO ADVERTISE AND PUBLICIZE THE CITY OF MIDLAND FOR THE PURPOSE OF DEVELOPING NEW AND EXPANDED BUSINESS ENTERPRISES (DISTRICT: NONE) (CITY MANAGER)

14. 110-2021 – MOTION APPROVING A PROMOTIONAL AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND HIGHER ORBITS, INC. TO ADVERTISE AND PUBLICIZE THE CITY OF MIDLAND FOR THE PURPOSE OF DEVELOPING NEW AND EXPANDED BUSINESS ENTERPRISES (DISTRICT: NONE) (CITY MANAGER)

15. 111-2021 – MOTION APPROVING A SECOND AMENDMENT TO THAT CERTAIN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND SUSIE'S SOUTH FORTY CONFECTIONS, INC. (DISTRICT 2) (CITY MANAGER)

16. 112-2021 – MOTION AUTHORIZING THE EXECUTION OF A FISCAL SPONSORSHIP AGREEMENT WITH THE PERMIAN BASIN AREA FOUNDATION TO PROVIDE FOR CERTAIN FACILITY IMPROVEMENTS AND ENHANCEMENTS LOCATED AT HOGAN PARK (DISTRICT 2) (CITY MANAGER)

17. 2021-102 – RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO PERMIAN DEEP ROCK OIL CO., LLC ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED IN SECTION 3, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED 2,373 FEET EAST OF SOUTH GARFIELD STREET AND 320 FEET NORTH OF WEST COUNTY ROAD 111); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT (DISTRICT 2) (DEVELOPMENT SERVICES)

18. 2021-103 – RESOLUTION APPROVING THE ISSUANCE OF PERMITS TO ENDEAVOR ENERGY RESOURCES, L.P. ("OPERATOR") TO DRILL THREE OIL AND GAS WELLS LOCATED IN SECTION 4, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 580 FEET NORTH OF THE WEST INTERSTATE 20 SERVICE ROAD AND BETWEEN 1,157 FEET AND 1,207 FEET EAST OF SOUTH MIDKIFF ROAD); AND PROVIDING THAT SAID PERMITS DO NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT (DISTRICT 2) (DEVELOPMENT SERVICES)

19. 113-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE

(21-329-031) WITH CENTURION PIPELINE L.P., REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 9, BLOCK 39, TOWNSHIP 2 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT 2) (UTILITIES)

20. 114-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (21-329-029) WITH CENTURION PIPELINE L.P., REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTIONS 9 & 10, BLOCK 39, TOWNSHIP 2 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT 2) (UTILITIES)

21. 115-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (21-329-030) WITH CENTURION PIPELINE L.P., REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 9, BLOCK 39, TOWNSHIP 2 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT 2) (UTILITIES)

22. 116-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (21-329-032) WITH CENTURION PIPELINE L.P., REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 9, BLOCK 39, TOWNSHIP 2 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT 2) (UTILITIES)

23. 117-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (21-329-033) WITH CENTURION PIPELINE L.P., REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 9, BLOCK 39, TOWNSHIP 2 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT 2) (UTILITIES)

24. 118-2021 – MOTION AUTHORIZING AND EXECUTING A RIGHT-OF-WAY LICENSE (21-217-035) BETWEEN THE CITY OF MIDLAND AND OXY USA INC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 36, BLOCK 39, TOWNSHIP 1 NORTH, T&P RR CO. SURVEY, MARTIN COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)

25. 119-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (21-329-034) WITH CENTURION PIPELINE L.P., REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTIONS 4 AND 9, BLOCK 39, TOWNSHIP 2 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT 2) (UTILITIES)

26. 120-2021 – MOTION AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT WITH AMERICAN TOWERS LLC, A DELAWARE LIMITED LIABILITY COMPANY REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 5, BLOCK X, H.P. HILLIARD SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT 1) (UTILITIES)

SECOND READINGS

27. 10219 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 9.70-ACRE TRACT OF LAND OUT OF SECTION 7, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM AE, AGRICULTURAL ESTATE DISTRICT TO TH, TOWNHOUSE (ATTACHED) DWELLING DISTRICT (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF OCCIDENTAL PARKWAY AND FAIRGROUNDS ROAD);

CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 1) (DEVELOPMENT SERVICES) (FIRST READING HELD AUGUST 10, 2021)

28. 10220 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 15, TRACT B, GARDEN HEIGHTS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST LOUISIANA AVENUE, APPROXIMATELY 315 FEET EAST OF NORTH CRESTVIEW ROAD), BY PERMITTING (1) AN INCREASED MAXIMUM NUMBER OF ACCESSORY BUILDINGS, (2) AN INCREASED MAXIMUM SQUARE FOOTAGE OF ALL ACCESSORY BUILDINGS, (3) A REDUCED MINIMUM SIDE YARD SETBACK, AND (4) A REDUCED MINIMUM REAR YARD SETBACK; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES) (FIRST READING HELD AUGUST 10, 2021)

29. 10221 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 5,790-SQUARE FOOT PORTION OF A 0.4-ACRE TRACT OF LAND OUT OF THE SOUTHWEST QUARTER OF SECTION 33, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST WALL STREET AND BANKHEAD HIGHWAY), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A VENDOR MARKET FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES) (FIRST READING HELD AUGUST 10, 2021)

30. 10222 – AN ORDINANCE AMENDING TITLE X, “TRAFFIC REGULATIONS”, CHAPTER FOUR, “TRAFFIC CONTROL DEVICES”, SECTION 11, “SCHOOL ZONES”, OF THE MIDLAND CITY CODE, SO AS TO DESIGNATE EACH SCHOOL ZONE WITHIN THE CITY AND REGULATE THE SPEED AND MOVEMENT OF TRAFFIC THEREIN; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO INSTALL APPROPRIATE SIGNS AND MARKINGS; REPEALING ORDINANCE NO. 10114; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS ($200.00); AND ORDERING PUBLICATION (DISTRICT: ALL) (ENGINEERING SERVICES) (FIRST READING HELD AUGUST 10, 2021)

31. 10223 – AN ORDINANCE ALTERING PRIMA FACIE SPEED LIMITS ALONG CERTAIN

STREETS IN THE CITY; AUTHORIZING INSTALLATION OF APPROPRIATE SIGNS AND MARKINGS; REPEALING ORDINANCE NO. 9945; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS ($200.00); AND ORDERING PUBLICATION (DISTRICT: ALL) (ENGINEERING SERVICES) (FIRST READING HELD AUGUST 10, 2021)

32. 10224 – AN ORDINANCE AMENDING TITLE VI, "POLICE REGULATIONS", CHAPTER 10, "DANGEROUS DOGS", OF THE CITY CODE OF MIDLAND, TEXAS; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS ($500.00); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION (LEGAL) (FIRST READING HELD AUGUST 10, 2021)

PUBLIC HEARINGS

The City Council will hold public hearings on the following items:

33. 10204 – AN ORDINANCE ESTABLISHING THE INITIAL ZONING CLASSIFICATIONS OF THE AREA INDICATED AS BEING A 131.190-ACRE TRACT OF LAND OUT OF SECTION 35, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AS AN LR, LOCAL RETAIL DISTRICT, IN PART, AND AN SF-3, SINGLE-FAMILY DWELLING DISTRICT, IN PART; SAID TRACT BEING GENERALLY LOCATED ON THE WEST SIDE OF STATE HIGHWAY 158, APPROXIMATELY 1,001 FEET NORTH OF STATE HIGHWAY 191; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT: NONE) (DEVELOPMENT SERVICES) (DEFERRED FROM JULY 13, 2021)

34. 10225 – GATHER PUBLIC INPUT ON THE PROPOSED 2021-2022 BUDGET; AND CONSIDER AN ORDINANCE OF THE CITY OF MIDLAND PROVIDING FUNDS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2021, AND ENDING SEPTEMBER 30, 2022, BY APPROVING THE BUDGET FOR SAID PERIOD AND APPROPRIATING AND SETTING ASIDE THE NECESSARY FUNDS OUT OF THE GENERAL AND OTHER REVENUES AND UNAPPROPRIATED FUND BALANCE OF THE CITY OF MIDLAND FOR SAID FISCAL YEAR FOR THE MAINTENANCE AND OPERATION OF THE VARIOUS DEPARTMENTS AND FOR VARIOUS ACTIVITIES AND IMPROVEMENTS TO THE CITY; AND ORDERING PUBLICATION (FINANCE)

35. 10226 – TAX RATE INCREASE FOR FISCAL YEAR 2021-2022; AND CONSIDER AN ORDINANCE FIXING THE TAX LEVY FOR THE CITY OF MIDLAND, TEXAS, FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2021, AND ENDING ON SEPTEMBER 30, 2022 (FINANCE)

36. 10227 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 3, BLOCK 3, MOODY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM LI, LIGHT INDUSTRIAL DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF NORTH

MADISON STREET, APPROXIMATELY 146 FEET SOUTH OF SOUTH STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

37. 10228 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 2, BLOCK 2, WALLACE HEIGHTS ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE SOUTH SIDE OF SINCLAIR AVENUE, APPROXIMATELY 290 FEET EAST OF NORTH LOOP 250 WEST); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES)

38. 10229 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOT 2, BLOCK 2, WALLACE HEIGHTS ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF SINCLAIR AVENUE, APPROXIMATELY 290 FEET EAST OF NORTH LOOP 250 WEST), WHICH IS PRESENTLY ZONED PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES)

39. 10230 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 16, BLOCK 2, EASTOVER ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF JESSE STREET AND EAST ILLINOIS AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

40. 10231 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,977-SQUARE FOOT PORTION OF LOT 1, BLOCK 11, WESTRIDGE PARK ADDITION, SECTION 27, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF DEAUVILLE ROAD AND TRADEWINDS BOULEVARD), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL

DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

41. 10232 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR LOT 1, BLOCK 1, CLAYDESTA PLAZA NORTH, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH BIG SPRING STREET AND WEST LOOP 250 NORTH), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR A MOBILE FOOD VENDOR PARK; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)

42. 10233 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOT 1, BLOCK 1, CLAYDESTA PLAZA NORTH, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH BIG SPRING STREET AND WEST LOOP 250 NORTH), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A MOBILE FOOD VENDOR PARK FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)

43. 2021-104 – RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A VENDOR MARKET AND CONCERT ON LOT 1A, BLOCK 54, ALL OF BLOCK 55, A 0.57-ACRE PORTION OF WEST WALL STREET RIGHT-OF-WAY, A 0.57-ACRE PORTION OF NORTH COLORADO STREET RIGHT-OF-WAY, AND A 0.57-ACRE PORTION OF THE WEST TEXAS AVENUE RIGHT-OF-WAY, ALL ADJACENT TO BLOCK 55, ALL OUT OF ORIGINAL TOWN ADDITION, SECTION 14, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF NORTH COLORADO STREET AND WEST TEXAS AVENUE) SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS (DISTRICT 2) (DEVELOPMENT SERVICES)

44. 2021-105 – RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A STAIR CLIMB AND CONCERT EVENT ON LOT 1A, BLOCK 54, ALL OF BLOCK 55, AND A 0.57-ACRE PORTION OF THE NORTH COLORADO STREET RIGHT-OF-WAY LOCATED ADJACENT TO BLOCK 55, ALL OUT OF ORIGINAL TOWN ADDITION, SECTION 14, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH COLORADO STREET AND WEST TEXAS AVENUE) SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS (DISTRICT 2) (DEVELOPMENT SERVICES)

MISCELLANEOUS

45. 10234 – AN ORDINANCE ADOPTING A FEE SCHEDULE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING AN APPEAL PROCESS; AND ORDERING PUBLICATION (FINANCE)

46. 121-2021 – MOTION GRANTING AMANDA AND DANIEL ARCHER'S APPEAL AND REVERSING THE CITY TRAFFIC ENGINEER'S DENIAL OF A DRIVEWAY PERMIT FOR LOT 31, BLOCK 31, LONE STAR TRAILS ADDITION, SECTION 13, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF BURNETT LANE, APPROXIMATELY 288 FEET NORTH OF BRUSH DRIVE) (DISTRICT 1) (ENGINEERING SERVICES)

47. 2021-106 – RESOLUTION CREATING A DOWNTOWN ENTERTAINMENT DISTRICT ADVISORY COMMITTEE AND ESTABLISHING DUTIES, QUALIFICATIONS, TERMS OF OFFICE, METHODS FOR FILLING VACANCIES, AND RELATED ORGANIZATIONAL MATTERS (DISTRICT 2) (CITY MANAGER)

48. MOTION MAKING APPOINTMENTS TO VARIOUS BOARDS AND COMMISSIONS (CITY SECRETARY'S OFFICE)

PUBLIC COMMENT

49. Receive public comments where individuals may address the City Council on City related issues and projects not on the present agenda. Any deliberation of or decision by the City Council regarding the item being discussed shall be limited to a motion to place the item on the agenda for a subsequent meeting. (Please limit comments to three minutes or less.)

EXECUTIVE SESSION

50. Pursuant to Texas Government Code § 551.101, the City Council will hold an Executive Session, which is closed to the public, to discuss the following matters as permitted under the following sections of the Texas Government Code:

a. Section 551.087, Deliberate Economic Development Negotiations

a.1. Discuss business prospects that the City seeks to have locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives.

Respectfully Submitted,

Robert Patrick
City Manager

MEETING ASSISTANCE INFORMATION: The Midland City Hall and Council Chamber are wheelchair accessible. If you need special assistance to participate in this meeting, please contact the City Secretary's Office at (432) 685-7430. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

MIDLAND CITY COUNCIL
MINUTES
August 10, 2021

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., August 10, 2021.

Council Members present:	Patrick Payton, Spencer Robnett, Michael Trost, Scott Dufford, John Norman, Jack Ladd, Lori Blong
Council Members absent:	None
Staff members present:	City Manager Robert Patrick, City Attorney John Ohnemiller, Deputy City Manager Morris Williams Jr, Assistant City Manager Tina Jauz

The meeting was called to order at 10:00 a.m.

OPENING ITEMS

1. Invocation – Reverend Pat Bryant, Travis Baptist Church

2. Pledge of Allegiance

CONSENT AGENDA

John Norman moved to approve Consent Agenda items 3-21, excluding item(s) 10; seconded by Jack Ladd.

The motion passed by the following vote:
AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd
NAY: None
ABSTAIN: None
ABSENT: Blong

3. MOTION APPROVING THE FOLLOWING MINUTES:

   3a. SPECIAL SESSION OF JULY 14, 2021

   3b. BRIEFING SESSION OF JULY 27, 2021

DRAFT

4. 2021-088 – RESOLUTION APPROVING A CONTRACT WITH FIELDTURF USA, INC., THROUGH BUYBOARD, FOR THE PURCHASE AND INSTALLATION OF TWO (2) ARTIFICIAL TURF FIELDS FOR FIELDS 5 AND 6 AT HOGAN PARK FOR A TOTAL COST OF $1,514,221.00; APPROVING $50,000.00 FOR CONTINGENCIES; AND APPROPRIATING FUNDS FOR SAID PROJECT (DISTRICT 2) (GENERAL SERVICES)

5. 2021-089 – RESOLUTION APPROVING A CONTRACT WITH FIELDTURF USA, INC., THROUGH BUYBOARD, FOR THE PURCHASE AND INSTALLATION OF TWO (2) ARTIFICIAL TURF FIELDS AT REYES-MASHBURN-NELMS PARK FOR A TOTAL COST OF $1,349,678.00; APPROVING $75,000.00 FOR CONTINGENCIES; AND APPROPRIATING FUNDS FOR SAID PROJECT (DISTRICT 2) (GENERAL SERVICES)

6. 2021-090 – RESOLUTION APPROVING A CONTRACT WITH MUSCO CORPORATION DBA MUSCO SPORTS LIGHTING, LLC, THROUGH BUYBOARD, FOR THE PURCHASE AND INSTALLATION OF LED FIELD LIGHTING AT THE HOGAN PARK BILL WILLIAMS SOFTBALL COMPLEX FOR A TOTAL COST OF $1,835,972.00; APPROVING $183,597.00 FOR CONTINGENCIES; AND APPROPRIATING FUNDS FOR SAID PROJECT (DISTRICT 2) (GENERAL SERVICES)

7. 096-2021 – MOTION AUTHORIZING THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE TO ADVERTISE A REQUEST FOR PROPOSALS FOR TURF AND LANDSCAPE MAINTENANCE SERVICES AND TO NEGOTIATE A CONTRACT FOR SAID SERVICES; PROVIDED, HOWEVER, THAT SAID CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL (DISTRICT: ALL) (GENERAL SERVICES)

8. 2021-091 – RESOLUTION REJECTING THE SOLE BID RECEIVED FOR THE REMOVAL OF WATER TREATMENT PLANT SOLIDS FROM THE WATER PURIFICATION PLANT (DISTRICT: NONE) (GENERAL SERVICES)

9. 2021-092 – RESOLUTION RATIFYING AND APPROVING THE PAYMENT FOR EMERGENCY REPAIR SERVICES OF A 21" WASTEWATER LINE IN THE BOTTOM OF SCHARBAUER DRAW BY EDGARDO MADRID & ASSOCIATES LLC FOR A TOTAL COST OF $146,364.07 (DISTRICT 3) (GENERAL SERVICES)

11. 097-2021 – MOTION AUTHORIZING THE MAYOR, CITY MANAGER AND CITY ATTORNEY TO EXECUTE FEDERAL AVIATION ADMINISTRATION GRANT #64 IN ORDER TO RECEIVE GRANT FUNDS FOR THE RELOCATION OF SV1A & SV1B GATES PROJECT AND THE AIRFIELD LIGHTING REHABILITATION PROJECT AT MIDLAND INTERNATIONAL AIR & SPACE PORT (DISTRICT 4) (AIRPORTS)

12. 2021-094 – RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS, APPROVING A NEGOTIATED SETTLEMENT BETWEEN THE EXECUTIVE COMMITTEE OF CITIES SERVED BY ATMOS WEST TEXAS ("CITIES") AND ATMOS ENERGY CORP., WEST TEXAS DIVISION (THE "COMPANY") REGARDING THE

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COMPANY'S 2021 RATE REVIEW MECHANISM FILINGS; DECLARING EXISTING RATES TO BE UNREASONABLE; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT; FINDING THE RATES TO BE SET BY THE SETTLEMENT TARIFFS TO BE JUST AND REASONABLE AND IN THE PUBLIC INTEREST; APPROVING AN EXHIBIT ESTABLISHING A BENCHMARK FOR PENSIONS AND RETIREE MEDICAL BENEFITS; APPROVING AN EXHIBIT REGARDING AMORTIZATION OF REGULATORY LIABILITY; REQUIRING THE COMPANY TO REIMBURSE CITIES' REASONABLE RATEMAKING EXPENSES; DETERMINING THAT THIS RESOLUTION WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; ADOPTING A SAVINGS CLAUSE; DECLARING AN EFFECTIVE DATE; AND AUTHORIZING AND DIRECTING THE CITY SECRETARY TO DELIVER THIS RESOLUTION TO THE COMPANY AND CITIES' LEGAL COUNSEL (DISTRICT: NONE) (CITY MANAGER)

13. 2021-095 – RESOLUTION CALLING AN ELECTION FOR FOUR CITY OFFICIALS; AMENDING THE BOUNDARY OF THE CITY ELECTION AND CITY COUNCIL DISTRICTS; PROVIDING FOR USE OF ACCESSIBLE VOTING SYSTEMS; ESTABLISHING ELECTION PRECINCTS FOR SAID ELECTION; AND ESTABLISHING VOTE CENTERS FOR SAID ELECTION (CITY SECRETARY'S OFFICE)

14. 2021-096 – RESOLUTION AUTHORIZING THE EXECUTION OF A COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT WITH CASA DE AMIGOS FOR THE SENIOR NUTRITION GRAB-N-GO PROGRAM IN THE AMOUNT OF $30,000.00; AND ALLOCATING FUNDS (DISTRICT: ALL) (DEVELOPMENT SERVICES)

15. 2021-097 – RESOLUTION AUTHORIZING THE EXECUTION OF A COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT WITH THE SALVATION ARMY OF MIDLAND FOR THE HOMELESS MEAL AND FOODBOX PROGRAM IN THE AMOUNT OF $142,500.00; AND ALLOCATING FUNDS (DISTRICT: ALL) (DEVELOPMENT SERVICES)

16. 2021-098 – RESOLUTION AUTHORIZING AN OPERATING CERTIFICATE FOR RUBEN RAMIREZ TO OPERATE A LIMOUSINE BUSINESS; SETTING FORTH CONDITIONS ACCOMPANYING THE CERTIFICATE; AND ESTABLISHING THE TERMS OF THE CERTIFICATE (DISTRICT: ALL) (POLICE)

17. 098-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE AMENDMENT (21-329-022) WITH MEDALLION CRUDE OIL LOGISTICS LLC, REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTIONS 4, 9, AND 16, BLOCK 37, TOWNSHIP 3 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)

18. 099-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (21-329-021) WITH ENDEAVOR ENERGY RESOURCES, LP., REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 8, BLOCK 39, TOWNSHIP 2 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT 2) (UTILITIES)

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19. 100-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (21-329-025) WITH ENDEAVOR ENERGY RESOURCES, LP., REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 8, BLOCK 39, TOWNSHIP 2 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT 2) (UTILITIES)

20. 101-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (21-329-026) WITH ENDEAVOR ENERGY RESOURCES, LP., REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 8, BLOCK 39, TOWNSHIP 2 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT 2) (UTILITIES)

21. 102-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (21-329-024) WITH ENDEAVOR ENERGY RESOURCES LP., REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTIONS 12 AND 13, BLOCK 37, TOWNSHIP 3 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)

The following item(s) were pulled from consent agenda and considered individually.

10. 2021-093 – RESOLUTION AWARDING A CONTRACT FOR THE NEW YORK AVENUE PAVING BOND PROJECT TO CD KING CONSTRUCTION, LLC, DOING BUSINESS AS JD KING, OF SEMINOLE, TEXAS, AT A TOTAL COST OF $2,096,751.37; APPROPRIATING FUNDS; AND AUTHORIZING PAYMENT (DISTRICT 2) (GENERAL SERVICES)

Council Member Norman asked if this includes curb and gutter or was it only paving. Engineering Services Director Jose Ortiz reported it includes bringing the paving up to standard and installing curb and gutter where it is missing. The existing curb work will stay.

John Norman moved to approve Resolution No. 2021-093; seconded by Jack Ladd.

The motion passed by the following vote:
AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong
NAY: None
ABSTAIN: None
ABSENT: None

SECOND READINGS

22. 10173 – AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO A CERTAIN AREA ADJOINING THE PRESENT CITY LIMITS, BEING A 21.91-ACRE TRACT OF LAND OUT OF LOT 1, BLOCK 21, GRASSLAND ESTATES, SECTION 16, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED APPROXIMATELY 266 FEET EAST OF THE INTERSECTION OF HOMELAND DRIVE AND APPROXIMATELY 258 FEET EAST OF HOMESTEAD BOULEVARD); ORDERING PUBLICATION; AND ORDERING RECORDATION BY THE CITY SECRETARY (DEVELOPMENT SERVICES) (FIRST READING HELD JULY 13, 2021)

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Deputy City Secretary Vanessa White read the caption of Ordinance No. 10173.

Amy Burkes, 6408 Homestead, heard that this would take one year for approval because it was a PD and had drainage issues. She was surprised to see a letter on Saturday that it is going to Planning & Zoning on August 16th. The neighborhood is asking for transparency. City Attorney John Ohnemiller clarified that it will go to Planning & Zoning and then to Council for two readings. Council can choose to put off the vote until they are comfortable with the drainage issues. Council Member Blong reported she would be more comfortable with a full drainage study because of the recent flooding.

Autumn Winkles, 5601 Ridgemont, seconded Amy's comments and asked Council to make it a priority to require a flood study since the last one was done in the 1990s. She asked Council to consider deferring this item until the flood study is complete.

Engineering Director Jose Ortiz answered questions about a drainage study noting that the developer funds the study. Staff usually does not request a drainage study in advance of Planning & Zoning. Council Member Blong added that she felt requiring a drainage study is pertinent because of the flooding issues.

Kim Helm, 6508 Homestead, reported that the neighborhood has a vested interest in the drainage because their property is at risk. The developer needs to spend the money on the study to have a stake in the sale. She explained that they will have to get 100% protest from the neighborhood for Planning & Zoning and they only have 6 days to accomplish it.

City Attorney John Ohnemiller encouraged the neighboring homeowners to go to Planning to see a copy of what has been filed for the next Planning & Zoning meeting. The audience reported they asked and have been denied. He reported they would ensure they could see a copy.

Council Member Trost reported his position is to protect the neighborhood and thinks this development will cause problems.

Spencer Robnett moved to approve the second and final reading of Ordinance No. 10173; seconded by Jack Ladd.

The motion passed by the following vote:
AYE: Payton, Robnett, Dufford, Norman, Ladd, Blong
NAY: Trost
ABSTAIN: None
ABSENT: None

23. 10174 – AN ORDINANCE ESTABLISHING THE INITIAL ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 21.91-ACRE TRACT OF LAND OUT OF LOT 1, BLOCK 21, GRASSLAND ESTATES, SECTION 16, MIDLAND COUNTY, TEXAS, AS AN AE, AGRICULTURAL ESTATE DISTRICT; SAID TRACT BEING GENERALLY LOCATED APPROXIMATELY 266 FEET EAST OF THE INTERSECTION OF HOMELAND DRIVE AND APPROXIMATELY 258 FEET EAST OF HOMESTEAD BOULEVARD; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES) (FIRST

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READING HELD JULY 13, 2021)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10174.

Autum Winkles, 5601 Ridgemont, noted that one more no vote would stop this whole thing. When asked how many names were on the petition she reported there are over 1,500 that would like to see the area remain a green space. Council Member Norman stated that at the last meeting Ms. Winkles asked for the zoning to be changed to AE because that is what she wanted for her group. He asked if she still wanted it to be AE. Ms. Winkles reported she does want the zoning AE, but not at the behest of a Florida developer.

Council Member Blong reported they have to consider distinct issues that create the best outcomes for the entire community. It is not a foregone conclusion that Council will approve the next thing. She continues to have deep concern for the developer's next step.

Dan Corrales, 1600 N. Weatherford, reported that from what he understands this change is procedural and is being requested by the developer and is causing concern for the residents. The best thing they can do is to understand the procedure and after this is changed, it still has to to go Planning & Zoning and then come back to Council. He advocates that the community keeps apprised of that opportunity and to continue to voice their opinions and stay engaged.

Jack Ladd moved to approve the second and final reading of Ordinance No. 10174; seconded by Spencer Robnett.

The motion passed by the following vote:
AYE: Payton, Robnett, Dufford, Norman, Ladd, Blong
NAY: Trost
ABSTAIN: None
ABSENT: None

24. 10213 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOT 8A, BLOCK 27, WYDEWOOD ESTATES, SECTION 29, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH LOOP 250 WEST AND PRESTON DRIVE), WHICH IS PRESENTLY ZONED PD, PLANNED DEVELOPMENT DISTRICT FOR A SHOPPING CENTER, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES) (FIRST READING HELD JULY 27, 2021)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10213.

Catherine Chamblee, Austin, on behalf of Cracker Barrel, thanked Council for allowing her

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to present the application. She made herself available to answer any questions.

Jack Ladd moved to approve the second and final reading of Ordinance No. 10213; seconded by Lori Blong.

The motion passed by the following vote:
AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong
NAY: None
ABSTAIN: None
ABSENT: None

25. 10214 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 0.43-ACRE TRACT OF LAND OUT OF LOT 14, BLOCK 1, 349 RANCH ESTATES, CITY AND COUNTY OF MIDLAND, TEXAS, FROM AE, AGRICULTURAL ESTATE DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF SHAWNEE, APPROXIMATELY 175 FEET NORTH OF TEJAS); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 1) (DEVELOPMENT SERVICES) (FIRST READING HELD JULY 27, 2021)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10214.

Spencer Robnett moved to approve the second and final reading of Ordinance No. 10214; seconded by Lori Blong.

The motion passed by the following vote:
AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong
NAY: None
ABSTAIN: None
ABSENT: None

26. 10215 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE THE NORTH HALVES OF TRACTS 12, 13 AND 14, HILLCREST ACRES, AND THE ENTIRETY OF LOT 2, BLOCK 3, HILLCREST ACRES, SECTION 10, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-1, SINGLE-FAMILY DWELLING DISTRICT TO PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER AND HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE SOUTH SIDE OF ANDREWS HIGHWAY, APPROXIMATELY 170 FEET EAST OF WOODCREST DRIVE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (COUNCIL DISTRICT 4) (DEVELOPMENT SERVICES) (FIRST READING HELD JULY 27, 2021)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10215.

Spencer Robnett moved to approve the second and final reading of Ordinance No. 10215; seconded by Lori Blong.

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The motion passed by the following vote:
AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong
NAY: None
ABSTAIN: None
ABSENT: None

27. 10216 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 2, BLOCK 3, MOODY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM LI, LIGHT INDUSTRIAL DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MADISON STREET, APPROXIMATELY 97 FEET SOUTH OF SOUTH STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES) (FIRST READING HELD JULY 27, 2021)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10216.

Jack Ladd moved to approve the second and final reading of Ordinance No. 10216; seconded by Spencer Robnett.

The motion passed by the following vote:
AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong
NAY: None
ABSTAIN: None
ABSENT: None

28. 10217 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 16, BLOCK 2, EASTOVER ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF JESSE STREET AND EAST ILLINOIS AVENUE), BY PERMITTING A REDUCED MINIMUM LOT AREA, A REDUCED MINIMUM LOT WIDTH, AND A REDUCED MINIMUM LOT DEPTH IN THE EVENT THAT THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND IS AMENDED TO REZONE THE PROPERTY FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES) (FIRST READING HELD JULY 27, 2021)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10217.

Jack Ladd moved to approve the second and final reading of Ordinance No. 10217; seconded by John Norman.

The motion passed by the following vote:
AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong
NAY: None

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ABSTAIN: None
ABSENT: None

PUBLIC HEARINGS

The City Council will hold public hearings on the following items:

29. 10218 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 3.093-ACRE TRACT OF LAND OUT OF LOT 3, BLOCK 6, WESTRIDGE PARK ADDITION, SECTION 31, CITY AND COUNTY OF MIDLAND, TEXAS, FROM O-2, OFFICE DISTRICT TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF CHAMPIONS DRIVE AND NORTH LOOP 250 WEST); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10218.

Planning Division Manager Elizabeth Shaughnessy gave a brief overview of the item noting the applicant is requesting a zone change to Regional Retail for future development. The shopping center will be similar to Red Oaks Plaza south of the HEB on Loop 250. Staff is in support of the request. Council Member Blong noted there is already so much congestion in the area and inquired about traffic. Traffic Engineer Mike Pacelli reported they will not have access off of Loop 250 service road but will have access from a side street. The traffic produced will not be significant enough to cause a great change.

Mayor Payton opened the public hearing at 10:37 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Michael Trost moved to approve the first of two readings of Ordinance No. 10218; seconded by Lori Blong.

The motion passed by the following vote:
AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong
NAY: None
ABSTAIN: None
ABSENT: None

30. 10219 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 9.70-ACRE TRACT OF LAND OUT OF SECTION 7, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM AE, AGRICULTURAL ESTATE DISTRICT TO TH, TOWNHOUSE (ATTACHED) DWELLING DISTRICT (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF OCCIDENTAL PARKWAY AND FAIRGROUNDS ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 1) (DEVELOPMENT SERVICES)

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Deputy City Secretary Vanessa White read the caption of Ordinance No. 10219.

Planning Division Manager Elizabeth Shaughnessy gave a brief overview of the item noting that Betenbough is requesting a zone change to allow for a smaller housing development of affordable housing. Staff believes this will fit in the area and make a good transition. It is adjacent to Occidental Parkway and will be a good buffer.

Mayor Payton opened the public hearing at 10:37 a.m.

Ronnie Wallace and Chris Berry, Betenbough Homes, shared a few slides and answered questions about their development which is Lone Star Trails. This property will be developed as 40 townhomes that will be sold individually. Each side is 1,550 square feet and will have three bedrooms and two bathrooms. They will sell for around $200,000 and there will be a homeowners association. This will be developed without alleys and they meet all drainage requirements.

Council Member Dufford shared that on future projects Council desires to see more mixed use type developments of varying sized homes, not just all SF-3. Mr. Berry noted that for this project there are nine acres, but only two are buildable.

There being no one else wishing to speak, the public hearing was closed.

Scott Dufford moved to approve the first of two readings of Ordinance No. 10219; seconded by John Norman.

The motion passed by the following vote:
AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong
NAY: None
ABSTAIN: None
ABSENT: None

31. 10220 – AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 15, TRACT B, GARDEN HEIGHTS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST LOUISIANA AVENUE, APPROXIMATELY 315 FEET EAST OF NORTH CRESTVIEW ROAD), BY PERMITTING (1) AN INCREASED MAXIMUM NUMBER OF ACCESSORY BUILDINGS, (2) AN INCREASED MAXIMUM SQUARE FOOTAGE OF ALL ACCESSORY BUILDINGS, (3) A REDUCED MINIMUM SIDE YARD SETBACK, AND (4) A REDUCED MINIMUM REAR YARD SETBACK; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10220.

Planning Division Manager Elizabeth Shaughnessy gave a brief overview of the item noting it is a request for a special exception that exceeds the maximum area for accessory buildings and does not meet rear or side yard setbacks. He has already exceeded the

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allowable area by 10% and the new addition will exceed it by 15%. There is currently an existing non-conforming building on the property line. Staff recommends denial of the special exception.

Mayor Payton opened the public hearing at 11:00 a.m.

Charles Francis reported his house was built in the early to mid 50s. Garden homes have large back yards for gardens in the back. Over the years this has changed and nobody has a garden in the back anymore. He shared a copy of his plat showing what he is building. He wants to put a carport in an area to cover his tractors from rain, snow and hail. This carport will improve his property and raise his valuation which will increase his property tax. He shared pictures of houses in the neighborhood that have similar structures. The carport will not have electricity or plumbing and will have gravel underneath. Twenty years ago he built his existing building to code. The building was inspected. The code has changed since then but it was to code at the time of the build. Council Member Robnett asked him to bring a letter of support from his immediate neighbors to the second reading.

There being no one else wishing to speak, the public hearing was closed at 11:08 a.m.

Lori Blong moved to approve the first of two readings of Ordinance No. 10220; seconded by Scott Dufford.

The motion passed by the following vote:
AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong
NAY: None
ABSTAIN: None
ABSENT: None

32. 10221 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 5,790-SQUARE FOOT PORTION OF A 0.4-ACRE TRACT OF LAND OUT OF THE SOUTHWEST QUARTER OF SECTION 33, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST WALL STREET AND BANKHEAD HIGHWAY), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A VENDOR MARKET FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10221.

Mayor Payton opened the public hearing at 11:10 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Jack Ladd moved to approve the first iof two readings of Ordinance No. 10221; seconded

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by Spencer Robnett.

The motion passed by the following vote:
AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong
NAY: None
ABSTAIN: None
ABSENT: None

MISCELLANEOUS

33. 2021-099 – RESOLUTION RECORDING A VOTE ON A PROPOSAL TO CONSIDER AN AD VALOREM TAX RATE FOR THE FISCAL YEAR 2021-2022 AND TO ESTABLISH A DATE TO HOLD A PUBLIC HEARING ON THE PROPOSED TAX RATE; ESTABLISHING DATES WHEN THERE WILL BE A RECORD VOTE ON THE TAX RATE; AND AUTHORIZING AND DIRECTING THE CITY MANAGER TO POST ALL APPROPRIATE NOTICES (DISTRICT: NONE) (FINANCE)

Mayor Payton clarified that this item is setting the ceiling for a tax rate. They cannot go higher than this amount, but they can go below the rate that is being set today.

Budget Manager Jamie Radcliff agreed noting that at the July 14 meeting the voter approval rate was 37.1221 cents. The final valuations have changed so the tax rate will go down from what was presented. Now the voter approval rate is 36.7190 cents per $100 of valuation. Staff is recommending to set the rate at 36.7189 cents which is just below the voter approval rate. She answered questions about the certified taxable value as set by Midland Central Appraisal District.

Ross Schumann, 4003 Gleneagles Court, reported that with recent troubling times he felt Council should set the cap to not increase the revenue noting he was not advocating to never go up in the future.

Spencer Robnett moved to approve Resolution No. 2021-099; seconded by Jack Ladd.

The motion passed by the following vote:
AYE: Payton, Robnett, Dufford, Norman, Ladd, Blong
NAY: Trost
ABSTAIN: None
ABSENT: None

34. 10222 – AN ORDINANCE AMENDING TITLE X, “TRAFFIC REGULATIONS”, CHAPTER FOUR, “TRAFFIC CONTROL DEVICES”, SECTION 11, “SCHOOL ZONES”, OF THE MIDLAND CITY CODE, SO AS TO DESIGNATE EACH SCHOOL ZONE WITHIN THE CITY AND REGULATE THE SPEED AND MOVEMENT OF TRAFFIC THEREIN; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO INSTALL APPROPRIATE SIGNS AND MARKINGS; REPEALING ORDINANCE NO. 10114; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS ($200.00); AND ORDERING PUBLICATION (DISTRICT: ALL) (ENGINEERING SERVICES)

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Deputy City Secretary Vanessa White read the caption of Ordinance No. 10222.

Traffic Engineer Mike Pacelli gave a brief overview of the item noting this was a straight forward item adopting a new ordinance to replace the previous ordinance for school zone limits and times. MISD made some changes and this ordinances cleans up what is already in place.

Michael Trost moved to approve the first of two readings of Ordinance No. 10222; seconded by John Norman.

The motion passed by the following vote:
AYE: Payton, Robnett, Trost, Dufford, Norman, Blong
NAY: None
ABSTAIN: None
ABSENT: Ladd

35. 10223 – AN ORDINANCE ALTERING PRIMA FACIE SPEED LIMITS ALONG CERTAIN STREETS IN THE CITY; AUTHORIZING INSTALLATION OF APPROPRIATE SIGNS AND MARKINGS; REPEALING ORDINANCE NO. 9945; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS ($200.00); AND ORDERING PUBLICATION (DISTRICT: ALL) (ENGINEERING SERVICES)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10223.

Michael Trost moved to approve the first of two readings of Ordinance No. 10223; seconded by Spencer Robnett.

The motion passed by the following vote:
AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong
NAY: None
ABSTAIN: None
ABSENT: None

36. 10224 – AN ORDINANCE AMENDING TITLE VI, “POLICE REGULATIONS”, CHAPTER 10, “DANGEROUS DOGS”, OF THE CITY CODE OF MIDLAND, TEXAS; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS ($500.00); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION (LEGAL)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10224.

City Attorney John Ohnemiller reported this is a housekeeping item to the dangerous dog ordinance to line up with the law noting that if an owner is appealing a dangerous dog determination, the dog cannot be euthanized. It has never been done, but staff felt it was best to have it in writing.

John Norman moved to approve the first of two readings of Ordinance No. 10224; seconded by Lori Blong.

DRAFT

The motion passed by the following vote:
AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong
NAY: None
ABSTAIN: None
ABSENT: None

PUBLIC COMMENT

37. Receive public comments where individuals may address the City Council on City related issues and projects not on the present agenda. Any deliberation of or decision by the City Council regarding the item being discussed shall be limited to a motion to place the item on the agenda for a subsequent meeting. (Please limit comments to three minutes or less.)

There were no citizens present wishing to speak.

All the business at hand having been completed, the meeting adjourned at 11:26 a.m.

PASSED AND APPROVED August 24, 2021.

Patrick Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

DRAFT

City Council Meeting

Item Number: 5

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Christy Weakland, Director

Subject: RESOLUTION ACCEPTING A GRANT IN THE AMOUNT OF $24,988,224.00 FROM THE U.S. DEPARTMENT OF THE TREASURY CORONAVIRUS STATE FISCAL RECOVERY FUND ESTABLISHED UNDER THE AMERICAN RESCUE PLAN ACT OF 2021; AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS; AND APPROPRIATING THE FUNDS (DISTRICT: NONE) (FINANCE)

Purpose:

Consider a resolution to accept and appropriate funds awarded through the America Rescue Plan Act of 2021.

Recommended City Council Action:

Approve

Fiscal Impact:

Funds in the amount of $12,494,112 will be appropriated to a Grant Project in Fund 065, which represents the first tranche of funds. Funds in the amount of $12,494,112 will be appropriated upon receipt in May, 2022.

Discussion:

The City was awarded a total of $24,988,224 from the American Rescue Plan Act, through the Department of the Treasury. These funds are to be distributed in two tranches at one half each tranche. The first was received in May, 2021, and the second is to be received in May 2022. These funds must be spent by December 31, 2026, and all costs incurred by December 31, 2024. Funds must be spent according to the Interim Rule from the Department of Treasury for the following: 1) Response to the COVID 19 pandemic, 2) Premium Pay, 3) Revenue loss, or 4) Infrastructure capital for water & sewer or broadband.



City Manager's Office

RESOLUTION NO. _____

RESOLUTION ACCEPTING A GRANT IN THE AMOUNT OF $24,988,224.00 FROM THE U.S. DEPARTMENT OF THE TREASURY CORONAVIRUS STATE FISCAL RECOVERY FUND ESTABLISHED UNDER THE AMERICAN RESCUE PLAN ACT OF 2021; AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS; AND APPROPRIATING THE FUNDS

WHEREAS, the City of Midland has received notice of a grant award of $24,988,224.00 from the U.S. Department of the Treasury Coronavirus State Fiscal Recovery Fund established under the American Rescue Plan Act of 2021 (the "Grant"); and

WHEREAS, the City of Midland has received Grant funds in the amount of $12,494,112.00, and the City anticipates receiving the remainder of the Grant funds in May of 2022; and

WHEREAS, the Council finds it to be in the public interest to accept the Grant and appropriate the funds;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the City of Midland, acting through its Mayor and City Council, hereby accepts the Grant.

SECTION TWO. That the City Manager or his designee is hereby authorized and directed to execute all documents necessary to evidence the City of Midland's acceptance of the Grant.

SECTION THREE. That the sum of $12,494,112.00 is hereby appropriated to a Grant Project in Fund 065.

SECTION FOUR. That upon the City's receipt of the remainder of the Grant funds, the sum of $12,494,112.00 shall be appropriated to a Grant Project in Fund 065.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the

City of Midland at a regular meeting on the _____ day of _____, A.D., 2021, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Christy Weakland, Interim Director of Finance

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

City Council Meeting

Item Number: 6

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Christy Weakland, Director

Subject: **RESOLUTION APPROVING A GRANT OF FUNDS TO THE MIDLAND COUNTY HOSPITAL DISTRICT ("MIDLAND HEALTH") IN THE AMOUNT OF $4,776,000.00 FOR THE PURPOSE OF FUNDING PROJECTS RELATED TO MIDLAND HEALTH'S RESPONSE TO THE COVID-19 PANDEMIC; AUTHORIZING THE MAYOR AND THE CITY MANAGER TO EXECUTE ALL DOCUMENTS NECESSARY AND APPROPRIATE TO EFFECTUATE THE ADMINISTRATION OF SAID FUNDS; AND AUTHORIZING PAYMENT OF SAID FUNDS (DISTRICT: NONE) (FINANCE)**

Purpose:

Resolution allocating funds from the American Rescue Plan Act in the amount of $4,776,000 to Midland Health to reimburse the hospital for the salaries of workers who are caring for COVID patients.

Recommended City Council Action:

Approve

Fiscal Impact:

Funds are available in the ARPA Grant Project.

Discussion:

One of the approved uses of the ARPA funds is to respond to the negative impacts of the COVID-19 public health emergency through the provision of care for those impacted by the virus.

City Manager's Office

RESOLUTION NO. _____

RESOLUTION APPROVING A GRANT OF FUNDS TO THE MIDLAND COUNTY HOSPITAL DISTRICT ("MIDLAND HEALTH") IN THE AMOUNT OF $4,776,000.00 FOR THE PURPOSE OF FUNDING PROJECTS RELATED TO MIDLAND HEALTH'S RESPONSE TO THE COVID-19 PANDEMIC; AUTHORIZING THE MAYOR AND THE CITY MANAGER TO EXECUTE ALL DOCUMENTS NECESSARY AND APPROPRIATE TO EFFECTUATE THE ADMINISTRATION OF SAID FUNDS; AND AUTHORIZING PAYMENT OF SAID FUNDS

WHEREAS, the Midland County Hospital District ("Midland Health") has requested a grant of funds from the City of Midland in the amount of $4,776,000.00 for the purpose of funding projects related to Midland Health's response to the COVID-19 pandemic; and

WHEREAS, the City Council of the City of Midland, Texas, finds it to be in the public interest to approve a grant of funds to Midland Health in the amount of $4,776,000.00 for the purpose of funding projects related to Midland Health's response to the COVID-19 pandemic;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS;

SECTION ONE. That a grant of funds to Midland Health in the amount of $4,776,000.00 for the purpose of funding projects related to Midland Health's response to the COVID-19 pandemic is hereby approved.

SECTION TWO. That the Mayor and the City Manager are hereby authorized and directed to execute all documents necessary and appropriate to effectuate the administration of said funds.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay $4,776,000.00 to Midland Health in accordance with this resolution and any documents executed in accordance with Section Two upon the City Manager's receipt of documentation from Midland Health showing that the payment satisfies the U.S. Department of Treasury's guidance regarding the use of funds granted to the City under the American Rescue Plan Act

of 2021.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2021, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

400 ROSALIND REDFERN GROVER PARKWAY | MIDLAND, TX 79701 | 432.221.1111
MIDLANDHEALTH.ORG

August 16, 2021

Robert Patrick
City Manager
300 North Loraine
Midland, Texas 79701

Dear Robert:

Midland County Hospital District respectfully requests allocation of a portion of the City's American Rescue Plan Act (ARPA) funding. The US Department of the Treasury has sanctioned six categories of expenditures as appropriate uses of ARPA funds. Our request fits within the category of "Premium Pay for Essential Workers."

1.	**One-time bonus for service during the Pandemic** This allocation would allow us to pay a 3% bonus to every Midland Health employee below the Department Director level, in recognition of their steadfast and continuing service in the ongoing COVID-19 pandemic.	$3,000,000
2.	**Hourly differentials and extra shift incentives for COVID caregivers** This category includes temporary differential payments added to the hourly rates of direct care staff in departments most likely to care for COVID inpatients, along with special incentives for agreeing to work extra shifts in these areas. The total request represents an estimated $48,000 in incentives per week for seven weeks, through the end of September.	336,000
3.	**Incremental cost of adding contract professional staff** The hospital's COVID census (89 patients this morning), requires dependence on greater than expected numbers of contract staff, especially in nursing and respiratory therapy, at historically high compensation rates. Midland Memorial Hospital's contract labor run rate has risen from $350,000 per week to $550,000. The total request represents seven weeks of this $200,000 differential, through the end of September.	1,400,000
	TOTAL REQUEST:	**$4,776,000**

We sincerely appreciate your consideration of this request, and will be happy to provide more detailed estimates or any other information necessary for the City Council to make an informed decision. Thank you very much for your consideration.

Sincerely,

Russell Meyers
President
Chief Executive Officer

City Council Meeting

Item Number: 7

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Mark Widmann, Director

Subject: **Motion allocating Cares Grant Project funds in the sum of $1,900,000 to provide a 3% one-time merit payment to Critical Service Personnel who provided services during the COVID pandemic. (DISTRICT: ALL) (ADMINISTRATIVE SERVICES)**

Purpose:

Providing a one-time merit payment to Critical Service Personnel who reported to work in person providing critical services to our citizens and community. Critical Service Personnel includes:

- Fire Personnel
- Police Personnel
- Communications Personnel
- Airport Operations Personnel
- Facilities Personnel
- Information Technology
- Solid Waste Personnel
- Transportation Personnel
- Traffic Operations Personnel
- Utilities Personnel

Recommended City Council Action:

Approve

Fiscal Impact:

The funding of $1,900,000 is available in the CARES Grant Project 700298-065 and will be allocated for said purpose.

Discussion:

The one-time merit will provide a 3% payment to approximately 700 employees who reported to work during the COVID pandemic. These city employees provided critical services such as public safety, airport operations, trash collection, road repairs, and safe water and utilities for our citizens. Active employees are eligible for the one-time payment if hired prior to December 31, 2020.

Tina Jaug

City Manager's Office

City Council Meeting

Item Number: 8

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Justine Ruff, Director

Subject: MOTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH COMMEMORATIVE AIR FORCE, INC., PROVIDING FOR THE 2021 AIRSHO AT MIDLAND INTERNATIONAL AIR & SPACE PORT (DISTRICT 4) (AIRPORTS)

Purpose:

Motion authorizing the execution of 2021 Airsho Agreement with the Commemorative Air Force and The City of Midland, Texas.

Recommended City Council Action:

Approve

Fiscal Impact:

None

Discussion:

The CAF will use portions of the Airport for staging and conducting the airshow and its ancillary activities. The CAF Airsho will commence Friday, September 10, 2021, and will conclude at approximately 5:30 p.m. Sunday, September 12, 2021. The Federal Aviation Administration (FAA) has approved all necessary waivers and the Transportation Security Administration (TSA) has approved all security measures.

The agreement allows the CAF to host an airshow on Midland International Air & Space Port property, sets required insurance levels as well as requiring emergency response personnel.

Tina Dawg

City Manager's Office

AIRSHOW AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS AND THE COMMEMORATIVE AIR FORCE, INC.

THIS AGREEMENT, effective the _____ day of August, 2021, by and between the City of Midland, Texas, a home rule municipal corporation of the State of Texas ("*City*"), and the Commemorative Air Force, Inc., a Texas non-profit corporation ("*CAF*");

W I T N E S S E T H :

WHEREAS, City and CAF entered into that certain Lease Agreement dated July 4, 1990, and effective July 1, 1990, hereafter referred to as the "*Lease,*" for the lease of certain land and improvements located at Midland International Air & Space Port, hereafter referred to as the "*Airport*"; and

WHEREAS, Section 8.10 of the Lease requires that CAF conduct at least two air shows at the Airport during each calendar year pursuant to provisions of a written agreement between City and CAF; and

WHEREAS, CAF and City desire to enter an agreement for the conduct of an airshow at the Airport to commence Friday, September 10, 2021, at approximately 7:30 a.m. until approximately 5:30 p.m. Sunday, September 12, 2021, hereafter referred to as the "*Airshow.*" The Airshow shall be governed by The CAF Airsho Ground Operations Plan, submitted by the guidelines of 14 CFR Part 139 Program Policy and Guidance, attached hereto as "Exhibit B."

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises and conditions contained herein, City and CAF hereby agree as follows:

1. USE OF AIRPORT: CAF shall have the right to use the Leased Premises as described in Section 1.01(a) of the Lease, as well as the areas and facilities at the Airport designated by City's Director of Airports ("*Director*") for the purpose of conducting the Airshow.

If conditions are: A defined ceiling of five hundred (500) feet above ground level (AGL) or below, and/or one (1) statue mile in visibility or below, Runway 10/28 and any associated safety areas and protection zones shall be turned back over to City to support commercial arrivals and departures and any emergency aircraft. If the observed conditions are at/below the above criteria prior to 11:00 a.m., the Airshow may be put on hold to see if conditions improve. If conditions are not above these minimums at 11:00 a.m., Local Runway 10/28 shall be turned over to City no later than 12:00 p.m. This is to include all pyrotechnic detonation, cleanup activities, and sufficient time for DOA operations and maintenance personnel to return the runway back to a CFR 139 compliant surface. A request for an extension may be made but must be approved by the Director of Airports or his/her representative.

2. PRESHOW SET-UP: CAF shall be permitted to commence its set-up activities on Airport property not located within the area of the Leased Premises on Tuesday, September 7, 2021, at such times as agreed by Director. A representative of CAF shall be

at the Airport at all times during set-up activities.

3. DESCRIPTION OF AIRSHOW: CAF represents that the Airport will be used solely for the purpose of staging and conducting the Airshow and its ancillary activities. Such flight shall be conducted only northwest of Runway 16 Right/34 Left. Any parachute events shall be northwest of Taxiway "E" and in no case closer than fifty (50) feet from the crowd line. CAF shall not move or operate or permit the movement or operation of any aircraft involved in the performance of the Airshow without qualified safety personnel being present. Such safety personnel shall be provided solely at the cost of CAF.

4. CAF RESPONSIBILITIES: Except as otherwise set forth in this Agreement or as agreed in writing by City, CAF shall be responsible for making all arrangements for the Airshow, but not limited to, the following:

a. CAF shall be responsible for parking or arranging for the parking of all aircraft which are part of the Airshow and its ancillary activities. CAF shall also be solely responsible for the movement of or arranging for the management of movement and parking of such aircraft while in the parking areas and on aprons at the Airport. All such aircraft parking and movement shall be coordinated in advance with the Director and the Manager of the Air Traffic Control Tower.

b. CAF shall at its sole expense obtain all licenses, permits, clearances, or

other like authorizations required by any and all Federal, State, or local governmental agencies, including but not limited to the Federal Aviation Administration (FAA), that are necessary for the conduct of an Airshow. CAF shall obtain the appropriate Certification of Waiver or Authorization from the FAA prior to the Airshow and shall at all times be solely responsible for compliance with all provisions of the Waiver. A copy of said Waiver shall be attached to this Agreement as Exhibit "A" and shall be incorporated herein by reference and made a part hereof for all legal purposes.

c. CAF shall provide for suitable automobile parking areas in such locations as approved by the Director and shall be responsible for all roadway signage and directions of spectators and vehicles to the public parking areas. CAF shall have the option to collect or permit the collection of a fee for such parking at the time the vehicles are being parked. Procedures for direction and control of vehicles on Airport property shall be coordinated with, approved by, and under the direction of the Midland Police Department's Airport Division ("*Airport Police*"); however, CAF shall be solely responsible for arranging and providing adequate personnel to conduct such parking operations under the direction of the Airport Police.

d. CAF shall remove or cause the removal of all litter and trash deposited on

Airport property as a result of the Airshow during and immediately after the conclusion of the Airshow or by such time as agreed by the Director.

e. CAF shall supply portable sanitation facilities, including but not limited to, toilets and trash containers, in sufficient numbers to accommodate those anticipated to attend the Airshow, and will provide the personnel to clean up and remove all facilities installed for the event immediately upon conclusion of the Airshow.

f. Subject to Section 5, CAF shall be solely responsible for arranging for the hiring of sufficient numbers of commissioned peace officers to provide security, crowd control, and traffic control during the set-up, during the Airshow, and for a reasonable time before and after the Airshow. All security, crowd control, and traffic control activities occurring on Airport property shall be coordinated through and approved by the Director and the Airport Police. At no time during the conduct of the Airshow shall CAF permit the number of police forces required by the Director and/or FAA to secure the crowd line within the AOA or other secured areas of the Airport be permitted to go below the required levels.

g. CAF shall be solely responsible for obtaining authorization from the appropriate authority to close and/or barricade any public right of way, including any public streets or highways, for purposes of crowd or traffic

control. City does not by entering the Agreement waive any of CAF's obligations with respect to obtaining City's consent to close City rights of way or to otherwise divert the flow and direction of vehicular and pedestrian traffic on City-owned rights of way from the manner designated by City ordinance or other applicable law.

h. Subject to Section 5, CAF shall be solely responsible for the arranging with City's Fire Chief for the hiring of sufficient numbers of fire fighters, health and medical personnel, and emergency medical technicians (EMT's) or paramedics to be on-site during the Airshow to handle possible fire and/or medical emergencies. CAF shall be solely responsible for providing facilities to serve as first aid stations.

i. CAF shall be solely responsible for arranging for and supervising all concessions. At no time shall concession vendors be permitted to set up within the AOA or on other City property not within the Leased Premises except as authorized in writing by the Director. CAF shall not permit any vendor to place anchoring or grounding stakes into any pavement. Removal of all concession facilities set up for the Airshow on Airport property not within the Leased Premises shall commence immediately after the conclusion of the Airshow and be completed no later than four (4) hours after the conclusion of the Airshow unless otherwise agreed by the Director.

All concession vendors shall have all required state and/or local health and/or food vending permits visibly displayed within their concession areas. CAF shall not permit any concession vendor to operate on any City-owned property, regardless of location, unless that concession vendor has in its possession all required permits. CAF shall not permit any vendor to place any anchoring or grounding stakes into any pavement within the Leased Premises.

j. CAF shall not permit any vendor to possess, sell or offer in any manner "dummy" grenades or any other such device that might reasonably cause unnecessary alarm or disrupt the public safety, or result in a response from federal, state or local authorities or emergency personnel. **CAF shall indemnify, defend and hold City harmless from any and all suits or claims for damages, of whatsoever nature, resulting from a vendor's possession, sale or offering of a device described in this provision and/or any incident, of whatsoever nature, resulting therefrom**.

k. CAF shall be solely responsible for providing or arranging for the provision of adequate amounts of drinking water and ice to accommodate those attending the Airshow.

l. CAF shall be solely responsible for arranging for all parties who are to perform in the Airshow.

m. CAF shall be solely responsible for arranging clean-up of any fluid spills in the AOA on, but not limited to, runways, taxiways, public ramps on or before Monday, September 13, 2021.

n. CAF shall be solely responsible for the payment of all costs associated with the carrying out of the obligations and responsibilities described in subparagraphs a. through m. above.

5. MINIMUM EMERGENCY PERSONNEL STAFFING: CAF acknowledges and understands the Airport will be open and operational for commercial traffic during the hours of the Airshow except during the performances of the U.S.A.F. Thunderbirds. CAF further acknowledges and agrees that in order to adequately protect the secured areas of the Airport and to provide for adequate public safety for those attending and participating in the Airshow, a minimum number of qualified off-duty fire/paramedic personnel and qualified off-duty police personnel need to be hired to be within the AOA and other secured areas of the Airport, during the operating hours of the Airshow and for at least two (2) hours before and two (2) hours after the operating hours of the Airshow. In light of the foregoing acknowledgments, CAF shall at all times during the Airshow in which spectators are permitted to access the AOA have onsite no fewer than the following public safety personnel/equipment:

a. One (1) Midland Fire Department Ambulance;

b. One (1) Midland Fire Department Tanker Truck;

c. Two (2) Midland Fire Department ARFF Fire Fighters;

d. One (1) Midland Fire Department Command Staff with the rank of Captain or higher;

e. Two (2) Midland Fire Department fire inspectors;

f. Five (5) Midland Fire Department emergency medical technicians (EMTs);

g. Three (3) Midland Fire Department fire fighters;

h. One (1) Midland Fire Department division supervisor;

i. One (1) communications specialist;

j. Twenty-one (21) Midland Police Department officers; and

CAF shall be solely responsible for contracting with and paying the above described personnel; provided, however, that in the event CAF fails to hire sufficient numbers of people to provide the above minimum staffing requirements during the hours of operation of the Airshow, City may, at its sole discretion, assign fire and/or police personnel sufficient to maintain the above required levels. CAF shall, within ten (10) days after receipt of an invoice, reimburse City for all costs incurred by City in assigning additional off-duty fire and/or police personnel to work at the Airshow in accordance with this Section, such as costs to include, but not limited to wages, benefits, F.I.C.A., workers compensation insurance, unemployment insurance and retirement fund contributions. Furthermore, **CAF shall indemnify, defend, and hold City harmless from and against any and all claims made by any person hired by CAF to provide medical, fire and/or police protection during the Airshow relating to failure to comply with any federal**

or state law or regulation governing wage and hour rates, including, but not limited to, the Federal Fair Labor Standards Act. CAF acknowledges and understands that the staffing level set forth in this Section is a minimum requirement needed to secure the AOA and other secured areas of the Airport used for the Airshow and shall not be construed as a prohibition against CAF hiring additional public safety personnel at CAF's own discretion; provided, however, that CAF shall hire only additional personnel who have been certified in accordance with the applicable law to perform the duties required by CAF.

6. CITY EQUIPMENT AND PERSONNEL PROVIDED AT CITY'S EXPENSE: City agrees to provide to CAF for use at the Airshow the following equipment and services at no charge to CAF:

a. One (1) Midland Fire Department ambulance;

b. One (1) Midland Fire Department fire engine in addition to those stationed at the Airport;

c. Additional sweeping of runways, taxiways, and public ramps within the AOA prior to the Airshow to comply with FAA requirements;

d. Mowing of City-owned areas off the Leased Premises designated by the Director for parking if deemed necessary by City in City's sole discretion; however, parking areas not on City property shall be solely the responsibility of CAF.

Notwithstanding the above, City shall not be liable to CAF if, in the opinion of City's Fire Chief and/or Director of Airports, the equipment and/or personnel described in Section 6(a)-(c) are required in the public interest to be reassigned to perform other duties

as the result of a fire or other unforeseen event away from the Airshow site; provided, further that except as agreed by the City Manager, CAF agrees to reimburse City within ten (10) days after invoice for any services or supplies provided by City that are not specifically listed in this Section.

7. INSURANCE:

a. Liability Coverage: CAF shall purchase additional Airshow liability insurance with a combined single limit coverage in an amount not less than $10,000,000 per occurrence, which shall remain in full force and effect during the Airshow and shall name City as an additional insured. Such policy shall be endorsed to either (i) waive any alcohol liability exclusion, or (ii) include alcohol liability coverage as provided for in Section 7(d). Such insurance shall not exclude losses and claims related to the operation of non-commercial, privately owned, or experimental aircraft. In addition, CAF shall obtain an endorsement on its insurance policies which shall insure CAF and City against claims made against any Airshow performer or concession vendor resulting from an injury to person or property of any third party caused by the negligent act or omission of said performer or vendor and their respective employees, agents and representatives. CAF further agrees that all non-City owned motor vehicles that CAF or any performer or vendor will utilize within the airport's Aircraft Operating Area

shall be covered by automobile liability insurance in the amounts required by the Texas Motor Vehicle Safety Responsibility Act, Chapter 601 of the Texas Transportation Code. All liability insurance shall name City as an additional insured.

b. Fire Insurance: Unless otherwise provided within the coverage of the Airshow liability insurance described in Paragraph 7, above, CAF shall purchase fire and casualty insurance with coverage limits at not less than $100,000, which shall provide coverage for loss or damage to property owned by City or the United States of America, including, but not limited to any buildings, improvements, runways, taxiways, ramps, or gates not located within the Leased Premises, which damage is caused by CAF or any Airshow performer or participant. City shall be named as a loss payee on such policy and the policy shall contain an endorsement waiving the insurance carrier's right of subrogation against City with respect to such damages. All liability insurance shall name City as an additional insured.

c. Certificates of Insurance: A certificate of insurance evidencing such additional coverage and all required waivers and endorsements shall be provided to the Director no later than ten (10) days prior to the Airshow. If any or all of such certificates of insurance are not provided to the Director prior to the Airshow, the Director may disallow the staging and conducting

of the Airshow and its ancillary activities or that portion of the Airshow which does not meet the above described insurance requirements. All certificates of insurance required herein shall name City as an additional insured.

d. Alcohol Liability Coverage: The requirement of an endorsement on CAF's policy regarding alcohol liability may be satisfied by the contractor hired by CAF to provide the alcohol service delivering to City a certificate of insurance naming City as an additional insured for the Airshow and indicating alcohol liability coverage in an amount not less than $1,000,000 combined single limit; provided, however, said contractor has the exclusive rights to serve alcoholic beverages at the Airshow.

8. **INDEMNIFY AND HOLD HARMLESS:** **CAF SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CAF, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING**

OUT OF, OR RESULTING FROM CAF'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND CAF SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY FEES.

CAF SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH CAF OR CAF'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND CAF SHALL BE

REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

9. DAMAGE TO CITY PROPERTY: CAF shall be solely responsible for the cost of repair and/or replacement of City property owned by City, the United States of America, or any other Airport tenant, including but not limited to any buildings, grounds, improvements, runways, taxiways, ramps, or gates, which are damaged or destroyed by CAF and/or Airshow performers or participants. All such repairs shall be conducted by City and billed, at City's cost, to CAF. For damages of less than $10,000, CAF shall reimburse City for the costs of repairing such damages within thirty (30) days after presentation of an invoice by City to CAF. Costs in excess of $10,000, shall be repaid in accordance with a schedule agreed by City, but in any case not later than one year after the date of ordinance. CAF shall not be responsible for damage to runways, taxiways, or ramps, which results through normal wear and tear of such improvements caused by regular Airport operations or damage caused by oversized aircraft directed to the damaged area of the airfield by someone other than CAF or its representatives.

10. GOVERNMENTAL IMMUNITY: By executing this Agreement, City is not waiving its right of governmental immunity. City is retaining its immunity from suit. City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.

11. ACCESS TO AIRCRAFT OPERATIONS AREAS (AOA) AND OTHER SECURED AREAS: The Director, in consultation with CAF's representative, shall determine which security gate(s) will be used by Airshow participants and spectators for the purpose of entering and leaving the AOA and other secured areas of the Airport. CAF shall be solely responsible for securing the designated gates and for permitting only persons related to Airshow activities to enter the security gates. Furthermore, CAF shall have a representative on-site at the Airport at all times while Airshow participants and concession vendors are needing access to the Airport's secured areas and shall at no time permit such persons to be unescorted. Not later than ten (10) days prior to the Airshow, CAF shall provide to the Director a list of all organizations or companies providing concessions or other services that need access to the Airport's secured areas. If vehicular or pedestrian access to the Movement Area is required for purposes consistent with this Agreement, CAF acknowledges and agrees to request and coordinate all escorts to the Movement Area with the Department of Airports. All such escort requests must be submitted and approved by the Department of Airports prior to the granting of any access.

12. BROADCAST AND ADVERTISING RIGHTS: CAF shall have exclusive control and supervision of the sales and content of all advertising and all radio, television, broadcasting, or recording and transcription rights, and other media contracts, and shall have the sole right to proceeds derived therefrom.

13. CITY NOT A CO-SPONSOR: CAF understands and agrees that execution of this

Agreement by City in no way creates any partnership or joint venture between City and CAF, nor shall City be deemed to be a co-sponsor by virtue of having signed this Agreement. CAF and its members and representatives shall not make any express or implied representation to any person that City is acting as a co-sponsor or is in any way financially or otherwise responsible for the conduct of CAF or the Airshow.

14. FEES FOR ADMISSION AND CONCESSION RECEIPTS: CAF shall have the exclusive right to handle, control, and keep custody of receipts and funds derived from sales for admission to the Airshow, or from any other source in any way connected therewith, and shall have the sole right to all proceeds derived therefrom; provided, however, CAF shall remain liable to collect and pay all lawfully imposed sales taxes.

15. USE OF PYROTECHNICS: CAF shall be permitted to locate and detonate fireworks, dynamite, flashpots, or other incendiary devices ("*Fireworks*") during the period of the Airshow, on Airport property, after obtaining written approval from the Director of Airports and City's Fire Marshal, which permission shall not be granted unless: (i) CAF has notified the Director of Airports and City's Fire Marshal in writing of the location of all Fireworks to be installed for detonation during the Airshow and the time at which the events involving the detonation of Fireworks will occur; (ii) CAF has delivered to City the certificates of insurance indicating the required insurance coverage set forth in Section 7; and (iii) CAF has delivered to the Director of Airports a letter indicating the name of the operator who will supervise the operation of the Fireworks to

be installed and detonated as part of the Airshow performance, which letter shall be accompanied by copies of any licenses or permits required by Texas or federal law. CAF shall not locate or detonate, or permit the location or detonation of, any Fireworks in such place or manner as to risk injury to or cause interference with aircraft, runways, taxiways, or aprons or with Airport patrons or personnel. Additionally, CAF shall not locate or store, or permit the location or storage of, Fireworks within the safety areas of any active runway or taxiway at the Airport. The installation and detonation of all Fireworks to be detonated during the Airshow shall be conducted and/or supervised by a properly licensed pyrotechnic operator if required by Article 5.43-4, Texas Insurance Code, as they relate to the storage, transportation, sale, installation, and display of Fireworks. The pyrotechnic portion of the Airshow shall be immediately suspended upon notification to CAF by proper fire safety authorities of non-compliance with the provisions of the public display permit or any State or federal law or regulation regarding the use of Fireworks on the Airport. CAF shall coordinate the detonation of Fireworks with the Director to ensure scheduled airline operations will continue unimpeded. The Fireworks portion of the Airshow shall be immediately suspended upon notification to CAF by the Director that pyrotechnic activity may impede air carrier operations at the Airport. CAF shall be solely responsible for the location of all above or below ground structures, including but not limited to, water, sewer, gas, or oil pipeline, electric or telephone cable, or other utility cables, which might be detrimentally affected by the detonation of Fireworks in their

vicinity. **CAF shall be solely responsible for damage to all structures, whether above or below ground, including buildings, fences, pipelines, utilities, roads, etc., whether publicly or privately owned, caused by the activities related to the Airshow, and shall indemnify, defend, and hold City harmless from claims made by anyone for damage to person or property resulting from the detonation of any fireworks during the Airshow. "Fireworks," as used in this Section, shall also include all items defined as "Fireworks" as that term is defined in Texas Occupations Code §2154.001**.

16. NOTICES TO AIRMEN (NOTAMS): CAF shall cooperate with and timely provide all requested information to the Director for the issuance of proper Notices to Airmen (NOTAMs) regarding the closure of the Airport during the flying portion of the Airshow. City, through its Department of Airports, will be the only agency to issue the NOTAMs. **CAF shall coordinate the Airshow in a manner that ensures the Airport will be open and operational for commercial traffic during the hours of the Airshow except during the performances of the U.S.A.F. Thunderbirds.** CAF also agrees that any aircraft experiencing an emergency situation during the Airshow shall be allowed to use the Airport without hindrance by CAF or its agents/representatives. Nothing in this Agreement shall be construed in a matter permitting CAF or its agents/representatives to control or direct aircraft other than which appear on the daily Airshow schedule.

17. FAA OR TSA VIOLATIONS: CAF shall neither conduct nor permit the conduct of activities related to the Airshow that would compromise the Airport's compliance with

FAA or TSA regulations, or any other applicable laws or regulations. **CAF agrees to indemnify City against civil fines assessed by the FAA or TSA against City for violation of FAA or TSA regulations that result of the acts or omissions of CAF, any of its members, or other participants of the Airshow who are not employees of City acting within the scope of their employment.**

18. ADA REQUIREMENTS: CAF shall be solely responsible for adhering to all requirements stated in the American's Disability Act (ADA) as well as all applicable federal, state and local laws and ordinances.

19. SALES AND AMUSEMENT TAXES: CAF shall be solely responsible for the collection of any sales and/or amusement taxes required by any federal, state or local law, regulation, or ordinance in connection with the sale of admissions and concessions at the Airshow. **CAF agrees to indemnify, defend, and hold City harmless against any suits or claims brought by any governmental entity as the result of non-payment of any such sales or amusement taxes.**

20. RELATIONSHIP TO LEASE: The use of the Airport and the Leased Premises by CAF for the Airshow shall at all times remain subject to the provisions of the Lease, which remains in effect and is no way amended by virtue of the execution of this Agreement.

21. DEFAULT: Failure of CAF to comply with any provision of this Agreement shall constitute an event of default, which shall entitle City to cancel this Agreement, and

consequently the Airshow, and to seek such other remedies as may be available to City at law or in equity. Furthermore, an event of default under this Agreement shall constitute an event of default in the Lease and shall entitle City to invoke such remedies as City may have available to it pursuant to Article 15 of the Lease.

22. FUELING OF AIRCRAFT: CAF, its members, invitees and guests shall not be relieved from the payment of any part of the cost of fuels which constitutes a fuel flowage fee for fuel purchased by and/or distributed by CAF, its members, invitees, or guests; however, City agrees that CAF and its members shall be relieved of payment to City of any part of the cost of fuel constituting a fuel flowage fee for fuel used in operating historical military aircraft and ground vehicles participating in the Airshow for a period commencing September 5, 2021, until September 15, 2021. Fuel provided to CAF members for aircraft not performing in the Airshow are not exempt from the fuel flowage fee. CAF shall not self-fuel nor permit the self-fueling of any aircraft except aircraft owned by CAF. CAF shall not permit any party who does not have a current Airport fueling agreement to enter the Leased Premises or the Airport to perform fueling operations for any aircraft. CAF shall contract with a third party, fixed-base operator at the Airport that has a current Airport Fueling Agreement with City to provide fueling services for CAF's members, employees, and invitees, which contract will at all times be subject to said Airport Fueling Agreement. CAF shall not permit the fueling of any aircraft to be operated at the Airport by any person who has not been properly certified

and tested by the Department of Airports or the FAA to perform fueling services at the Airport.

23. SEVERABILITY: If any of the provisions of this Agreement shall be held illegal, invalid, or otherwise unenforceable, the remainder of the Agreement shall not be affected thereby and shall be read as if the invalid portion were not part of this Agreement.

24. GOVERNING LAW AND VENUE: The laws of the State of Texas shall govern, construe, and enforce all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have been performed in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas.

25. ENTIRE AGREEMENT; WRITTEN AMENDMENTS: This Agreement contains the entire understanding between the parties hereto and supersedes all other oral and written agreements or understandings between them. No modification or addition hereto or waiver of cancellation of any provisions hereof shall be valid except by a written instrument signed by both parties.

26. RELEASE: **NOTWITHSTANDING ANY OTHER PROVISION OF THIS**

AGREEMENT, CAF HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT CAF HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.

27. SPECIAL PERFORMANCE FOR SEPTEMBER 10, 2021: City understands and agrees that CAF may conduct a brief aeronautical performance on Friday, September 10, 2021, from 9:30 a.m. until 12:30 p.m. for special guests of CAF. Except for the actual flying activities, no activities shall be permitted to occur outside the Leased Premises. CAF agrees that all provisions of this Agreement shall be applicable and in effect for the performance on Friday, September 10, 2021, except for Sections 4(f)-(h), 5. CAF shall be responsible for coordinating with the Midland Air Traffic Control Tower Manager regarding the time the performance will occur and the permitted area of operations.

28. REMOVAL OF AIRSHOW EQUIPMENT AND FACILITIES: All CAF equipment and facilities shall be removed from non-leased areas by 1700L on Monday, September 13, 2021.

29. ATTORNEY'S FEES: **BY EXECUTING THIS AGREEMENT, CAF AGREES**

TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. CAF SPECIFICALLY AGREES THAT IF CAF BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, *ET SEQ.*, AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, CAF AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CAF MIGHT OTHERWISE BE ENTITLED.

CAF AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. CAF ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. CAF FURTHER

ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND CAF. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

CAF AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

30. INDEPENDENT CONTRACTOR: It is expressly understood and agreed that CAF shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that CAF shall have exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of *respondeat superior* shall not apply as between City and CAF, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and CAF. No person performing any of the work and services described hereunder by CAF shall be considered an officer, agent, servant or employee of City. Further, it is specifically understood and agreed that nothing in this contract is intended or shall be construed as creating a "Community or Pecuniary Interest" or "An Equal Right of Control," which would give rise to vicarious

liability. CAF shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder. City does not have the power to direct the order in which the work is done. City shall not have the right to control the means, methods or details of CAF's work. CAF shall assume exclusive responsibility for the work. CAF is entirely free to do the work in its own way.

31. THIRD-PARTY BENEFICIARY: City's approval of this Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or other rights hereunder.

32. AS IS LANGUAGE: BY EXECUTING THIS AGREEMENT, CAF AGREES AND ACKNOWLEDGES CAF IS LEASING THE LEASED PREMISES **AS-IS WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED BEING MADE BY CITY, THAT THE LEASED PREMISES ARE FIT FOR A PARTICULAR PURPOSE**. CAF ACKNOWLEDGES, BY EXECUTING THIS AGREEMENT, THAT CAF IS NOT RELYING UPON ANY REPRESENTATION MADE BY CITY WITH RESPECT TO THE CONDITION OF THE LEASED PREMISES, BUT IS RELYING UPON CAF'S EXAMINATION OF THE LEASED PREMISES. CAF ALSO RECOGNIZES BY EXECUTING THIS AGREEMENT, THAT CAF IS AGREEING TO ACCEPT THE

LEASED PREMISES **AS-IS**, THAT CAF AGREES TO MAKE CAF'S OWN APPRAISAL OF THE LEASED PREMISES AND TO ACCEPT THE RISK THAT CAF MAY BE WRONG. CITY GIVES NO ASSURANCES, EXPRESS OR IMPLIED CONCERNING THE VALUE OR CONDITION OF THE LEASED PREMISES. IN NO EVENT SHALL CAF HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, CAF SHALL TAKE THE LEASED PREMISES UNDER THE EXPRESS UNDERSTANDING THE LEASED PREMISES ARE ACCEPTED **AS-IS AND WITH ALL FAULTS**, EXCLUDING EXPRESS OR IMPLIED WARRANTIES.

33. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES: As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, CAF or its legal representative, shall give the City Manager notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred and twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which CAF will settle, the physical and mailing addresses of CAF at the time and date the claim was presented and the physical and mailing addresses of CAF for the six (6) months immediately preceding the occurrence of such damages, and the names

and addresses of the witnesses upon whom CAF relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except City from any liability whatsoever. City is under no obligation to provide notice to CAF that CAF's notice is insufficient. City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, CAF's failure to comply with the requirements herein shall perpetually bar CAF's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if City has actual or constructive notice or knowledge of said claim or alleged damages. CAF agrees that the requirements of this Agreement are reasonable.

34. FEDERAL WAGE REQUIREMENTS: If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations are hereby incorporated by reference and made a part of this Agreement, and all terms and requirements under said laws, by such incorporation, are made terms and requirements of this Agreement, to which the parties to have agreed to be bound.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by persons duly authorized, on the day and year first written above.

CITY OF MIDLAND, TEXAS

_____
Robert Patrick, City Manager

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Justine Ruff, Director of Airports

THE COMMEMORATIVE AIR FORCE, INC.

_____

Steven Buss, VP Membership

THE STATE OF TEXAS §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared STEVEN BUSS, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of COMMEMORATIVE AIR FORCE, INC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2021.

_____

Notary Public in and
for the State of Texas

CAF AIRSHO 2021

FAA Waiver

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

CERTIFICATE OF WAIVER

ISSUED TO

Commemorative Air Force High Sky Wing
Gena Linebarger, Responsible Person
Mobile 432-528-0997 Email: iblast4fun@grandecom.net

ADDRESS

P.O. Box 61064
Midland, Texas 79711

This certificate is issued for the operations specifically described hereinafter. No person shall conduct any operation pursuant to the authority of this certificate except in accordance with the standard and special provisions contained in this certificate, and such other requirements of the Federal Aviation Regulations not specifically waived by this certificate.

OPERATIONS AUTHORIZED

TYPE OF OPERATION: MIDLAND AIRSHOW WILL CONSIST OF AEROBATIC DEMONSTRATIONS, MILITARY DEMONSTRATIONS AND FLY-BYS.

AERA OF OPERATION: AIRSPACE WITHIN A FIVE NAUTICAL MILE RADIUS OF MIDLAND INTERNATIONAL AIR & SPACE PORT FROM THE SURFACE TO 17,500 FEEL MSL FROM N31 56' 54", W102 12' 34"

LIST OF WAIVED REGULATIONS BY SECTION AND TITLE

See Attachment A

STANDARD PROVISIONS

1. A copy of the application made for this certificate shall be attached to and become a part hereof.
2. This certificate shall be presented for inspection upon the request of any authorized representative of the Administrator of the Federal Aviation Administration, or of any State or municipal official charged with the duty of enforcing local laws or regulations.
3. The holder of this certificate shall be responsible for the strict observance of the terms and provisions contained herein.
4. This certificate is nontransferable.

NOTE— This certificate constitutes a waiver of those Federal rules or regulations specifically referred to above. It does not constitute a waiver of any State law or local ordinance.

SPECIAL PROVISIONS

Common Special Provisions Nos. 1 to 21; air show provisions 1 to 22;pyro provisions 1-5, inclusive, are set forth on attachment B. pages.

This certificate is effective from 0930-1230 September 10, 2021, 1130-1730 September 11-12, 2021. All times local.

BY DIRECTION OF THE ADMINISTRATOR

SW REGION
August 11, 2021

Aaron L. Robinson
MANAGER, LBB FSDO

FAA Form 7711-1 (7-74) **DISTRIBUTION:** Applicant, MAF Aprt Mngr, MAF ATCT, AFSS

ISSUED TO: Gena Linebarger, Commemorative Air Force High Sky Wing 432-528-0997, cell 817-705-5817
DATE ISSUED: August 10, 2021; Amendment 0
VALID: Sep 10th 0930-1230; Sep 11th 1130-1730; & Sep 12th 1130-1730, 2021
ISSUED BY: Lubbock FSDO 800-858-4115, 806-740-3805, fax 806-740-3869

COORDINATION: Applicant, MAF Aprt Mngr, MAF ATCT, AFSS

ATTACHMENT A

WAIVED REGULATIONS BY SECTION AND TITLE

This Certificate of Waiver constitutes a waiver of only those regulations stated, to the degree and for the period specified in the certificate. The Certificate of Waiver does not constitute a waiver of any state law or local ordinance. Should the proposed operation conflict with any state law, local ordinance, or required permission of local authorities or property owners, it shall be the applicant's responsibility to resolve the difficulty. The provisions of the waiver shall apply, regardless of the statements contained in the application for Certificate of Waiver. The waiver shall be considered void; upon completion of the authorized schedule of events, or at the latest time shown on the face of the Certificate of Waiver, whichever occurs earlier. The air show will consist of only those maneuvers or events specified in Item 14 of the application, or in an attachment to the Application for Certificate of Waiver.

Definition of the Waiver Area:

The listed regulations are waived, to the extent specified by this document, only for operations within the airspace described as follows: Airspace within a 5 nautical mile radius of the Midland International Air & Space Port (KMAF) from the surface to 17,500 feet Mean Sea Level (MSL). Located N31° 56' 54" W102° 12' 34"

Regulations Waived:

The following regulations are waived as follows:

FAR 91.107(a)(2) May operate without each person on board being notified to fasten safety belt and shoulder harness.

FAR 91.107(a)(3) May operate without each person occupying an approved seat and without a safety belt and shoulder harness being secured about each person.

FAR 91.117(a) May operate at speeds greater than 250 KIAS below 10,000 feet MSL.

FAR 91.117(b) May operate at speeds greater than 200 KIAS at or below 2,500 feet above the surface within 4 nautical miles (NM) of the primary airport of a Class C or Class D airspace area.

FAR 91.117(c) May operate beneath Class B airspace at a speed in excess of 200 knots (230 mph).

FAR 91.119(b) Minimum altitudes over congested areas for nonaerobatic flight at not less than an altitude of 200 feet above the highest obstacle along an FAA-approved ingress/egress route to and from the aerobatic area within 3 NM radius of the designated show center and no lower than 500 feet above designated spectator areas (authorized military teams only).

FAR 91.119(c) Minimum safe altitude over other than congested areas, except not closer than 500 feet to persons on the surface.

FAR 91.121(a) Each person operating an aircraft may maintain the cruising altitude or flight level of that aircraft by reference to an altimeter that is set to zero feet when the aircraft is on the ground.

FAR 91.127(a) Aircraft operating on or in the vicinity of an airport in Class E airspace need not comply with § 91.126(b)(1).

FAR 91.127(b) Aircraft departing an airport in Class E airspace need not comply with any traffic patterns established for that airport in part 93.

FAR 91.127(c) "Communications" is waived to allow participating aircraft to operate within Class E/waivered airspace via appropriate communications with the official air show control point. Except when otherwise authorized by agreement between the Air Traffic Control Tower and the waiver holder, the usual required communications for arrival and departure at a tower-controlled airport still apply.

FAR 91.130(b) "Traffic Patterns" is waived to allow participating aircraft to operate in Class C/waivered airspace without adhering to FAA arrival and departure traffic patterns.

FAR 91.130(c) "Communications" is waived to allow participating aircraft to operate in Class C/waivered airspace via appropriate communications with the official air show control point. Except when otherwise authorized by agreement between the Air Traffic Control Tower and the waiver holder, the usual required communications for arrival and departure at a tower-controlled airport still apply.

FAR 91.130(d) "Equipment Requirements" is waived to allow participating aircraft to operate in Class C/waivered airspace without adhering to the applicable equipment requirements specified in § 91.215.

FAR 91.155 "Basic VFR Weather Minimums" is waived to allow operations in waivered airspace in accordance with applicable special provisions and FAA Order 8900.1, Volume 3, Chapter 6, Section 1, subparagraphs 3-144A1)b), 3-145E9), and 3-154I.

FAR 91.303(c) Aerobatic Flight: Within the lateral boundaries of the surface areas of Class B, C, D, and E airspace designated for an airport.

FAR 91.303(d) Aerobatic Flight: Within 4 NM of the center line on any Federal airway.

FAR 91.303(e) Aerobatic Flight: Below an altitude of 1,500 feet above the surface.

FAR 91.515(a)(1) Large or turbine-powered aircraft less than 1,000 feet above the surface.

ATTACHMENT B

Special Provisions

Common Special Provisions.

Failure to comply with any standard or special provision is a violation of the terms of this Certificate of Waiver (CoW) or Certificate of Authorization (CoA) and justification for cancellation of this Certificate and constitutes a violation of Title 49 of the United States Code Section(s) 44711(A)(2)(B) and/or 44711(A)(5).

1. The FAA has the authority to cancel or delay any or all acts or events if the safety of persons or property on the ground or in the air, are in jeopardy or there is a violation of the terms of the CoW.
2. Russel Royce, or the Air Boss will ensure that notification is made to the Leidos Flight Service Station (AFSS) 1-817-541-3474, 817-490-6649 (fax), of the date, time, place, demonstration areas, altitudes, nature of the activity, and duration of the operation and request that a Notice to Airmen (NOTAM D or TFR) be issued.
   a. Such notice shall be accomplished by providing the controlling flight service station (FSS) with a copy of the CoW, at least 48 hours before the event and no more than 72 hours before the event.
   b. A Class D NOTAM is issued for the entire aviation event. Class D NOTAM verification is required.
3. Gena Linebarger, named in Item 2 on FAA Form 7711-2 must ensure that participants are thoroughly briefed on special field rules, the established demonstration area, flying display area, and aerobatic box (other defined areas within the waivered/authorized airspace), manner and order of events, and special provisions of the CoW or CoA, before beginning the activities each day.
   a. No person may participate in any event listed on the CoW unless that person has signed a statement acknowledging receipt of a briefing on the provisions of the CoW.
   b. For team performances, only the team leader is required; however, a delegate may represent the team leader, provided the person is a pilot member of the team. The team leader or delegate must brief each member of the team and will provide the name of each person on the team he/she will brief before the performance
4. All civil aircraft and pilots participating in the aviation event shall provide the requested data to establish qualifications and airworthiness to the event organizer and if required be available for FAA inspection at the time and place agreed upon by Gena Linebarger and the FAA IIC.

   NOTE: FAA Checklists, Status Forms, and Job Aids can be used to gather data in advance to establish performer qualifications and aircraft airworthiness.

   NOTE: CoW special provisions never supersede aircraft airworthiness operating limitations. Pilots should review their aircraft operating limitations prior to participating in an aviation event to ensure they are familiar and can comply with the requirements as specified.
5. For civil aircraft, only required flight crewmembers by type design, safety pilots as listed in FAA Order 8900.1, Volume 3, Chapter 6, or those persons required to participate in the demonstration (wing walkers, stunt persons, participants integral to the performance, and those conducting safety related functions) will be carried on any aircraft engaged in demonstrations authorized by this CoW.

Additional crewmembers or essential personnel may not participate without specific approval by Gena Linebarger or air boss, and the IIC.

6. No demonstrations shall be authorized or scheduled when a suspension of airport traffic or diversion of other aircraft traffic would cause a hardship to scheduled air carrier operations.
7. A control point shall be established where the certificate holder or responsible person shall direct the demonstration. Gena Linebarger, shall be continuously available to the FAA IIC or designated representative and is the person designated as responsible for the overall safety of the event.
8. Supersonic and/or trans-sonic speeds are prohibited.

9. Adequate communication capability (electronic and visual) must be provided to maintain a safe operation, to control spectators, and to advise participants that the aerial demonstration has been halted or canceled. During a Military Jet Team performance (engine start to shut-down) the Air Boss, IIC, and team member communicating with the team lead must all be in direct communication.
10. A crowd line consisting of a physical barrier and/or adequate policing shall be provided to confine the spectators to designated areas. The spectator areas shall have well-defined lateral boundaries.
11. The demonstration shall be halted for any reason that is in the interest of safety. It shall also be halted when unauthorized aircraft enter the demonstration area, or when unauthorized persons or vessels enter the area underlying the flying display area/aerobatic box.
    a. Only the minimum number of essential personnel necessary to support operations will be authorized in the flying display areas/aerobatic box.
    b. The holder of the CoW, [insert name] assumes responsibility for the security of areas where unauthorized personnel and aircraft are not authorized access and for compliance with the aviation event security plan.
    c. The FAA IIC has the responsibility to make the holder of the CoW Gena Linebarger aware of any identified safety concerns and if necessary has the authority for canceling or delaying any or all acts if it is deemed necessary in the interest of safety.
12. Aircraft engines shall not be started and aircraft shall not be taxied in designated spectator areas or static display areas unless adequate measures are taken to protect the spectators.

    a. Unguarded engine run areas where engines and propellers are turning must be at least 100 feet from the spectator area. In areas where aircraft with rotors turning must be at least 200 feet from the spectator area. These distances are measured from the critical wingtip, tail, tail rotor, or rotor-blade.
    b. In guarded areas where engines and propellers are turning, the aircraft must be at least 50 feet from the spectator area. In areas where rotors are turning, the rotorcraft must be at least 100 feet from the spectator area. These distances are measured from the critical wingtip, tail, tail rotor, or rotor-blade. All aircraft must be guarded by wing walkers, marshallers, and either crowd monitors or barriers that prevent entry by unauthorized personnel.
13. In lieu of placing a large "X" on the runways to indicate the airport is closed, the control point may have spotters dedicated to detection of non-participating aircraft encroaching on the waivered airspace. In the event that communications cannot be established with the encroaching aircraft, operations will be suspended until the aircraft either departs the area or lands and clears the active runways

14. Gena Linebarger, will ensure that roads and buildings under the specified flying display area/aerobatic box are devoid of vehicular and pedestrian traffic and/or persons in accordance with security plan in attachment F.
15. The following facilities shall be provided and readily available in accordance with the submitted emergency response plan at the demonstration site. Fire truck, Ambulance, Crash Rescue Vehicle/Paramedic, Marine Unit and police vehicles will be provided as included in the emergency response plan in attachment F.
16. Aircraft equipped with operable ejection seats, ballistic parachutes, ballistic seat belts, on-board pyro technics, or jettisoned tanks must be identified as such to the event organizer and on-site crash rescue services. Information describing how to extricate each performer shall be provided to the on-site crash rescue services prior to the first performance.
17. Persons or aircraft not appearing on the CoW application and subsequently added to the CoW or CoA may not participate without specific approval by the responsible person or air boss, Gena Linebarger, and the IIC. Proof of appropriate qualifications for crewmember(s), and an airworthy aircraft is required before the performance can be conducted at that event site. If applicable, the appropriate category show line must be established for that aircraft before the performance can be conducted at that event site.
18. In the event that a performance involves aircraft operating in the vicinity of parachutists, whether in free-fall or under deployed canopies, all pilots and the jump master or team leader of the parachutists involved shall be present at the aviation event safety briefing. The responsible person, [insert name], or Air Boss shall ensure that each participant understands the details of the performance which shall include, at the minimum, the following information: a. The number of jumpers performing,
    b. The types of and/or colors of parachutes,
    c. The exit altitude and deployment altitude,
    d. The planned flight path prior to exit, as well as, the descent area of the jump aircraft,
    e. The number, make(s)/model(s) and color of the aircraft involved, and
    f. Procedures to be used in the event of an unexpected occurrence.
19. Unmanned Aerial Systems (UAS) Demonstrations are not authorized under this CoW.
20. Rocket Demonstrations are not authorized under this CoW.
21. Parachute Demonstrations are authorized under this CoW when a CoA is issued and included as attachment # J501 of this CoW authorizing the demonstration in accordance with all required special provisions and policy.

Air show special provisions:

1. All civil pilots who perform aerobatics and dynamic maneuvering must possess:

   a. A valid FAA Form 8710-7, Statement of Acrobatic Competency, or Transport Canada Aviation (TCA), Form 26-0307, Statement of Aerobatic Competency. All limitations and endorsements on the form will be adhered to including altitude restriction for the entire performance.

2. All civil aircraft pilots must show evidence of performing or practicing their performance(s) within the previous 45 days.

3. All civil aircraft pilots that perform formation dynamic maneuvering or aerobatics must ensure the following requirements are met:

   a. The members of the aerobatic team must comply with practice requirements of the applicable FAA accepted RIO ACE Program; and

   b. All persons conducting formation dynamic maneuvering or aerobatics must have demonstrated or substantiated their skills as a team and have the formation dynamic maneuvering or aerobatics notation placed on their SAC.

   Note: An air show performance conducted under a CoW issued for an "air show" is never counted as a practice.

   Note: This evidence of performing or practicing can be a logbook endorsement, a written statement, or by noting this on the Participants Safety Briefing Signature Page for Aviation Event. The required practice or performance must be in the same aircraft make and model and the same maneuvers that will be performed at this event.

4. All military pilots must have command approval and FAA approval to conduct a demonstration in accordance with an approved maneuvers package.
5. Civilian pilots who wish to conduct Standard formation flight in airspace issued a CoW for an aviation event must possess a valid industry formation credential acceptable to the FAA.

6. A fly-by can be performed by a single aircraft, by aircraft in formation, or by aircraft in trail, along show lines at a minimum horizontal distance of not less than 500 feet from spectator area(s), congested areas, or occupied buildings; and in accordance with the conditions established in the following table:

FLYBY REQUIREMENTS AND LIMITATIONS

FLYBY. A pass or a series of passes, performed by one or more aircraft while in the flying display area before an invited open air assembly of persons at an aviation event while a CoW for an aviation event is in effect. A flyby is not considered part of a performer's maneuvering sequence and therefore must be performed in accordance with requirements listed below.

SAC – Statement of Aerobatic Competency, FAA Form 8710-7	**Formation Credential – FAST/FFI:**
17. DMF – Dynamic Maneuvering–Formation 18. DMS – Dynamic Maneuvering–Solo 19. AF – Aerobatics–Formation 20. AS – Aerobatics–Solo	• FAST – Formation and Safety Training • FFI – Formation Flying, Inc.

Air Show Special Provisions

Category Aircraft **CAT I** **CAT II** **CAT III**	**Minimum Aircraft Category Show Line** **CAT III – 500 feet**	**Limitations**
CAT I/II/III Aircraft – Solo ➢ Standard Maneuvering–Solo ➢ Dynamic Maneuvering–Solo ➢ Aerobatic Maneuvering–Solo	**CAT III**	➢ **Standard Maneuvering–Solo** No Credential Required: Pitch ≤ 60° and/or Bank ≤ 75° Altitude ≥ 100 feet AGL Airspeed ≤ 300 kts IAS ➢ **Dynamic Maneuvering–Solo** SAC with DMS endorsement: Pitch ≤ 60° and/or Bank ≤ 90° Altitude: SAC-DMS Level II or higher ≥ 100 feet AGL Airspeed: SAC-DMS Level II or higher – No limitation (supersonic not authorized) ➢ **Aerobatic Maneuvering–Solo** SAC with AS endorsement: Pitch > 60° and/or Bank > 75° Altitude: SAC-AS Level I or higher – No limitation

		Airspeed: SAC-AS Level I or higher – No limitation (supersonic not authorized)
CAT I/II/III Aircraft – Formation ➢ Standard Maneuvering–Formation	**CAT III**	➢ **Standard Maneuvering–Formation** FAST or FFI Formation Credential: Pitch ≤ 45° and/or Bank ≤ 60° Altitude ≥ 250 feet AGL

Air Show Special Provisions

➢ Dynamic Maneuvering–Formation ➢ Aerobatic Maneuvering–Formation		Airspeed ≤ 250 kts IAS Formation separation is not authorized in the flying display area (see subparagraph 3-145D1)) ➢ **Dynamic Maneuvering–Formation** SAC with DMF endorsement: Pitch ≤ 60° and/or Bank ≤ 75° Altitude: SAC DMF Level II or higher ≥ 250 feet AGL Airspeed: SAC DMF Level II or higher – No limitation (supersonic not authorized) ➢ **Aerobatic Maneuvering–Formation** SAC with AF endorsement: Pitch > 60° and/or Bank > 75° Altitude: SAC-AF Level I or higher ≥ 250 feet AGL Airspeed: SAC-AF Level I or higher – No limitation (supersonic not authorized)

All Aircraft:	Military Aircraft:
➢ Maneuvering sequence may not be interrupted to perform a flyby. ➢ Flyby may only be performed before or after the sequence is completed. ➢ No abrupt maneuvers between the corner markers may be performed along the Category III show line. ➢ Flyby must be conducted in accordance with subparagraph 3-147L. ➢ Supersonic flight not authorized.	➢ Sanctioned military demonstration teams with an FAA-approved maneuvers package must comply with the limits approved. ➢ All other military pilots must comply with the flyby requirements and limitations.

NOTE: Per § 91.117(d), if the minimum safe airspeed for any particular operation is greater than the maximum speed required by § 91.117(a through c), the aircraft may be operated at that speed.

7. For the purpose of this event, the definition of aerobatic flight contained in 14 CFR § 91.303 is waived.
8. The following aircraft attitudes will be considered **Aviation Event Maneuvering.** Maneuvers performed while participating in accordance with the provisions of a CoW for an aviation event. Maneuvers performed at an aviation event require different levels of endorsement and are categorized and defined below:

a. Aerobatic Maneuvering. Requires Statement of Aerobatic Competency (SAC) with an aerobatic maneuvering endorsement.

a. In a solo flight, aerobatic maneuvering is when the pitch attitude of the aircraft is greater than 60 degrees above or below the horizon and/or the angle of bank is greater than 75 degrees in reference to the horizon.

b. In a formation flight, aerobatic maneuvering is when the pitch attitude of an aircraft is greater than 60 degrees above or below the horizon and/or the bank angle is greater than 75 degrees to the horizon.

b. Dynamic Maneuvering. Requires SAC with a dynamic maneuvering endorsement.

i. In a solo flight, dynamic maneuvering includes abrupt maneuvering, crossing maneuvers, and opposing maneuvers. The pitch and bank limitations are when the pitch attitude of the aircraft is less than or equal to 60 degrees above or below the horizon and/or the bank angle is less than or equal to 90 degrees in reference to the horizon.

ii. In a formation flight, dynamic maneuvering includes formation separation, formation configuration/position changes, rejoins, crossing maneuvers, and opposing maneuvers. The pitch and bank limitations are when the pitch attitude of the aircraft is less than or equal to 60 degrees above or below the horizon and/or the bank angle is less than or equal to 75 degrees in reference to the horizon.

NOTE: Solo maneuvers conducted after a formation has separated may be performed within the Dynamic Maneuvering–Solo limitations.

c. Standard Maneuvering. Formation flight requires an industry formation credential.

i. In a solo flight, standard maneuvering includes non-abrupt maneuvering and flybys. The pitch and bank limitations are when aircraft pitch attitude of the aircraft is less than or equal to 60 degrees above or below the horizon and/or the bank angle is less than or equal to 75 degrees in reference to the horizon.

ii. In a formation flight, standard maneuvering includes non-abrupt maneuvering, flybys, formation configuration/position changes, and missing-man formation, and the flight may not separate inside the flying display area, except to break for landing or flyby. The pitch and bank limitations are when the aircraft pitch attitude of the aircraft is less than or equal to 45 degrees above or below the horizon and/or the bank angle is less than or equal to 60 degrees in reference to the horizon.

Aviation Event Maneuvering Chart

SAC – Statement of Aerobatic Competency FAA Form 8710-7	Formation Credential - FAST/FFI:
• DMF - Dynamic Maneuvering - Formation • DMS - Dynamic Maneuvering- Solo • AF – Aerobatics- Formation • AS – Aerobatics - Solo	• FAST – Formation and Safety Training • FFI - Formation Flying Inc.

Formation Maneuvering			
	Standard Maneuvering	Dynamic Maneuvering	Aerobatic Maneuvering
FAST/FFI	Pitch ≤45° and/or Bank ≤60°		
SAC + DMF		Pitch ≤60° and/or Bank ≤75°	
SAC + AF			Pitch >60° and/or Bank >75°

Solo Maneuvering			
	Standard Maneuvering	Dynamic Maneuvering	Aerobatic Maneuvering
No Credential	Pitch ≤60° and/or Bank ≤75°		
SAC + DMS		Pitch ≤60° and/or Bank ≤90°	
SAC + AS			Pitch >60° and/or Bank >75°

9. Repositioning Turns.

i. **Return to the Flying Display Area/Aerobatic Box.** Conducting repositioning turns having an energy vector directed towards the primary spectator area, and in accordance with subparagraph 3-147L, made for the purposes of returning to the flying display area or aerobatic box to realign with the appropriate category aircraft show line, must be completed as follows:

i. Civilian performers. Pilots who hold a SAC with an Aerobatic endorsement (Solo or Formation) and flying Category III or Category I and Category II ex-military fighters are permitted to perform repositioning turns for the purposes of returning to the flying display area or aerobatic box using a maximum of 120 degrees of bank and 90 degrees of pitch when above 500 feet AGL and not over designated spectator areas or congested areas.

ii. Pilots who hold a SAC with a Dynamic Maneuvering–Solo endorsement are permitted to perform repositioning turns using a maximum of 90 degrees of bank and 60 degrees of pitch when above 500 feet AGL when not over designated spectator areas or congested areas. Formation not authorized.

iii. Military jet demonstration teams and single-ship demonstration teams for the purposes of returning to the flying display area or aerobatic box:

iv. Military demonstration teams with accepted maneuvers packages are permitted to exceed a maximum of 120 degrees of bank and 90 degrees of pitch; Pitch and bank angles must not exceed standard operating procedures prescribed for the specific aircraft; and Inverted flight is not authorized below 1,500 feet AGL and not over congested areas or spectator areas.

c. **Inside the Flying Display Area/Aerobatic Box**. When it is not practical to leave the flying display area or aerobatic box in between segments of a flight performance, repositioning turns that have an energy vector directed towards the primary spectator area, in accordance with subparagraph 3-147L, and are made for the sole purpose of remaining in the flying display area and realigning with the appropriate Category show line are permitted in accordance with the following:

i. Pilots who hold a SAC with an Aerobatics–Solo or Dynamic Maneuvering–Solo endorsement are permitted to perform repositioning turns and/or clearing turns to a maximum 90 degree bank. Pilots who hold a SAC with a Dynamic Maneuvering– Formation endorsement can perform repositioning turns using up to 75 degrees of bank. Pilots who hold an industry formation credential can perform repositioning turns using up to 60 degree angle of bank.

ii. The turns are carried out without abrupt control inputs during the portion of the turn when the aircraft is directing energy at the crowd.

iii. The turns are conducted in a manner to ensure the aircraft remains beyond the appropriate distance for their show line category (i.e., 500 feet for Category III; 1,000 feet for Category II; 1,500 feet for Category I).

10. Sequences/performances that contain dynamic maneuvering and aerobatic maneuvers must be initiated, performed, and completed at or above the altitude listed in the limitations on the SAC.

11. A show line (man-made or natural) clearly visible to the performers/pilots shall be provided to assist them in compliance with the approved distances from the spectator area(s). The show line will include a clearly visible (from 200 feet AGL at 200 KIAS) show center marker and corner markers that are 500 feet beyond the spectator areas along the crowd line to provide reference to pilots entering or leaving the flying display area.

12. Except when authorized during takeoff or landing, aircraft that operate at speeds of 156 knots or less and certain other Category III aircraft shall perform no closer than 500 feet horizontally from the spectator area[s]. Any single reciprocating-engine airplane, regardless of speed, with a maximum certificated gross weight of no more than 2,250 lbs. is also a Category III aircraft.

NOTE: The dimensions of the aerobatic area for Category III aircraft may vary. It only needs to be large enough to provide sufficient space for Cat III performers to complete their aerobatic maneuvers within it. The only requirement that may not be altered is that the minimum distance from each side

of this aerobatic area to the primary and secondary spectator areas respectively may not be less than 500 feet at any time.

13. Except when authorized during takeoff or landing, aircraft that operate at speeds of more than 156 knots but 245 knots or less shall perform aerobatic maneuvers no closer than 1,000 feet horizontally from a single spectator area. If two spectator areas are used, the show lines may be no less than 800 feet from one spectator area and no less than 1,000 feet from any other designated spectator area.

    Note: The dimensions of the aerobatic area may vary. It only needs to be large enough to provide sufficient space for Cat II performers to complete their aerobatic maneuvers within it. The only requirement is that the minimum distance from each side of this aerobatic area to the primary and secondary spectator areas respectively may normally not be less than 1000 feet. This distance may be reduced only on one side only of the Cat II aerobatic area to no less than 800 feet from either the primary or secondary spectator areas

14. Except when authorized during takeoff or landing, aircraft that operate at speeds of more than 245 knots shall perform aerobatic maneuvers no closer than 1,500 feet horizontally from a single spectator area. If two spectator areas are used, the show line may be no less than 1,200 feet from one of the designated spectator areas, and no less than 1,500 feet from any other designated spectator area. Single Cat I airplanes or the center of formation flights of Cat I airplanes must be centered on this show line.

    NOTE: Applicable to Category I, II, and III showlines. For reciprocating engine powered airplanes, these distances are predicated on true airspeed in straight and level flight at 75 percent power at standard temperature and pressure (15°C/sea level) and maximum certificated gross weight. For turbine engine powered airplanes, the distances are based on 85 percent of the maximum continuous powered straight and level flight true airspeed at standard temperature, pressure, and maximum certificated gross weight. Any turbine engine powered airplane for which valid performance data acceptable to the FAA is not available will be required to perform on or beyond the Category I show line

15. Gena Linebarger will make every effort to discourage secondary spectator areas. Secondary spectator areas cannot be located under the aerobatic box/flying display area. Flight over the secondary spectator area is permitted by all civilian and military air show performers when the following conditions are met:
    i. Minimum altitude must be no lower than 500 feet above the spectators.
    ii. Until the aircraft reaches an altitude of 500 feet, flight will be non-maneuvering and wings level in a normal climb.
    iii. For rockets, flight over secondary spectator area is prohibited.
    iv. UAS operations are not authorized unless authorized by the Administrator.

16. Flight demonstrations shall not be conducted during the day unless the ceiling is at least 1,500 feet, and the visibility is at least 3 statute miles at the time of the demonstration. The FAA IIC may adjust the minimum ceiling and visibility requirements at his/her discretion, if 14 CFR Section 91.155 is waived, but no less than 1,000 feet and 3 statute miles if:

a. Except for North American military performers, aerobatic maneuvers are conducted by Category III aircraft only within an operations area having a diameter of no more than 2 statute miles; and

b. Originally scheduled aerobatic maneuvers are not modified or conducted in close proximity to the surface as a result of the reduced weather conditions.

c. 14 CFR Section 91.155 is waived, the cloud separation may be reduced to "Clear of Clouds" by the IIC

d. No other reductions in weather requirements shall be made. (Ref. 3-154)

17. Air Show Maneuvers Toward Primary Spectator Area-Prohibited. Maneuvers that put the aircraft in an aerobatic attitude while the energy vector of the aircraft is directed at the primary spectator area between the corner markers are prohibited.

a. Aerobatic maneuvers, that in the event of a catastrophic failure, a part of the aircraft would contact the surface at or inside the primary spectator area between the corner markers are prohibited. Maneuvers of this type include inverted flight, pulling to the vertical, and loops where the energy vector is directed at the primary spectator area during the maneuver.

b. Rocket launches conducted inside the aerobatic box that, in the event of a catastrophic failure might result in a part of the rocket contacting the surface inside the primary spectator area between the corner markers, are prohibited.

18. Air Show Maneuvers Toward Primary Spectator Area- Permitted Maneuvers—No Approval Required.

Air Show Special Provisions

The following maneuvers are permitted without any additional approval:

a. Aerobatic maneuvers by a single aircraft, by multiple aircraft, or aircraft in formation in which the aircraft, but not the actual energy vector, is momentarily pointed towards the primary spectator area. For example, a spinning maneuver that has the energy vector of the aircraft directed toward the ground, but may briefly have the nose of the aircraft directed at the crowd, will be permitted. Similarly, a humpty-bump maneuver in which the direction of the aircraft is briefly directed at the crowd when the aircraft has nearly zero air speed is also permitted. Maneuvers of this type include spins, tail slides, torque rolls, humpty-bumps, and flops, as well as hammerhead turns and tumbles or lomcevaks whose flightpaths are parallel to the show reference line.

b. High energy maneuvers such as minimum radius turns (maximum of 90 degrees of bank) by a single aircraft on the appropriate show line for the aircraft category in accordance with the following:

- Category III aircraft—maximum altitude of 250 feet,
- Category II aircraft—maximum altitude of 300 feet, and
- Category I aircraft—maximum altitude of 500 feet.

c. Non-aerobatic maneuvers by a single aircraft, by multiple aircraft, or aircraft in formation with an energy vector directed towards the primary spectator area provided the aircraft/UAS

remains beyond the appropriate show line for aircraft category (i.e., 500 feet for Category III; 1,000 feet for Category II; 1,500 for Category I)

d. Non-aerobatic formation maneuvers (e.g., flybys) that may direct momentary, but not sustained, energy toward the primary spectator area, except during any formation separations, formation configurations/position changes, or rejoins. This does not apply to non-aerobatic formation maneuvers conducted in accordance with established FAA policy.

e. Flight over the spectator areas in accordance with established FAA policy.

f. Repositioning turns in accordance with established FAA policy.

g. All other maneuvers that do not direct an energy vector at the primary spectator area.

h. Class 1 rocket launches in accordance with established FAA policy.

19. Spectator areas may not be closer than 500 feet from any takeoff and landing runway when the approach speed (Vref) of any aircraft exceeds 100 knots and/or for any aircraft that has a certificated gross weight of more than 50,000 pounds. This also includes Airplanes, gyroplanes, and helicopters conducting excessive, non-aerobatic maneuvers on takeoff or landing (car-top landing/comedy acts). Aircraft with and both an approach speed (Vref) of 100 knots or less and a certificated gross weight of 50,000 pounds or less and UAS (> 55 pounds) shall be required to use a runway that is at least 300 feet from the spectator area. Powered parachute (aircraft/ultralight) and UAS (< 55 pounds) shall be required to use a runway that is at least 100 feet from the spectator area.

    a. If ALL aircraft and ultra-lights in an air show have approach speeds of less than 60 knots, and certificated gross weight of less than 2,500 pounds, and there is no excessive maneuvering during takeoff or landing, spectators may be as close as 200 feet to the takeoff or landing runway.

    b. Car-top landings: only those performers with a current and valid SAC and a car-top landing endorsement with a 300-foot limitation are authorized to maneuver non- aerobatic, take off, and land at a minimum of 300 feet from spectators, congested areas, or occupied buildings when a hard prepared surface is available and a similar surface is not available at 500 feet.

    c. These distances can be measured to the runway centerline for single aircraft operations, in which case the aircraft are expected to operate on the runway centerline. For formation takeoffs/landings, this distance shall be measured to the runway edge.

20. For the U.S. Air Force Thunderbirds and Heritage Flights, U.S. Navy Blue Angels, and Canadian Snowbirds approved maneuvers include level or climbing (normal rate) non-aerobatic flight over any spectator no less than 500 feet above the highest point in the primary spectator areas. All other performers must be at or above 1,000 feet above the highest point in the primary spectator areas.

21. Any maneuver or speed approved by AFS-800 in the FAA approved maneuvers package or FAA accepted military order are permitted if performed as approved. These may be exceptions to FAA Order 8900.1,

Volume 3, Chapter 6. For US Military Jet Teams, flight below 500 feet AGL over occupied buildings is permitted in the transition areas depicted in their maneuvers package. Low altitude ingress and egress routes below 500 feet AGL require FAA IIC approval.

a. FAA IIC approval has been granted.

22. An arrival demonstration is not authorized unless an advance member of the US Military Jet Team has been briefed on the show line and pertinent special provisions of the CoW. This information must be relayed to the team leader before the arrival demonstration.

C. Ground-Based Pyrotechnics Special Provisions

1. Ground-based pyrotechnics shall not be placed on and/or detonated in any safety area(s) defined by 14 CFR part 139, §139.309, and described in the airport certification manual if any certificated air carrier or commercial operator will be conducting revenue operations on the adjacent airport movement area(s) during the time period beginning when ground-based pyrotechnics are installed and ending when the ground-based pyrotechnics have been expended and/or safely removed and secured.

2. For all other public use airports, ground-based pyrotechnics shall not be placed on and/or detonated in any safety area(s) as defined in AC 150/5300-13, Airport Design, Tables 3-1, 3-2, or 3-3, as appropriate, if any non-participating aircraft will be operating on the adjacent airport movement area(s) during the time period beginning when ground-based pyrotechnics are installed and ending when the ground-based pyrotechnics have been expended and/or safely removed and secured.

3. If non-participating aircraft operations will be restricted to provide adequate separation from ground-based pyrotechnics to assure the safety of the aircraft relative to the use of ground-based pyrotechnics, the restricted movement plan must be approved by the airport manager and/or other appropriate official(s).

4. The placement and planned use of ground-based pyrotechnics must be thoroughly reviewed in the event participants' briefing as required by special provision 3.

5. The placement and planned use of ground-based pyrotechnics must be approved by the airport manager and/or other appropriate official(s).

Note: Consult with airport manager on location of airport safety areas.

ATTACHMENT C
Aviation Event Application FAA Form 7711-2

ISSUED TO: Gena Linebarger, Commemorative Air Force High Sky Wing 432-528-0997, cell 817-705-5817
DATE ISSUED: August 10, 2021; Amendment 0
VALID: Sep 10th 0930-1230; Sep 11th 1130-1730; & Sep 12th 1130-1730, 2021
ISSUED BY: Lubbock FSDO 800-858-4115, 806-740-3808, fax 806-740-3869

ATTACHMENT D

PARTICIPANT SAFETY BRIEFING SIGNATURE PAGE FOR AVIATION EVENTS

1. AVIATION EVENT/LOCATION: _____
2. DATE: _____
3. RESPONSIBLE PERSON: _____
4. AIR BOSS: _____
5. FAA IIC: _____
6. OTHER: _____

PARTICIPANTS:

I have read and/or been briefed on this document and fully understand the procedures, requirements, and limitations of the Certificate of Waiver and/or Certificate of Authorization (CoW/A) and all of its special provisions.

I attended the safety briefing required for today's aviation event.

[insert for airshows] I have performed or practiced my performance(s) within the previous 45 days and in accordance with FAA Order 8900.1 (Vol. 3 Ch. 6 Sect. 1).

[insert for airshows] The team leader signs as official team representative and lists all team members who will be performing today, be briefed, met proficiency requirements, and perform in accordance with FAA Order 8900.1 (Vol. 3 Ch. 6 Sect. 1).

FULL NAME (PRINTED) *[add team name]	SIGNATURE	AIRCRAFT REGISTRATION #

Briefing Sign In Sheet
Ver 10042018

Page 1

ISSUED TO: Gena Linebarger, Commemorative Air Force High Sky Wing 432-528-0997, cell 817-705-5817
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ISSUED BY: Lubbock FSDO 800-858-4115, 806-740-3808, fax 806-740-3869

Attachment F
Airport Emergency Plan

CAF AIRSHO 2021

CAF Insurance

Air Capital Insurance
P.O. Box 458
Wichita, KS 67201
877-224-0967 or 316-858-1999
Fax: 316-858-1994

ADDENDUM TO COMMEMORATIVE AIRFORCE CERTIFICATE OF INSURANCE

Policy AC3014765-03

Date of Certificate: September 9th – 13th 2021

AIRCRAFT	CAF WING
SNJ-5, N101X	High Sky Wing
L-17, N4321K	High Sky Wing
PT-19, N49797	High Sky Wing
T-28, N70743	High Sky Wing
C-45, N79AG	High Sky Wing
L-5, N961JW	High Sky Wing

ADDITIONAL INSURED/CERTIFICATE HOLDER AS RESPECTS OPERATIONS OF THE NAMED INSURED:

Re: CAF High Sky Wing Airsho 2021

City of Midland, its officers, employees, agents, and representatives
PO Box 60305
Midland, TX. 79711

Russell Royce
416 Vista Noche
Lewisville, TX. 75067

Air Capital Insurance
P.O. Box 458
Wichita, KS 67201
877-224-0967 or 316-858-1999
Fax: 316-858-1994

Certificate of Liability Insurance

Certificate Effective Date : September 9th – 13th 2021
Policy Effective Date : November 1, 2020
Policy Expiration Date : November 1, 2021
Policy or Certificate No. : AC3014765-03
Insurance Company : US Specialty Insurance Company

This is to certify to: **that the above policies / certificates have been issued to:**

See Attached Addendum

Commemorative Air Force, Inc.; the American Air Power Heritage Flying Museum, Inc. : The American Air Power Heritage Museum, Inc.: The American Air Power Heritage Foundation, Inc.
P.O. Box 764769
Dallas, TX 75376

This Certificate does not amend, extend or otherwise alter the terms and conditions of the policies referred to herein.

LEGAL LIABILITY PROTECTION	**LIMIT OF LIABILITY**
SINGLE LIMIT BODILY INJURY AND PROPERTY DAMAGE:	$10,000,000
PASSENGER LIABILITY LIMITED TO:	$250,000
STATIC DISPLAY BODILY INJURY AND PROPERTY DAMAGE:	$1,000,000
PASSENGER LIABILITY:	EXCLUDED

AIRCRAFT IDENTIFICATION

See Addendum

ADDITIONAL AGREEMENTS

ADDL NAMED INSUREDS: Officers, Directors and Members of the Commemorative Air Force, Inc.; The American Air Power Heritage Flying Museum, Inc.: The American Air Power Heritage Museum, Inc.; The American Air Power Heritage Foundation, Inc.

Additional Insured:

See Attached Addendum

Notice is hereby given that Air Capital Insurance is not the Insurer hereunder and shall not be held liable for any loss or damage nor for failure to provide Notice of Coverage Cancellation.

Air Capital Insurance

GREG HISER, PRESIDENT

Air Capital Insurance
877-224-0967 or 316-858-1999
Fax: 316-858-1994

Certificate of Insurance

Certificate Effective Date : September 9th – 13th 2021
Policy Effective Date : April 1, 2021
Policy Expiration Date : April 1, 2022
Policy or Certificate No. : UA00126594-20
Insurance Company : U.S. Specialty Insurance Company

This is to certify to:

Russell Royce
416 Vista Noche
Lewisville, TX. 75067

City of Midland, its officers, employees, agents, and representatives
PO Box 60305
Midland, TX. 79711

that the above policies / certificates have been issued to:

Commemorative Air Force, Inc (and the various wings, squadrons and divisions thereof).; the American Air Power Heritage Foundation, Inc.;: The American Air Power Heritage Flying Museum, Inc.; The American Air Power Heritage Museum, Inc.
P.O. Box 764769
Dallas, TX 75376

This Certificate does not amend, extend or otherwise alter the terms and conditions of the policies referred to Herein

- **PREMISES LIABILITY** — $5,000,000 Combined Single Limit Bodily Injury/Property Damage each Occurrence; $10,000,000 Aggregate ($1,000,000 per person limit in Florida only)
- **PRODUCTS/COMPLETED OPERATIONS** — $1,000,000 Products Completed Operations Hazard Bodily Injury/Property each Occurrence; $1,000,000 Aggregate; $100,000 Each Person

This coverage is provided as respects the Commemorative Air Force PX only.

CERTIFICATE HOLDERS ARE INCLUDED AS ADDITIONAL INSUREDS AS RESPECTS OPERATIONS OF THE NAMED INSURED:

Russell Royce
416 Vista Noche
Lewisville, TX. 75067

City of Midland, its officers, employees, agents, and representatives
PO Box 60305
Midland, TX. 79711

Re: CAF High Sky Wing Airsho 2021
CAF Wing: High Sky Wing

Air Capital Insurance

Greg Hiser, President

Notice is hereby given that Air Capital Insurance is not the Insurer hereunder and shall not be held liable for any loss or damage nor for failure to provide Notice of Coverage Cancellation.

Air Capital Insurance
877-224-0967 or 316-858-1999
Fax: 316-858-1994

Certificate of Insurance

Certificate Effective Date : September 9th – 13th 2021
Policy Effective Date : April 1st 2021
Policy Expiration Date : April 1st 2022
Policy or Certificate No. : UA00126594-20
Insurance Company : U.S. Specialty Insurance Company

This is to certify to:

Russell Royce
416 Vista Noche
Lewisville, TX. 75067

City of Midland, its officers, employees, agents, and representatives
PO Box 60305
Midland, TX. 79711

that the above policies / certificates have been issued to:
Commemorative Air Force, Inc (and the various wings, squadrons and divisions thereof).; the American Air Power Heritage Foundation, Inc.;: The American Air Power Heritage Flying Museum, Inc.; The American Air Power Heritage Museum, Inc.
P.O. Box 764769
Dallas, TX 75376

This Certificate does not amend, extend or otherwise alter the terms and conditions of the policies referred to Herein

- **PREMISES LIABILITY** $5,000,000 Combined Single Limit Bodily Injury/Property Damage each Occurrence; $10,000,000 Aggregate ($1,000,000 per person limit in Florida only)
- **MEDICAL EXPENSES** $10,000 Each Person / $50,000 Each Occurrence
- **HOST LIQUOR LIABILITY** $1,000,000 Any one Occurrence and in the Aggregate

CERTIFICATE HOLDERS ARE INCLUDED AS ADDITIONAL INSUREDS AS RESPECTS OPERATIONS OF THE NAMED INSURED:

Russell Royce
416 Vista Noche
Lewisville, TX. 75067

City of Midland, its officers, employees, agents, and representatives
PO Box 60305
Midland, TX. 79711

Event: CAF High Sky Wing AIRSHO 2021

Notice is hereby given that Air Capital Insurance is not the Insurer hereunder and shall not be held liable for any loss or damage nor for failure to provide Notice of Coverage Cancellation.

Air Capital Insurance
Greg Hiser, President
August 24, 2021

Air Capital Insurance
877-224-0967 or 316-858-1999
Fax: 316-858-1994

AIR CAPITAL INSURANCE

Certificate of Insurance

Certificate Effective Date : September 9th -13th 2021
Policy Effective Date : April 1, 2021
Policy Expiration Date : April 1, 2022
Policy or Certificate No. : NAF6039524
Insurance Company : Endurance American Insurance Company

This is to certify to:

City of Midland, its officers, employees, agents, and representatives
PO Box 60305
Midland, TX. 79711

Russell Royce
416 Vista Noche
Lewisville, TX. 75067

that the above policies / certificates have been issued to:

Commemorative Air Force, Inc (and the various wings, squadrons and divisions thereof).; the American Air Power Heritage Foundation, Inc.; The American Air Power Heritage Flying Museum, Inc.; The American Air Power Heritage Museum, Inc.
P.O. Box 764769
Dallas, TX 75376

- **AIRMEET LIABILITY** — $10,000,000 Combined Single Limit Bodily Injury/Property Damage each Occurrence excluding participants; There is no sub-limit per person
- **MEDICAL EXPENSE** — $5,000 Each Person / $30,000 Each Occurrence
- **EXPLOSIVES** — $10,000,000 Any one Occurrence and Aggregate

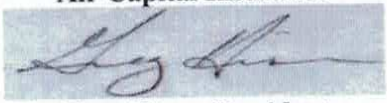
The Insured shall not use or permit use of explosives of any kind at or in connection with the air meet which is the subject of this insurance unless:

- Such use of explosives is specifically approved in advance by the FAA and;
- All handling and igniting of explosives is conducted by a person or persons duly licensed or otherwise authorized by the state and/or political subdivision in which the air meet takes place.

CERTIFICATE HOLDERS ARE INCLUDED AS ADDITIONAL INSUREDS AS RESPECTS OPERATIONS OF THE NAMED INSURED:

DATE OF AIR SHOW: September 9th – 13th 2021
UNIT: Blasters
AIRSHOW: CAF High Sky Wing Airsho 2021

Air Capital Insurance



Greg Hiser, President

Notice is hereby given that Air Capital Insurance is not the Insurer hereunder and shall not be held liable for any loss or damage nor for failure to provide Notice of Coverage Cancellation.

CAF AIRSHO 2021

Ground OPS Plan

City of Midland
Department of Airports
CAF Airsho Ground Operations Plan

Introduction

This Ground Operations Plan demonstrates complete compliance with CFR 14 Part 139.343, Noncomplying conditions:

Unless otherwise authorized by the Administrator, whenever the requirements of subpart D of this part cannot be met to the extent that uncorrected unsafe conditions exist on the airport, the certificate holder must limit air carrier operations to those portions of the airport not rendered unsafe by those conditions.

The provisions contained herein address items specific to CAF Airsho 2021. This plan will not supersede any guidelines contained within the Midland International Air & Space Port's approved Airport Certification Manual (ACM). Airport personnel will comply with the provisions of the ACM in the conduct of their duties during this event.

Event

The Commemorative Air Force High Sky Wing wishes to conduct an airshow and ancillary activities on Thursday, September 9th, 2021, Friday, September 10th, 2021, Saturday, September 11th, 2021, and Sunday, September 12th, 2021. Pre-show setup will begin on Tuesday, September 7th, 2021.

Airport Certification Safety Inspector (ASCI) consideration

Midland International Air & Space Port is certificated under 14 CFR Part 139.

Airline Operations

There will be commercial operations during portions of the airshow, between acts, and before and after setup. Commercial operations will be conducted on Runway 16R/34L. Airline access to the terminal shall not be obstructed at any time. The Airsho crowd will be separated from the Air Carrier Ramp by a Midland Police Checkpoint. Runway and taxiway usage shall be per NOTAMs issued for the Airsho.

Aircraft Rescue and Firefighting (ARFF) Capability and Special Emergency Response Procedures

ARFF units will be positioned at Station #7 during the airshow with one additional unit positioned on the West Executive Ramp. This location ensures clear access to the Movement Area and allows for timely response to aircraft emergencies. Static aircraft displays will be positioned in a manner that allows three (3) delineated ingress and egress routes from Station #7 (See Diagram #2). An additional egress route will be available south of Station #7 should it be necessary.

The Midland Fire Department will ensure the availability of suitable equipment and personnel during the airshow. ARFF will maintain the required index throughout the event. Additional emergency response personnel and equipment will be available to respond throughout the airshow. These personnel and equipment include the following:

- One (1) Midland Fire Department Ambulance
- One (1) Midland Fire Department Tanker Truck*
- Two (2) Midland Fire Department ARFF Fire Fighters
- One (1) Midland Fire Department Command Staff, rank of Captain
- Two (2) Midland Fire Department Fire Inspectors
- Five (5) Midland Fire Department Emergency Medical Technicians (EMTs)
- Three (3) Midland Fire Department Fire Fighters*
- One (1) Midland Fire Department Division Supervisor
- One (1) Communications Specialist
- Twenty-one (21) Midland Police Officers

**These positions may be filled by members of the Volunteer Fire Station*

A Hazardous Material (HAZMAT) Plan is in place to address potentially dangerous chemicals utilized during the airshow. These materials include the CAF's diesel fuel and blasting caps used during pyrotechnic displays. Diesel fuel will be stored in a tanker truck and all blasting caps are stored in an ATF approved magazine located at the MAF Bunkers.

Airport Emergency Plan (AEP) Contingencies

In the event of an accident or disaster, the MAF Airport Emergency Plan (AEP) will be activated. Response to an aircraft incident during the Airshow is expected to be identical to any other incident.

Temporary Arresting Gear Installed in a Runway Safety Area

No Temporary Arresting System will be utilized during Airsho 2021.

Integrity of Runway Safety Areas, Taxiways, and Object Free Areas

In the event that a Military Flight Demonstration Team is performing at the airshow, a centroid placement will be utilized. The centroid placement will include three (3) anchored tarps placed 1,000 feet north of the Runway 10/28 centerline and outside of the Runway Safety Area (See Diagram #1). Tarps will be placed at the following locations two (2) days prior to the commencement of airshow activity:

A. North of Runway 10/28, directly north of the Runway 10 number designation
B. North of Runway 10/28, approximately 1,500 feet from the approach end of Runway 10
C. North of Runway 10/28, approximately 5,000 feet from the approach end of Runway 10 and west of Taxiway 'Z'

Airport Maintenance personnel and equipment will be available to restore any Safety Areas damaged during airshow activities.

Pyrotechnic Devices

Pyrotechnic devices will be stored in an ATF approved magazine located at the MAF Bunkers. At no time shall the CAF be allowed to locate, store, or permit the location or storage of fireworks, dynamite, flashpots, or any other incendiary devices within their leasehold. All pyrotechnic devices will be detonated during the show in a predetermined detonation area north of Runway 10/28 at show center (See Diagram #1)

The pyrotechnic devices will be placed prior to the commencement of the airshow and shall be fully detonated prior to its conclusion. Only licensed pyrotechnic experts and fire department personnel will be allowed access to the detonation area. The aforementioned personnel will gain access to the detonation area utilizing the Perimeter Road, and only after passing through a Midland Police Department checkpoint (See Diagram #1). There will be at least five (5) volunteer fire trucks stationed near the detonation area to respond in the event of a fire.

Runway and Taxiway Safety Areas will be inspected by Airport Operations at the conclusion of pyrotechnic activities. Any discrepancies located during this inspection will be corrected before the associated surface is available for use.

Temporary Closures of Runways and Taxiways

The following surfaces will be closed via NOTAM during Airsho 2021:

- West 3000' of Runway 10/28 (except Airsho traffic during waver times)
- Taxiway 'E' and Taxiway 'A'
- West 100' of TWY 'P' between Runway 10/28 and TWY 'H'

A NOTAM will be issued to close Midland International Airport to all General Aviation traffic during the airshow. Only airshow and air carrier aircraft will be allowed to utilize the airport each day during the applicable waiver times (See Diagram #3).

Movement Area Maintenance

No aircraft or vehicle will be permitted to park on open Movement Area surfaces. Aircraft and vehicles will be allowed to park adjacent to Taxiway 'P' north of Taxiway 'H'. A physical barrier will be placed at this location and adequately policed to ensure no unauthorized access.

Fueling Operations

The CAF shall contract with a third party to provide all fueling services. Fueling operations will occur in designated areas on the North Ramp and the CAF Ramp. All fueling will take place after a minimum 100-foot perimeter crowd line has been established or when the ramp is sterile.

Public Protection

Spectators will be confined to designated areas by physical barriers which will remain continuously monitored by authorized personnel; all spectator areas will have well-defined lateral boundaries. An increased number of public safety personnel will be placed along these boundaries to prevent individuals from entering the Movement Area (See Diagrams #1 and #2).

Aircraft will utilize all Taxiways during the event. The primary crowd line runs parallel to Taxiway 'A', and will not be subject to jet blast hazards. Any areas that may potentially be affected by jet blast will be monitored by aircraft marshals and addressed on a case to case basis.

Special Self Inspections

Airport Operations personnel will conduct any and all necessary inspections of the airfield before, during, and immediately following the airshow. The Commemorative Air Force Air Boss will allow reasonable and timely access to airfield surfaces to facilitate these inspections. If Airport Operations personnel are unable to ensure the safety of airfield surfaces they will be closed to all traffic until such a time as they are inspected and declared safe.

Airshow Ground Vehicle Operations

Qualified Airport Operations and Airport Maintenance personnel will conduct all escorts for personnel requiring access to the Movement Area before, during, and after the airshow. The only additional vehicles authorized to enter the Movement Area are those operated by the

Midland Fire Department and Midland Police Department. All other vehicle operators, including those operating on behalf of the Commemorative Air Force, must be under the escort of an authorized vehicle operator.

Portions Taxiway ‘A’ along with the entirety of Runway 10/28 and Taxiway ‘E’ will be closed for airshow setup in order to prevent any vehicle or pedestrian incursions. These surfaces will remain closed until all takedown, clean up, and repair operations are complete following the airshow.

Impact to Navigational Aids (NAVAIDS)

MAF does not anticipate any changes to airport marking, lighting, or NAVAIDS to accommodate for the airshow.

Notice to Airmen (NOTAMS)

The Commemorative Air Force will provide the Director of Airports any and all information necessary for the issuance of proper Notices to Airmen (NOTAMS). NOTAMS will be issued regarding the closure of MAF during flying portions of the airshow. The City of Midland Department of Airports is the only agency authorized to issue and/or cancel these NOTAMS. The Commemorative Air Force must coordinate airshow activities to ensure all scheduled or unscheduled air carrier operations are allowed to continue unimpeded throughout the duration of the event. The Department of Airports, in coordination with the Commemorative Air Force, agrees that any aircraft experiencing an emergency situation during the timeframe of the airshow will be allowed to use the airport facilities without hindrance.

Mitigation of Wildlife Hazards

Wildlife activity on the airfield is seasonal and difficult to predict. Pilots will be notified of any potential wildlife related complications during a pre-show briefing. In order to further reduce wildlife attractants, the CAF shall remove or cause the removal of all litter and trash deposited on airport property as a result of the airshow immediately following the conclusion of the event.

Sample NOTAMs
(Times taken from Waivers and subject to change)

Tuesday (9/7/21 @ 0800L through 9/13/21 @1730L)

- !MAF XX/XXX MAF TWY E, TWY A BTN TWY A RUNUP PAD AND TWY P CLSD 2109071300-2109132230

Thursday (9/9/21 @ 0800L through 9/13/21 @ 1730L)

- !MAF XX/XXX MAF TWY P BTN TWY H AND RWY 10/28 CLSD EXC TAX EAST 100 FT 2109091300-2109132230

Friday (9/10/21 @ 0930L-1230L)

- !MAF XX/XXX MAF AD AIRPORT CLSD EXC ACR/AIRSHOW ACFT 2109101430-2109101730
- !MAF XX/XXX MAF TWY A BTN APCH END RWY 10 AND TWY A RUNUP PAD CLSD EXC AIRSHOW ACFT 2109101430-2109101730
- !MAF XX/XXX MAF RWY 10/28 W 3000FT CLSD. DECLARED DIST: RWY 10 TORA 5302FT TODA 5302FT ASDA 5302FT LDA 5302FT. RWY 28 TORA 5302FT TODA 5302FT ASDA 5302FT LDA 4610 FT. 2109101430-2109122230
- !MAF XX/XXX MAF AIRSPACE PJE WITHIN AREA DEFINED AS 3NM RADIUS OF MAF SFC-XXXXFT 2109101430-2109101730**

Saturday (9/11/21 @1130L-1730L)

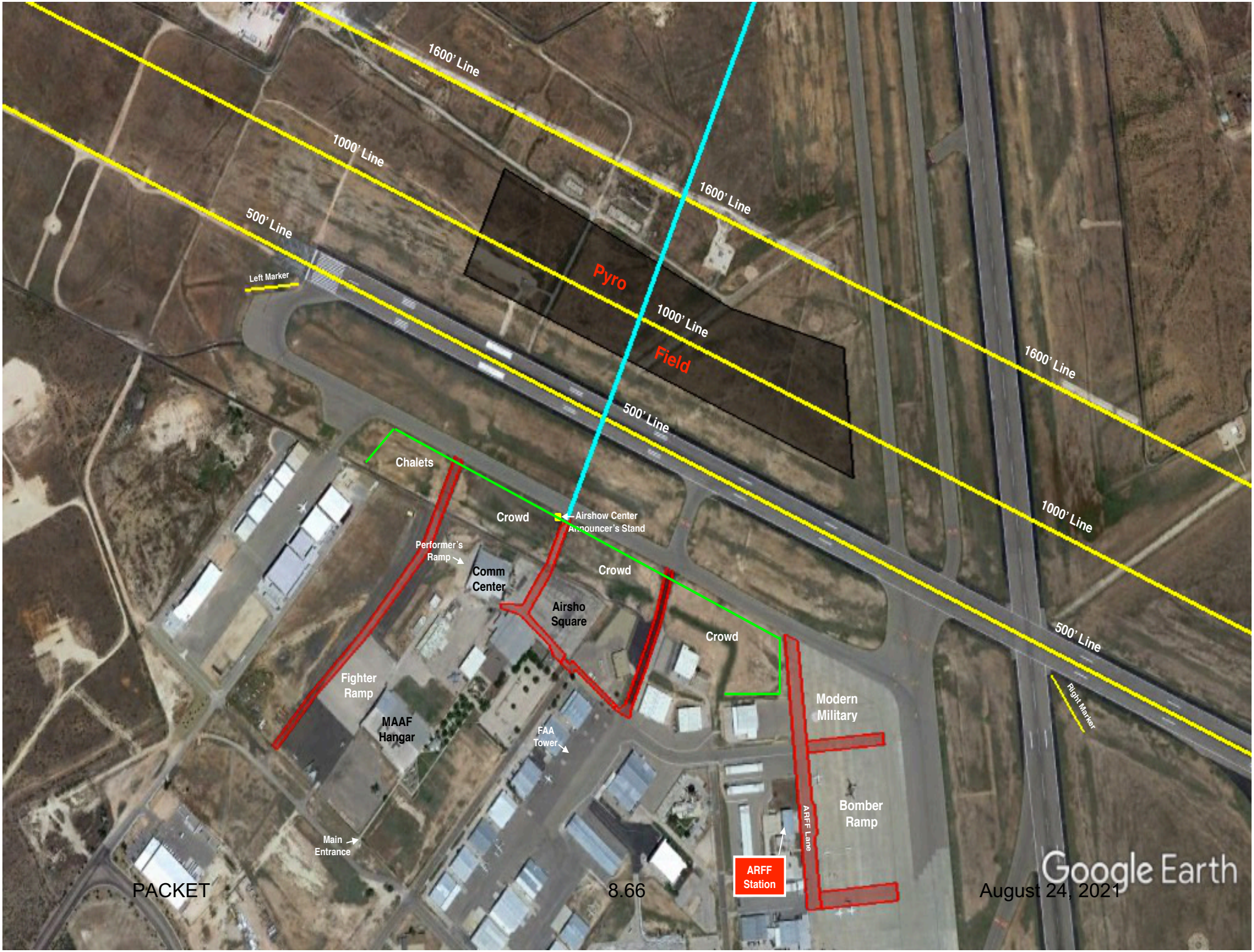
- !MAF XX/XXX MAF AD AIRPORT CLSD EXC ACR/AIRSHOW ACFT 2109111630-2109112230
- !MAF XX/XXX MAF TWY A BTN TWY A RUNUP PAD AND APCH END RWY 10 CLSD DLY 1630-2230 2109111630-2109122230
- !MAF XX/XXX MAF AIRSPACE PJE WI AN AREA DEFINED AS 3NM RADIUS OF MAF SFC-1500FT AGL 2109111630-2109112230**

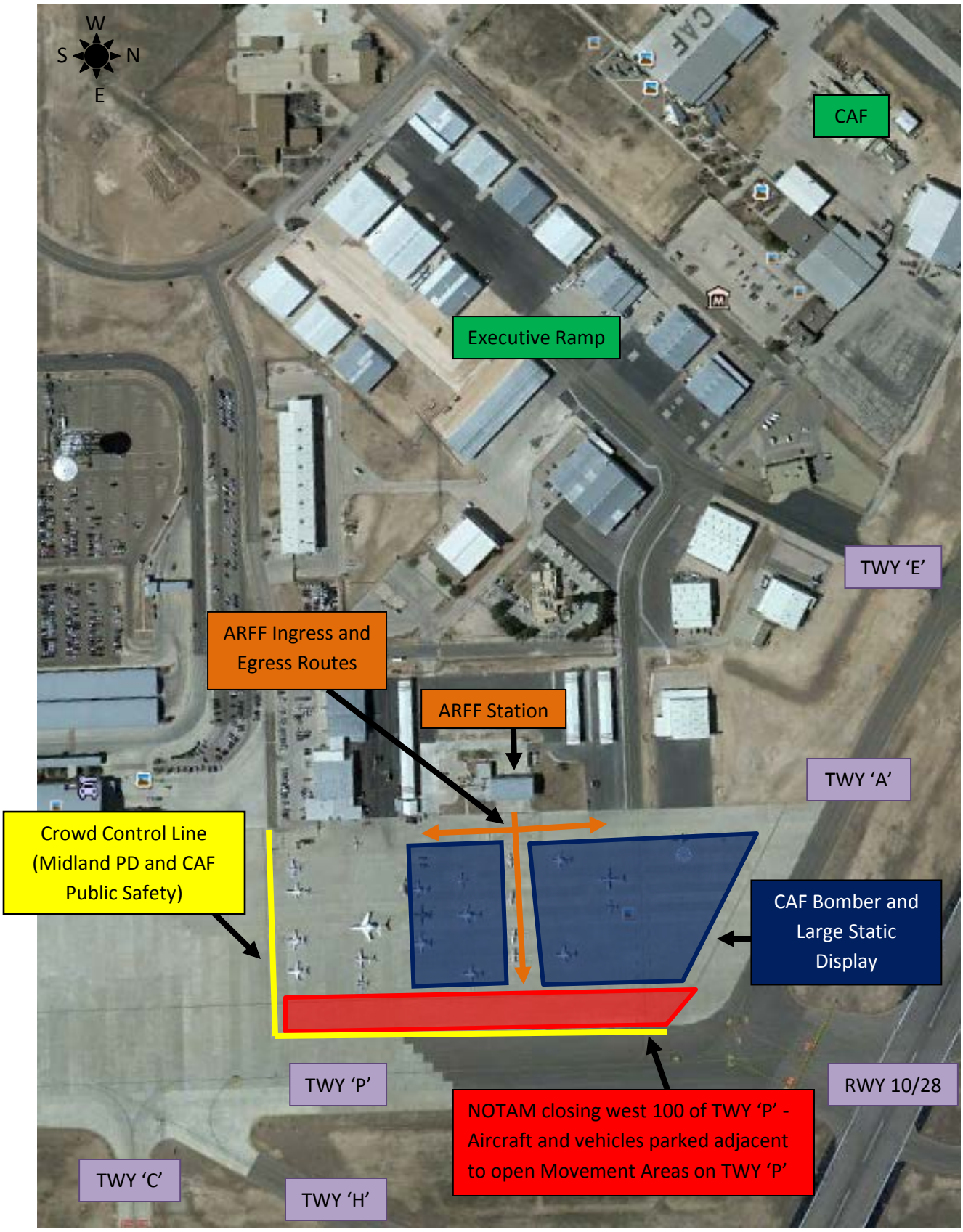
Sunday (9/12/21 @1130L-1730L)

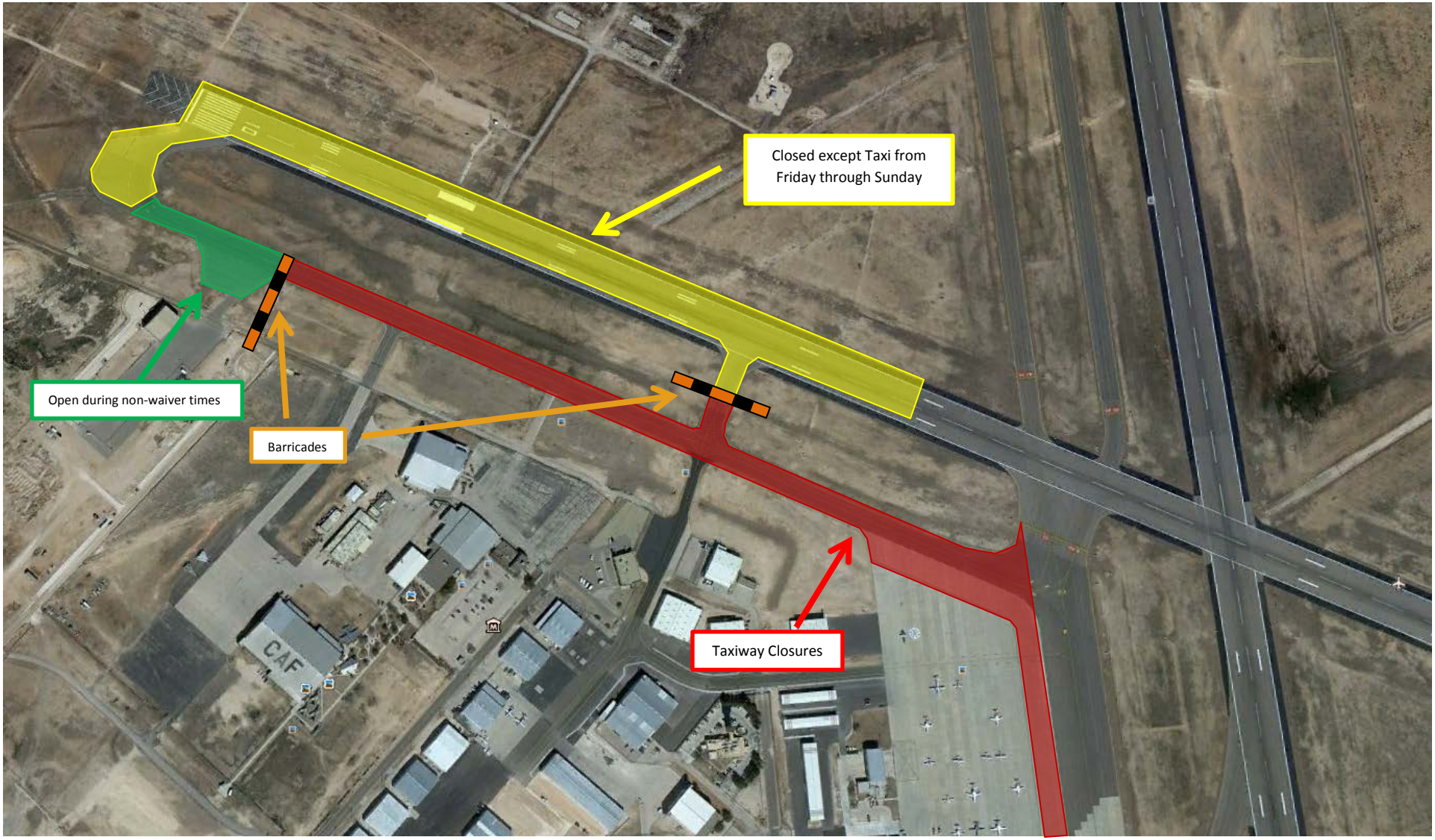
- !MAF XX/XXX MAF AD AIRPORT CLSD EXC ACR/AIRSHOW ACFT 2109121630-2109122230
- !MAF XX/XXX MAF AIRSPACE PJE WITHIN AREA DEFINED AS 3NM RADIUS OF MAF SFC-XXXXFT 2109121630-2109122230**

***Only issued if para jumpers will be participating*

The west 3000' of Runway 10/28 is tentatively scheduled to be closed on Friday 09/10 @ 0930L. This closure time may be altered based on weather conditions and the operational needs of Air Traffic Control


1600' Line
1000' Line
500' Line
1600' Line
Pyro
1000' Line
Field
1600' Line
500' Line
Left Marker
1000' Line
Chalets
Crowd
Airshow Center
Announcer's Stand
Performer's
Ramp
Comm
Center
Crowd
Airsho
Square
Crowd
500' Line
Fighter
Ramp
MAAF
Hangar
FAA
Tower
Modern
Military
Right Marker
Bomber
Ramp
ARFF Lane
Main
Entrance
ARFF
Station
Google Earth


W
S
N
E
CAF
Executive Ramp
TWY 'E'
ARFF Ingress and Egress Routes
ARFF Station
TWY 'A'
Crowd Control Line (Midland PD and CAF Public Safety)
CAF Bomber and Large Static Display
TWY 'P'
RWY 10/28
NOTAM closing west 100 of TWY 'P' - Aircraft and vehicles parked adjacent to open Movement Areas on TWY 'P'
TWY 'C'
TWY 'H'


Closed except Taxi from Friday through Sunday
Open during non-waiver times
Barricades
Taxiway Closures
CAF

CAF AIRSHO 2021

Pyrotechnics Permit

EOD
Blastards
Detachments of the Commemorative Air Force

June 30, 2021

Midland Airport Operations
Midland International Airport
Midland, Texas 79711

Gentlemen:

The Explosive Ordnance and Blastards Detachments of the Commemorative Air Force will be simulating bomb blast for over flying aircraft during the annual air show this year on September 11-12, 2021. This display will be north of Runway 10-28 between Taxiway Papa and the approach of Runway 10 with the Taxiway Echo being the approximately show center. The time for this year's display will be Saturday 9/11/2021 starting at 12:00 pm and ending at 5:00 pm. Sunday 9/12/2021 starting at 12:00 pm and ending at 5:00 pm. Please note these times are approximate depending on weather, airline schedules and air show schedule. Setup will start at 8:00 am each day of the show.

All material used this year will be the same as the past years and the amount will be less than the past years. All personnel that will be in contact with the explosives have filled out ATF paperwork and/or have an ATF licenses for the purchasing and storing of the explosives. The Shooter-in Charge this year will be Rodney Robinson EOD Lead and David Linebarger Blastards Lead. Your contact person for this years show will be:

David Linebarger CAF PYRO Lead
2507 Maxwell
Midland, Texas 79705
432 236 7777

We have a permit for the use of High Explosives for public display. The explosives will be stored in an ATF approved magazine that is located by the existing WWII bunkers north of Runway 10-28. The material and a work party will cross the field Thursday September 9, 2021 at approximately 12:00 pm for material preparation.

If there are any questions concerning this please give me a call at the above number.

Thank You

David Linebarger
Blastards Unit Leader

TEXAS DEPARTMENT OF INSURANCE
State Fire Marshal's Office (112-FM)
333 Guadalupe, Austin, Texas 78701 ★ PO Box 149221, Austin, Texas 78714-9221
(512) 676-6800 | F: (512) 490-1063 | (800) 578-4677 | TDI.texas.gov | @TXSFMO

APPLICATION FOR CLASS B FIREWORKS (FIREWORKS 1.3G) SINGULAR OR MULTIPLE DISPLAY PERMIT

This application must be accompanied by the appropriate fee and all documents and information required by Chapter 2154 of the Texas Occupations Code and the Fireworks Rules. Complete answers must be given to all questions.

Please print or type.

A public fireworks display permit may not be issued to any person who is under 21 years of age. Any fraudulent representation on this application shall be cause for denial, suspension, or revocation of a permit. All fees are non-refundable, except for overpayments resulting from mistakes of law or fact.

PERMIT

CHECK ONE	TYPE OF PERMIT	~~PERMIT FEE~~	CODE
☐	~~Singular Display Permit~~	~~$50.00~~	~~570-07~~
☐	~~Multiple Display Permit~~	$400.00	~~570-08~~

APPLICANT

NAME OF APPLICANT: David Linebarger/CAFPYRO
Telephone No. 432-236-7777
Fax No.
ADDRESS: 2507 Maxwell
CITY: Midland
STATE: TX
ZIP: 79705
E-MAIL ADDRESS FOR NOTIFICATION PURPOSES *(optional)*: Blastards1@gmail.com
WEB SITE ADDRESS *(optional)*:

Applicant doing business as (Check One)

☐ Individual. Is the individual 21 years of age or older? Yes ☒ No ☐
☐ Partnership. Is each partner 21 years of age or older? Yes ☐ No ☐
☐ Corporation
☐ Other – describe:

Federal employer's identification (FEI) number: 74-1484491

DISPLAY INFORMATION

Date of display: Sept 11-12, 2021
Time: 12pm - 5pm
Alternate date of display:
Time:
Exact location description or address of display and/or alternate location for the display: 500 ft north of Taxiway Alpha at MAF, Midland, TX

Pyrotechnic operator licensed in Texas who will be at the display site to supervise the display:
Name: Commemorative Air Force — License number: S-TX-113-33-2H-009
Name: — License number:
Name: — License number:

QUESTIONS
Size and estimated number of 1.3G fireworks to be discharged:
Other items (1.4G fireworks, flame effects, set pieces, etc.) 3000ft 50grain cord, 78 Orms electric caps, 42 non-electric caps 400 gal of gas
Manner and address of storage of fireworks prior to and during the display an ATF Type 2 outdoor bunker supplied by CAF & located between the 2 existing WWII storage bunkers at MAF
Manufacturer or distributor licensed in Texas who is to supply the fireworks: Name Buckley Powder Co License number 5-TX-329-22-9-J-01235

SIGNATURES

In applying for a fireworks permit, I certify that I am familiar with and will comply with Chapter 2154 of the Texas Occupations Code and the Fireworks Rules.
I hereby authorize the state fire marshal or any of his duly authorized deputies, upon notice, to enter, examine, and inspect any premises, building, room, or establishment used in connection with the permit for which I am applying to determine compliance with the provisions of Chapter 2154 and the Fireworks Rules.
By my signature, I verify that the information on this application and its attachments are true.
I understand that knowingly providing a false answer to any question or submitting false information or documents with this application may be tampering with a governmental record which is punishable under the Texas Penal Code Chapter 37, §37.10.

Printed name	Title
David Lineberger	CAF Blastards Lead
Signature Dal Lin	Date 7/27/2021
Printed name	Title
Signature	Date

APPLICATIONS MUST BE SIGNED BY AN INDIVIDUAL APPLICANT, BY AN OFFICER OF A CORPORATION, BY THE SOLE PROPRIETOR, BY EACH PARTNER OF A GENERAL PARTNERSHIP, BY THE GENERAL PARTNER OF A LIMITED LIABILITY PARTNERSHIP OR BY AN OFFICER OR MEMBER OF A LIMITED LIABILITY COMPANY.

APPLICATIONS SUBMITTED BY A GOVERNMENTAL ENTITY MUST BE SIGNED BY THE APPROPRIATE OFFICER. FOR EXAMPLE, A CITY'S APPLICATION SHOULD BE SIGNED BY THE MAYOR, CITY MANAGER, CITY ADMINISTRATOR, CITY SECRETARY, ETC.

Check or money order should be made payable to the TEXAS DEPARTMENT OF INSURANCE.
Mail this completed application along with the appropriate fee and additional documents to:

Mail Address:	State Fire Marshal's Office Mail Code 9999 P. O. Box 149221 Austin, TX 78714-9221 (512) 676-6808	Physical Address: Fax No. Web Site Address:	State Fire Marshal's Office 333 Guadalupe Austin, TX 78701 (512) 490-1056 www.tdi.texas.gov/fire

NOTICE ABOUT CERTAIN INFORMATION LAWS AND PRACTICES
With few exceptions, you are entitled to be informed about the information that the Texas Department of Insurance (TDI) collects about you. Under sections 552.021 and 552.023 of the Texas Government Code, you have a right to review or receive copies of information about yourself, including private information. However, TDI may withhold information for reasons other than to protect your right to privacy. Under section 559.004 of the Texas Government Code, you are entitled to request that TDI correct information that TDI has about you that is incorrect. For more information about the procedure and costs for obtaining information from TDI or about the procedure for correcting information kept by TDI, please contact the Agency Counsel Section of TDI's General Counsel Division at (512) 676-6551 or visit the Corrections Procedure section of TDI's website at www.tdi.texas.gov

Texas Department of Insurance
State Fire Marshal's Office
Application for Class B Fireworks (Fireworks 1.3G) Singular or Multiple Display Permit
Site Inspection Certification

1. Name of applicant David Linebarger / CAF PYRO
   Address 2507 Maxwell Telephone 432-236-7777
   City Midland State TX Zip Code 79705
2. Date of display Sept. 11-12, 2021 Time 12pm - 5pm
   Alternate date of display N/A Time N/A
3. Location and/or alternate location for the display 500 ft north of Taxiway Alpha at MAF, Midland, TX. This permit is in conjunction with the annual "CAF AIRSHO"
4. As the fire prevention officer, I approve of the display site and have reviewed the site diagram. ☑ Yes ☐ No
5. I approve of the location and manner for storage of display fireworks before and during the display. ☑ Yes ☐ No
6. I approve of the potential landing area for fireworks debris. ☑ Yes ☐ No
7. The display is to be conducted in compliance with TX Occupations Code, Regulation of Fireworks & Fireworks Displays and the Fireworks Rules. ☑ Yes ☐ No
8. My approval is subject to the following conditions.
   List conditions, if applicable, or indicate "None" None
9. As the appropriate fire prevention officer, I have inspected the display site(s) to determine whether this proposed display is of a nature or in a location that may be hazardous to property or dangerous to any person. This form is my notice to the state fire marshal of the results of the inspection as required in Sec. 2154.206, Chapter 2154, Texas Occupations Code.

   Signature of fire prevention officer [signature] Date 7-29-21
   Printed name of fire prevention officer James W. Howard Title Fire Marshal
   Department Midland Fire Dept Telephone No. 432-685-7335
   Email address: jhoward@midlandtexas.gov Mobile Phone No.

Telephone No. (512) 676-6808
Fax No. (512) 490-1056
Web Site Address www.tdi.texas.gov/fire

Air Capital Insurance
877-224-0967 or 316-858-1999
Fax: 316-858-1994

Certificate of Insurance

Certificate Effective Date : September 9th -13th 2021
Policy Effective Date : April 1, 2021
Policy Expiration Date : April 1, 2022
Policy or Certificate No. : NAF6039524
Insurance Company : Endurance American Insurance Company

This is to certify to:

City of Midland, its officers, employees, agents, and representatives
PO Box 60305
Midland, TX. 79711

Russell Royce
416 Vista Noche
Lewisville, TX. 75067

that the above policies / certificates have been issued to:

Commemorative Air Force, Inc (and the various wings, squadrons and divisions thereof).; the American Air Power Heritage Foundation, Inc.; The American Air Power Heritage Flying Museum, Inc.: The American Air Power Heritage Museum, Inc.
P.O. Box 764769
Dallas, TX 75376

- **AIRMEET LIABILITY** — $10,000,000 Combined Single Limit Bodily Injury/Property Damage each Occurrence excluding participants: There is no sub-limit per person
- **MEDICAL EXPENSE** — $5,000 Each Person / $30,000 Each Occurrence
- **EXPLOSIVES** — $10,000,000 Any one Occurrence and Aggregate

The Insured shall not use or permit use of explosives of any kind at or in connection with the air meet which is the subject of this insurance unless:

- Such use of explosives is specifically approved in advance by the FAA and;
- All handling and igniting of explosives is conducted by a person or persons duly licensed or otherwise authorized by the state and/or political subdivision in which the air meet takes place.

CERTIFICATE HOLDERS ARE INCLUDED AS ADDITIONAL INSUREDS AS RESPECTS OPERATIONS OF THE NAMED INSURED:

DATE OF AIR SHOW: September 9th – 13th 2021
UNIT: Blasters
AIRSHOW: CAF High Sky Wing Airsho 2021

Air Capital Insurance

Greg Hiser, President

Notice is hereby given that Air Capital Insurance is not the Insurer hereunder and shall not be held liable for any loss or damage nor for failure to provide Notice of Coverage Cancellation.

City Council Meeting

Item Number: 9

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Justine Ruff, Director

Subject: MOTION RATIFYING THE MAYOR'S AND CITY ATTORNEY'S EXECUTION OF THE FEDERAL AVIATION ADMINISTRATION'S CORONA VIRUS AID, RELIEF AND ECONOMIC SECURITY ACT DEVELOPMENT ADDENDUM FOR TERMINAL BUILDING GRANT FOR THE AIRPORT MULTIFACILITY PROJECT AT MIDLAND INTERNATIONAL AIR & SPACE PORT (DISTRICT 4) (AIRPORTS)

Purpose:

Motion ratifying the Mayor and City Attorney's execution of the Coronavirus Aid, Relief and Economic Security (CARES) Act Development Addendum for Terminal Building Grant from the Federal Aviation Administration (FAA) upon receipt for the Airport Multi-Facility Project at Midland International Air & Space Port.

Recommended City Council Action:

Approve

Fiscal Impact:

Estimated Grant Proceeds: This Grant is for $6,711,014 (which is a reassignment from the $22,935,854 CARES Grant.)

Appropriations Language:

That the sum of $6,711,014.00 is hereby appropriated from the Airport Operating Fund (500500) Current Year Federal Unappropriated Fund Balance (35305) to the MAF Multi-Facility Rehab Project (900308-505).

Discussion:

The Department of Airports is requesting City Council to approve the Mayor and City Attorney's execution of this grant agreement which was received on August 12, 2021. The grant proceeds will be used to fund the Multi-Facility Rehabilitation Project at the Midland International Air & Space Port. This money will fund 100% of the construction costs of the project with the exception of the contingency funding of $626,600 that has already been appropriated from the Airport Operating Fund.

Tina Gaug

City Manager's Office

City of Midland
Office Memorandum

DATE: August 19, 2021

TO: The Honorable Mayor and City Council Members

FROM: John Ohnemiller, City Attorney

SUBJECT: Motion authorizing the execution of an Engagement Agreement with the law firm of Bickerstaff Heath Delgado Acosta LLP for legal services related to the redistricting of council member districts based on a review of the 2020 census data.

The proposed motion authorizes the execution of an Engagement Agreement with the law firm of BICKERSTAFF HEATH DELGADO ACOSTA LLP (the "Bickerstaff firm") for legal services directly related to the City of Midland's redistricting process.

The release of the 2020 census data by the federal government requires city councils to review population changes to determine if council member districts have become imbalanced and must be redrawn. This is an important process because holding elections based on imbalanced districts may subject the City of Midland to potential legal challenges under the one-person, one-vote principle of the United States Constitution.

The Bickerstaff firm has assisted the City of Midland in its redistricting for several decades. The Bickerstaff firm also assists other governmental entities in Midland with this process.

I've included in your agenda packet a document that more specifically identifies the services the Bickerstaff firm will be providing.

As always, please do not hesitate to contact me if you have any questions.

BICKERSTAFF HEATH DELGADO ACOSTA LLP

REDISTRICTING PROJECT SCOPE

OVERVIEW

1. Initial Presentation to the Client on Redistricting

Presentation will discuss redistricting laws and process; designed to provide an overview on possible ways to complete a redistricting project and subsequent implementation of the redistricting plan including election procedures.

2. Collection of Data

We will request data from the Client to include current boundaries, election data, community data, facilities, incumbent locations and other related data to facilitate the redistricting process.

3. Consideration and Adoption of Guidelines and Criteria; Prepare Redistricting Time Line

Discussion on possible guidelines and criteria for redistricting plans; Discussion on level of public process desired by the Client; Preparation of a redistricting time line to schedule the various components of the process; Adoption by the Client of criteria and guidelines.

4. Evaluation of the 2020 Census Data

Prepare an initial assessment of the new 2020 Census data on current boundaries; Prepare population and demographic analysis for each set of current boundaries; prepare presentations to City Council including data charts showing race/ethnic breakdowns and maps showing race/ethnic densities by census block and/or voting tabulation districts; discuss legal requirements based upon the results of the initial assessment.

5. Conduct Drawing Session(s)

Conduct in person or using internet software and telephone drawing session(s) to prepare initial draft plan(s); Provide support and technical mapping skills to the City Council for rebalancing the Council Districts

6. Designation of Illustrative Plan(s) for Public Review

Client will designate draft initial plan(s) to become illustrative plan(s) for the purposes of public review and solicitation of public comment.

Bickerstaff
©2021 Bickerstaff Heath Delgado Acosta LLP

7. Provide Documents for Illustrative Plan(s) for Client to Post to Website and Begin Citizen Plan Submission Period

Client posts illustrative plan(s) to website and other media for the purpose of gathering public comment and accepting any citizen submitted alternative plans for Client review.

8. Conduct Public Hearing(s)

Conduct public hearing(s) on an illustrative plan to gain further input from the public.

9. Reports on Public Comment and Consideration of Possible Revisions to Plan(s)

Reports presented to the Client on all public comment and citizen submitted plans. Period for any revisions to the plans as desired by the Client.

10. Client Considers and Adopts Redistricting Plan

Client meets to consider plan(s) and adopt a redistricting plan for implementation.

11. Preparation for Plan Implementation and Election

Establish transition process for Client to new redistricting plan; prepare to call an election; notify all government entities of the redistricting plan; assist county with any voter coding questions as requested by the Client; prepare final maps for posting.

Bickerstaff
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City Council Meeting

Item Number: 11

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Tina Jauz, Assistant City Manager

Subject: MOTION APPROVING A CONSULTING SERVICES AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND KIMLEY-HORN AND ASSOCIATES, INC., FOR AIRSPACE MODELING SERVICES RELATED TO THE INTEGRATION OF A ROUNDTRIP, POINT-TO-POINT FLIGHT OF A REUSABLE LAUNCH VEHICLE BETWEEN MIDLAND INTERNATIONAL AIR & SPACE PORT AND SPACEPORT AMERICA (DISTRICT: NONE) **(CITY MANAGER)**

Purpose:

The Board of Directors of the Midland Development Corporation approved at a regular meeting on August 2, 2021, a resolution authorizing the execution of a consulting services agreement with Kimley-Horn and Associates, Inc., for the airspace modeling services related to the integration of a round-trip, point-to-point flight of a reusable launch vehicle between Midland International Air & Space Port and Spaceport America.

Recommended City Council Action:

Approve

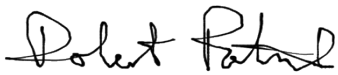
Fiscal Impact:

$99,000.00

Discussion:

This agreement is the next step in establishing a point-to-point high-speed aerospace corridor between Midland International Air & Space Port and Spaceport America (located approximately 45 minutes north of Las Cruces, New Mexico, in Truth or Consequences, N.M.), enabling Midland to capture a portion of the multi-billion-dollar market in high-speed and hypersonic testing and development. The information-gathering stage of this project has been

completed; this agreement will provide for simulation model development and validation, high-level feasibility analysis, and stakeholder coordination.



City Manager's Office

CONSULTING SERVICES AGREEMENT

THIS AGREEMENT is made and effective the 25th day of August, 2021, by and between the MIDLAND DEVELOPMENT CORPORATION, a Type A corporation pursuant to Chapter 504 of the Texas Local Government Code, as amended (hereinafter called "*MDC*"), and KIMLEY-HORN AND ASSOCIATES, INC. (hereinafter referred to as "*COMPANY*").

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall provide consulting services and deliverables (also referred to as the "services") for airspace modeling related to the integration of a roundtrip point-to-point flight of a Reusable Launch Vehicle (RLV) between Midland International Air & Space Port (MAF) and Spaceport America into the National Airspace System.

ARTICLE II. SERVICES TO BE PERFORMED

1. COMPANY shall provide those services described in **Exhibit A**, which is attached hereto and incorporated herein for all purposes.

2. COMPANY shall perform all the services under this Agreement consistent with the same level of skill and care as other professionals in approximately the same region at approximately the same point in time and for the same types of projects. COMPANY represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in **Exhibit A**.

ARTICLE III. FINANCIAL CONSIDERATIONS

MDC agrees to pay COMPANY in an amount not to exceed $99,000.00 for the consulting services described in **Exhibit A**. MDC agrees to pay COMPANY upon presentation of proper invoice(s) that set forth all fees and costs. The MDC's Executive Director must approve all additional expenses and reimbursable expenses in advance. Within thirty (30) days of the date on which COMPANY's invoice is received by MDC, MDC shall pay the full amount of such invoice; provided, however, that if MDC objects to any portion of an invoice, MDC shall notify COMPANY of MDC's objection and the grounds therefor within fifteen (15) days of the date of

receipt of the invoice, and the parties shall immediately make every effort to settle the disputed portion of the invoice. MDC in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV. TERM

The term of this Agreement shall be from August 24, 2021 until December 31, 2021, unless the Project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

MDC may terminate this Agreement at will for no or any reason upon giving at least one-hundred eighty (180) days' written notice to COMPANY. The parties to this Agreement understand and agree that it is in MDC's sole discretion to cancel the Agreement during the term of the Agreement without penalty to MDC. COMPANY has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

ARTICLE VI. ASSIGNMENT

This Agreement provides for consulting services, and COMPANY shall not assign this Agreement, in whole or in part, without the prior written consent of MDC. It is understood that the services shall be either self-performed or subcontracted by COMPANY.

ARTICLE VII. OWNERSHIP AND CONFIDENTIALITY OF DOCUMENTS AND OTHER WORK PRODUCT

Any deliverables or reports provided to MDC by COMPANY under this Agreement shall become the sole property of MDC and shall be delivered to MDC; provided, however, that COMPANY shall retain ownership of all deliverables/reports if MDC fails to pay COMPANY in accordance with the terms of this Agreement. COMPANY may make copies of any and all instruments of service for its files.

ARTICLE VIII. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of MDC; that COMPANY shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between MDC and COMPANY, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between MDC and COMPANY. No person performing any of the work and services described hereunder by COMPANY shall be considered an officer, agent, servant or employee of MDC. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. COMPANY shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. MDC does not have the power to direct the order in which the work is done. MDC shall not have the right to control the means, methods or details of COMPANY'S work. COMPANY shall assume exclusive responsibility for the work. COMPANY is entirely free to do the work in its own way.

ARTICLE IX. INSURANCE

COMPANY shall at all times during the term of this Agreement maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):

-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
Business Automobile Liability:	$250,000.00 combined single limit -
	Personal Injury and Property Damage
Workers' Compensation:	Statutory limits

Employers' Liability: $500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on a claims-occurred basis. This insurance shall name MDC as an additional insured and waive subrogation in favor of MDC.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-hired vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $250,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement. This insurance shall name MDC as an additional insured and waive subrogation in favor of MDC.

The Workers' Compensation coverage provided by COMPANY shall inure to the benefit of employees injured during the course and scope of their employment by COMPANY pursuant to this Agreement. The Workers' Compensation shall waive all rights of subrogation in favor of MDC.

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of MDC. All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name MDC as an additional insured on a claims occurred basis. MDC shall be provided the notice by COMPANY'S insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

COMPANY shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of MDC and policies that name the MDC as an additional insured on a claims occurred basis (except workers' compensation).

The parties agree that, prior to the execution of the Agreement, COMPANY shall provide one or more certificates of insurance specifically stating that these requirements have been met and subject to the approval of MDC. MDC shall not be required to provide any insurance whatsoever pursuant to this Agreement.

COMPANY certifies that the certificate of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. COMPANY shall not use an

unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of COMPANY.

ARTICLE X. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, COMPANY AGREES TO WAIVE AND DOES HEREBY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST MDC REGARDING THE AWARD OF ATTORNEY FEES THAT IS IN ANY WAY RELATED TO THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. COMPANY AGREES THAT IF COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, *ET SEQ*., AS AMENDED), THAT COMPANY AGREES TO (i) WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY FEES TO WHICH IT MIGHT OTHERWISE BE ENTITLED AND (ii) ASSUME COMPLETE FINANCIAL RESPONSIBILITY FOR AND PAY ALL ATTORNEY FEES AND ASSOCIATED COSTS INCURRED IN GOOD FAITH BY MDC IN MDC'S CONTESTING OF THE LEGAL ACTION OR PROCEEDING BROUGHT BY COMPANY.

COMPANY AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL (i) RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT AND (ii) ASSUMPTION OF A FUTURE OBLIGATION IN THE EVENT THAT COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING AGAINST MDC RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGEMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDMED). COMPANY ACKNOWLEDGES THAT COMPANY UNDERSTANDS

ALL TERMS AND CONDITIONS OF THE AGREEMENT. COMPANY FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN COMPANY AND MDC. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

COMPANY IS RELYING ON ITS OWN JUDGMENT. COMPANY ACKNOWLEDGES THAT COMPANY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE XI. GOVERNMENTAL IMMUNITY

By executing this Agreement MDC is not waiving its right of governmental immunity. MDC is retaining its immunity from suit. MDC is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.**

ARTICLE XII. NO THIRD-PARTY BENEFICIARIES

MDC's approval of this Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or other rights hereunder.

ARTICLE XIII. RELEASE

NOTWITHSTANDING ANY OTHER PROVISIONS, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES MDC, MDC'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF AGREEMENT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR MDC'S NEGLIGENCE.

ARTICLE XIV. INDEMNITY

COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND MDC

AND ALL OF MDC'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, TO THE EXTENT CAUSED BY ANY NEGLIGENT ACT OF COMPANY, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF THE PERFORMANCE OF THIS AGREEMENT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST MDC OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

ARTICLE XV. GENERAL PROVISIONS

A. Waiver. No waiver by MDC of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.

B. Governing Law and Venue. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas.

C. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

If to MDC: Executive Director
Midland Development Corporation
200 N. Loraine, Suite 610
Midland, Texas 79701

If to COMPANY: Kimley-Horn and Associates, Inc.
Thomas J. Sauro
11400 Commerce Park Dr., Suite 400
Reston, VA 20191

The parties hereto may change the above-designated addresses by giving notice pursuant to the terms of this Section.

D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.

F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.

H. Federal Wage Requirements. If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations are hereby incorporated by reference and made a part of this Agreement, and all terms and requirements under said laws, by such incorporation, are made terms and

requirements of this Agreement, to which the parties to this Agreement have agreed to be bound.

I. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, COMPANY or his legal representative, shall give the MDC Chairman, or any other reasonable official of MDC, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within ninety (90) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which COMPANY will settle, the physical and mailing addresses of COMPANY at the time and date the claim was presented and the physical and mailing addresses of COMPANY for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom COMPANY relies to establish its claim; and a failure to so notify the MDC Chairman within the time and manner provided herein shall exonerate, excuse and except MDC from any liability whatsoever. MDC is under no obligation to provide notice to COMPANY that COMPANY'S notice is insufficient. MDC reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, COMPANY'S failure to comply with the requirements herein shall perpetually bar COMPANY'S claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if MDC has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Agreement are reasonable.

J. Prompt Pay Act. MDC and COMPANY agree that Texas Government Code, Chapter 2251, Payment for Goods and Services does not waive governmental immunity.

K. Compliance. COMPANY agrees that it shall comply with Texas Government Code Section 2252.908, as amended. COMPANY agrees that it shall comply with Texas Local Government Code Section 176.006, as amended.

L. Governmental Function. MDC and COMPANY hereby acknowledge and agree that the entirety of MDC's performance and obligations under this Agreement is a governmental function. By entering into this Agreement, COMPANY releases MDC from any present or future claims asserting that MDC's performance or obligations under this Agreement are not governmental functions.

M. Conflict of Terms. If a conflict of terms or language exists between: (i) any of the provisions of this Agreement and (ii) any of the provisions contained in any exhibit(s) attached to this Agreement, precedence shall be given to the provisions of this Agreement. For the avoidance of any doubt, the provisions contained in this Agreement shall supersede any and all conflicting provisions contained in any exhibit(s) attached hereto. Furthermore, the parties acknowledge and agree that any provision contained in an exhibit(s) attached to this Agreement that imposes an additional express or implied obligation on MDC is hereby made void and of no force or effect. MDC's sole and exclusive obligations under this Agreement are contained in the provisions of this Agreement that precede the signature page(s), which evidences the parties' execution.

[Signature Pages Follow]

EXECUTED IN DUPLICATE the day and year first above mentioned.

MIDLAND DEVLEOPMENT CORPORATION

_____
Wesley Bownds, Chairman

ATTEST

_____
Berry Simpson, Secretary

[Signature Page Follows]

KIMLEY-HORN AND ASSOCIATES, INC.

By: _____

Name:_____

Title: _____

STATE OF _____ §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2021, personally appeared, _____ of _____, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2021.

_____

Notary Public, State of _____

City Council Meeting

Item Number: 12

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Tina Jauz, Assistant City Manager

Subject: MOTION APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND MOTRAN ALLIANCE, INC. (DISTRICT: NONE) (CITY MANAGER)

Purpose:

The Board of Directors of the Midland Development Corporation approved at a regular meeting on August 2, 2021, a resolution authorizing the execution of an economic development agreement with MOTRAN Alliance, Inc.

Recommended City Council Action:

Approve

Fiscal Impact:

$142,500.00

Discussion:

Commits $142,500.00 to MOTRAN for fiscal year 2022 to secure additional infrastructure funding for Midland and aggressively pursue the development and improvement of transportation corridors connecting Midland with domestic and international markets. The MDC has been supporting MOTRAN financially since 2010.

ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND MOTRAN ALLIANCE, INC.

WHEREAS, Motran Alliance, Inc., submitted a proposal to the Midland Development Corporation for economic development purposes and the funds for such Proposal can be appropriated by the Midland Development Corporation for fiscal year 2021-2022; and

WHEREAS, the primary purpose of Motran Alliance, Inc., is to raise funds for and improve the infrastructure of the Permian Basin area; and

WHEREAS, such activities will create the groundwork for developing new and expanded enterprises in the Midland/Odessa area; and

WHEREAS, the parties have agreed on the terms and conditions and have set forth such terms and conditions in this Agreement;

NOW, THEREFORE, the Midland Development Corporation, hereinafter referred to as the "MDC", and Motran Alliance, Inc., a Texas non-profit corporation, hereinafter referred to as "MOTRAN", do hereby contract and agree as follows:

I.

Economic Development Program

MOTRAN shall provide the economic development services as provided in **Exhibit B**, which document is incorporated herein by reference. Said services shall be referred to herein as the "Economic Development Program."

II.

Funding

The MDC shall pay to MOTRAN the total sum of One Hundred Forty-Two Thousand, Five Hundred Dollars ($142,500.00), for the MDC fiscal year, said funds to be used solely for the purpose of conducting the Economic Development Program as delineated in **Exhibit B**. The MDC shall dispense funds to MOTRAN by paying one-half of the total on or before December 1, 2021,

and one-half on or before April 1, 2022. It is understood and agreed that MOTRAN will obtain the remaining necessary funds for completion of the Program from other sources. MOTRAN may perform services that are not eligible for expenditure of funds by the MDC but the percentage of Economic Development Corporation funds received must not exceed the percentage of eligible services performed by MOTRAN.

III.

Budget and Financial Reporting

MOTRAN shall comply with the budget showing the revenues and expenses, a copy of which is attached as **Exhibit A**, to be received and incurred during the term of this Agreement. The hereinafter required financial reports shall, in each case, show the relationship of actual expenses to the authorized expenses shown in said budget.

On or before the 25th day of each month during the term of this Agreement, MOTRAN shall make and send to the MDC, and file with the City Secretary of the City of Midland, a report showing an accounting of all funds received and expended during the preceding month. Said report shall also show the cumulative expenses and revenues for the preceding month together with all prior months covered by this Agreement.

MOTRAN shall maintain complete and accurate financial records of each expenditure of Economic Development Program funds made by it. The general method of financial record keeping and reporting proposed by MOTRAN to be used in complying with the requirements of this Agreement shall be submitted to and approved by the MDC. The sufficiency of detail of any activity or financial report required by this Agreement shall be determined by the MDC. All of MOTRAN's records pertaining and related to the activities and funds under the Agreement shall be available for inspection by the MDC or MDC's representatives at any time during MOTRAN's normal office hours. The revenue provided by the MDC under this Agreement must be maintained by MOTRAN in a separate account established for that purpose and may not be co-mingled with any other money or maintained in any other account.

IV.

Informal Reporting

The Activity Reporting Requirements outlined in Article V are for the purpose of providing information to meet the very basic exchange of information. However, to be efficient in the use of economic development funds, to compete in the open market for jobs, to be able to respond to issues and economic development opportunities in a timely manner, to make decisions regarding goals, objectives and priorities and to foster the necessary teamwork between the MDC and MOTRAN, it is necessary to plan and to implement certain informal reporting and interactions which could occur on a frequent basis. For these purposes, the parties agree to engage in certain interaction and interoffice communications.

1. When decisions need to be made regarding negotiations or strategy, MOTRAN will meet with those persons designated by the MDC to develop a plan.
2. MOTRAN will meet with the MDC whenever necessary and also develop and distribute in writing or by oral presentation, reports when needed over and above those required in Article V.

V.

Activity Reporting Requirements

The Parties agree to the following provisions to establish necessary activity reporting requirements:

1. MOTRAN will provide quarterly activity reports in writing to the MDC and City Secretary of Midland that will provide a current status report. This report will provide hard data when available.

VI.

Audit

In addition to the heretofore required reports covering activities and expenditures under the Economic Development Program, a certified audit of the funds and activities of such Economic

Development Program shall be made annually. The costs of making the audit shall be paid by MOTRAN but MOTRAN may use MDC funds. The auditors performing the above described audit shall have access to and the right to examine all records and accounts directly related to the Economic Development Program and such other MOTRAN records and accounts as may be reasonably necessary to conduct and complete its audit of the Economic Development Program funds.

VII.

Independent Contractor

It is expressly understood and agreed that as to any and all of the services tendered by MOTRAN in conducting the Economic Development Program under this contract, MOTRAN shall be considered an independent contractor insofar as its relationship to the MDC. Accordingly, the officers and employees of MOTRAN used or involved in the Economic Development Program under this Agreement shall not be considered, for any purpose, to be the officers and employees of the MDC.

It is expressly understood and agreed that MOTRAN shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the MDC; that MOTRAN shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of *respondeat superior* shall not apply as between MDC and MOTRAN, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between MDC and MOTRAN. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of the MDC. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control".

MOTRAN shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to MOTRAN as such independent contractor hereunder. The MDC does not have the right to control the means, methods or details of MOTRAN's work. The MDC does not have the power to direct the order in which MOTRAN's work should be done. MOTRAN shall assume exclusive responsibility for the work hereunder. MOTRAN is entirely free to do the work in its own way.

VIII.

Agreement Period

This Agreement shall become effective on October 1, 2021 and shall terminate on September 30, 2022. If MOTRAN violates the terms or conditions of this Agreement, or fails to provide the agreed services, the MDC may terminate this Agreement under the following conditions. The MDC shall provide written notice of the violations or failures to MOTRAN. MOTRAN shall have thirty (30) days to cure the violations or failures or to file a written response with the MDC. If MOTRAN fails to cure or to file a written response within such 30-day period, the MDC may terminate this Agreement immediately. If a written response is filed, the MDC shall set a hearing before the MDC's Board of Directors and provide notice to MOTRAN. After consideration of the response and the testimony at the hearing, the MDC may declare if there has or has not occurred the stated violations or failures. If the Board finds that such violations or failures have occurred, it shall give MOTRAN thirty (30) days' written notice and an opportunity to cure. If not cured within such period, the MDC may terminate this Agreement immediately.

IX.

Civil Rights

MOTRAN agrees that as to all its programs and activities, it shall fully comply with all Civil Rights Acts and not discriminate against any person on the basis of race, color, national original, sex or disability.

X.

Indemnity

MOTRAN SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND MDC AND ALL OF MDC'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF MOTRAN OR MDC, MDC'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH MOTRAN OR MOTRAN'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT, AND CONTRACTOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

XI.

Excess MDC Funds

Any funds that are paid by the MDC to MOTRAN pursuant to this Agreement, not expended by the end of the term of this Agreement shall be refunded to the MDC within thirty (30) days after the end of the term of this Agreement, unless MOTRAN can provide the MDC with written notice as to the funds that have not been expended but have been committed, and such commitment is supported by contracts or other written documentation.

XII.

Property

The parties agree that Any records and documents that are developed for the purpose of accomplishing services on behalf of the MDC by MOTRAN, and necessary to continue to provide such services, or to show the rights or responsibilities of the MDC, shall be the joint property of the MDC and MOTRAN with equal rights of use and access.

XIII.

Project

The parties agree that this constitutes an eligible project as defined in Chapter 501 of the Texas Local Government Code, as amended.

XIV.

Assignment

The parties hereto shall not assign or subcontract this Agreement, in whole or in part, any such assignment or subcontract being void.

XV.

Notice

Any notice or report which may or shall be given under the provisions of this Agreement shall, unless otherwise provided herein, be in writing and shall be either delivered via email or sent by United States Mail:

If to MDC:

Midland Development Corporation
200 N. Loraine St., Ste. 610
Midland, Texas 79701

with copy to:

City Attorney's Office
City of Midland
300 N. Loraine St., Ste. 320
Midland, Texas 79701

If to MOTRAN:

Motran Alliance, Inc.
P.O. Box 60816

Midland, Texas 79711

XVI.

Severability

This Agreement shall be construed in accordance with the laws of the State of Texas. If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term hereof, then it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of both parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in meaning to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

XVII.

Alteration

This Agreement may not be altered, changed or amended, except by an instrument in writing signed by both parties hereto.

XVIII.

Entire Agreement and Binding Effect

This Agreement constitutes the entire agreement between the MDC and MOTRAN. No prior written or prior or contemporaneous oral promises or representations shall be binding. The provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

XIX.

Venue

All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall

be in Midland County, Texas. This Agreement shall be governed by the laws of the State of Texas. The obligations and undertakings of each of the parties to this agreement shall be deemed to have occurred in Midland County, Texas.

XX.

Compliance With Laws

In the payment and employment of people to serve as employees pursuant to this Agreement, MOTRAN shall comply with all federal, state and local laws, rules, regulations and ordinances with respect to payment of minimum wages. MOTRAN shall not discriminate against people on the basis of race, sex, age, religion, national origin, or mental or physical disability in the application, hiring, termination, evaluation, or compensation of people assigned to work under this Agreement, and shall further comply with all laws, rules and regulations prohibiting such discrimination including but not limited to, the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act, and the Americans With Disabilities Act.

XXI.

Governmental Immunity

By executing this Agreement, the MDC is not waiving its right of governmental immunity. The MDC is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.**

XXII.

Governmental Immunity

By executing this Agreement, **MOTRAN AGREES TO WAIVE AND DOES HEREBY WAIVE ANY CLAIM IT HAS OR MAY HAVE AGAINST THE MDC, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. MOTRAN SPECIFICALLY AGREES THAT IF MOTRAN BRINGS OR**

COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), MOTRAN AGREES TO WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH MOTRAN MIGHT OTHERWISE BE ENTITLED.

MOTRAN AGREES THAT THIS IS THE INTENTIONAL RELINQUISHMENT OF A PRESENTLY EXISTING KNOWN RIGHT. MOTRAN ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS AGREEMENT.

XXIII.

Release

NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, MOTRAN HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES MDC, MDC'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS CLAIMS OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH MOTRAN HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF AGREEMENT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR MDC'S NEGLIGENCE.

XXIV.

Third-Party Beneficiary

The MDC's approval of this Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. No person or entity who is not a party to this

Agreement shall have any third-party beneficiary or other rights hereunder.

EXECUTED by the duly authorized officials of the Parties this 2nd day of August, 2021.

MIDLAND DEVELOPMENT CORPORATION

By _____
Wesley Bownds, Chairman

ATTEST:

_____
Berry Simpson, Secretary

[Signature Page Follows]

MOTRAN ALLIANCE, INC.

By_____

Name _____

Title _____

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of MOTRAN ALLIANCE, INC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2021.

_____
Notary Public, State of Texas

MOTRAN, INC.	Approved 2020-21	Proposed 2021-22	MDC 2021-22	ODC 2021-22
REVENUES				
Founding Members Dues	20,000.00	20,000.00		
Members Dues	60,000.00	70,000.00		
Grants	15,000.00	15,000.00		
Interest Earned	500.00	250.00		
Midland Development Corp.	137,000.00	142,500.00	142,500.00	
Odessa Development Corp.	142,500.00	142,500.00		142,500.00
PBC Revenue	50,000.00	10,000.00		
Misc. Income	3,500.00	0.00		
TOTAL REVENUES	**$428,500.00**	**$400,250.00**	**$142,500.00**	**$142,500.00**
EXPENSES				
Bank Fees	250.00	250.00		
Dues & Subscriptions	1,500.00	1,500.00		
Events	20,000.00	20,000.00		
Food & Entertainment	5,500.00	5,500.00		
Gifts	1,500.00	1,500.00		
Health Ins. Reimbursement	10,000.00	10,000.00	2,500.00	2,500.00
Insurance	4,000.00	4,000.00		
I-14 Initiative	12,500.00	12,500.00	2,500.00	2,500.00
Miscellaneous Expenses	250.00	300.00		
Office Lease	11,000.00	11,000.00		
Office Supplies	6,000.00	6,000.00		
Payroll-Salaries	236,000.00	238,000.00	110,000.00	110,000.00
Payroll-Service Fee	1,500.00	1,600.00		
Payroll Taxes	17,500.00	17,500.00	8,000.00	8,000.00
401 K Plan	8,000.00	8,000.00		
Postage	3,500.00	2,600.00		
Marketing	25,000.00	25,000.00	8,000.00	8,000.00
Program Supplies	2,000.00	2,000.00		
Telephone	4,000.00	4,000.00		
Travel Expenses	16,000.00	16,000.00	5,500.00	5,500.00
Professional Services	12,000.00	13,000.00	6,000.00	6,000.00
ODC Wifi/Broadband	5,500.00			
Wesbite Updates	20,000.00			
Contingency	5,000.00			
TOTAL EXPENSES	**$428,500.00**	**$400,250.00**	**$142,500.00**	**$142,500.00**

Exhibit A

EXHIBIT B

ECONOMIC DEVELOPMENT SERVICES

The Midland Development Corporation seeks to provide the infrastructure to support an aggressive commitment to make Midland competitive for economic development. These objectives include working to secure additional infrastructure funding for the area and aggressively pursue the development and improvement of transportation corridors connecting Midland and Odessa throughout the region and domestic markets, as well as, other significant international markets. The MDC will support the regional efforts by MOTRAN and others to achieve that objective and to promote and develop new and expanded business enterprises and infrastructure in the area, as well as, promotion of the Midland-Odessa combined statistical area (CSA).

MOTRAN employs an executive director and associated staff whose primary duties include working with national, state, regional, and local entities, as well as, private businesses to provide additional investment in area infrastructure, establishing the La Entrada al Pacifico as a premier trade corridor to help further the economic opportunities presented to this area with regard to international trade, working to improve transportation infrastructure in the region, development of links between Interstates 14 and 27 and the Midland-Odessa area, and strategies to leverage local efforts for additional state and federal highway dollars.

It is for this purpose that the Midland Development Corporation agrees to provide partial funding for MOTRAN to employ necessary staff and assist in performing the following duties:

- Organize and manage the international public policy initiative and all advocacy efforts;
- Organize and manage intergovernmental relations including committee organization, and international organizations;
- Direct and participate in fund raising and public relations including direct marketing, web site development membership development and public speaking engagements;
- Direct and participate in research and production of technical and economic reports;
- Serve as the representative of the organization, both nationally and internationally;
- Draft corporate documents; and
- Perform related duties as directed, including seeking additional transportation funding from federal, state, and private sources for purposes of infrastructure development, and forging and organizing regional partnerships to accomplish area and regional infrastructure goals.

City Council Meeting

Item Number: 13

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Tina Jauz, Assistant City Manager

Subject: MOTION APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND THE UNIVERSITY OF TEXAS PERMIAN BASIN TO ADVERTISE AND PUBLICIZE THE CITY OF MIDLAND FOR THE PURPOSE OF DEVELOPING NEW AND EXPANDED BUSINESS ENTERPRISES (DISTRICT: NONE) (CITY MANAGER)

Purpose:

The Board of Directors of the Midland Development Corporation approved at a regular meeting on August 2, 2021, a resolution authorizing the execution of an interlocal agreement with the University of Texas Permian Basin to advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises.

Recommended City Council Action:

Approve

Fiscal Impact:

$577,677.00

Discussion:

Provides for the funding of the Midland Entrepreneurial Challenge. UTPB operates and administers the challenge. $500,000 is designated as awards for winning businesses (up to eight winning businesses to receive varying amounts of up to $100,000 each), and the remaining amount is for marketing and administrative costs. The MDC has partnered with UTPB for three previous iterations of the Midland Entrepreneurial Challenge (2017, 2018, 2019).

City Manager's Office

INTERLOCAL AGREEMENT

BETWEEN

THE UNIVERSITY OF TEXAS PERMIAN BASIN AND MIDLAND DEVELOPMENT CORPORATION

This Interlocal Agreement (the "***Agreement***"), is made and entered into this 24th day of August, 2021, between The University of Texas Permian Basin ("***UTPB***"), and the Midland Development Corporation ("***MDC***"), an economic development corporation existing under the authority of Chapter 504 of the Texas Local Government Code, pursuant to Chapter 791 of the Texas Government Code, also known as the Interlocal Cooperation Act, regarding the Midland Entrepreneurial Challenge. UTPB and MDC are sometimes collectively referred to herein as the "***Parties***."

WITNESSETH:

WHEREAS, MDC is a governmental entity of the state of Texas and is authorized by its governing body to enter into this Agreement; and

WHEREAS, MDC is authorized to expend promotional funds in order to advertise or publicize the City of Midland for the purpose of developing new and expanded business enterprises pursuant to Section 504.105 of the Texas Local Government Code; and

WHEREAS, UTPB is a governmental entity of the state of Texas and is authorized by its governing body to enter into this Agreement; and

WHEREAS, UTPB actively promotes business development and economic growth within the City of Midland and the surrounding region for the purposes of creating jobs and developing new and expanded business enterprises in the same; and

WHEREAS, MDC's expenditure of promotional funds for the advertising and promotional services described herein will advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises, and will thereby enhance and promote economic development within the City of Midland; and

WHEREAS, it is the desire of the Parties hereto to combine their efforts for the purpose of developing new and expanded business enterprises within the City of Midland;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits which will accrue to the Parties, as well as the general citizenry of the City of Midland, the Parties have agreed and do hereby agree as follows:

I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which UTPB shall perform advertising and promotional services for MDC for the purpose of developing new and expanded business enterprises in the City of Midland and thereby enhance and promote economic development within the City of Midland.

II. OBLIGATIONS OF THE PARTIES

A. MDC Payment. MDC agrees to provide to UTPB funds in an amount not to exceed FIVE HUNDRED THOUSAND and No/00 DOLLARS ($500,000.00), in consideration for UTPB's services described herein (the "***Service Funds***"). In addition to the Service Funds, MDC agrees to pay UTPB an amount not to exceed SEVENTY-SEVEN THOUSAND, SIX HUNDRED AND SEVENTY-SEVEN and No/00 DOLLARS ($77,677.00) for any marketing and administrative costs associated with the operation and management of the Midland Entrepreneurial Challenge (the "***Administration Funds***"). MDC's payment of the Administration Funds shall not exceed a cumulative amount of SEVENTY-SEVEN THOUSAND, SIX HUNDRED AND SEVENTY-SEVEN and No/ 100 DOLLARS ($77,377.00) over the term of this Agreement. MDC agrees to provide the Service Funds and Administration Funds (cumulatively referred to as the "***Funds***") subject to all conditions and restrictions contained in this Agreement. The payment of the Funds shall be on a cost-reimbursement basis, and shall be provided by MDC to UTPB upon MDC's receipt of a written request by UTPB. In conjunction with its written request for the Funds, UTPB shall submit invoices or statements demonstrating UTPB's payment of funds in support of UTPB's performance of the services described herein (the "***Supporting Documentation***").

B. UTPB Services. UTPB shall use commercially reasonable efforts to provide those promotional services described in **Exhibit A**, which is attached hereto and incorporated herein for all purposes. UTPB shall coordinate with MDC's Executive Director regarding the design, nature, content, and implementation of said services to enable the advertising and promotional activities performed hereunder to be effective and efficient in achieving the purpose of this Agreement. UTPB shall require its vendors to provide detailed outlines for any marketing strategies to include dates, times, media platforms, and proofs. Additionally, UTPB agrees to oversee the operation and management of the Midland Entrepreneurial Challenge. Regarding the Midland Entrepreneurial Challenge, UTPB shall provide those services and duties described in **Exhibit B**, which is attached hereto and incorporated herein for all purposes.

C. UTPB Report. On or before August 31, 2022, UTPB shall provide MDC with a written report containing a detailed summary of 1) UTPB's efforts to promote new and expanded business enterprises within the City of Midland; and 2) the participants, qualifications, evaluation material, and results of the Midland Entrepreneurial Challenge.

III. INDEPENDENT CONTRACTOR

MDC and UTPB shall operate hereunder as independent contractors and not as an officer, agent, servant, joint venturer or employee of the other Party. UTPB shall have exclusive control of, and the exclusive right to control, the details of the work to be performed hereunder and all personnel performing the same. Each Party shall be, to the extent authorized by the Constitution and laws of the State of Texas, solely responsible for the acts and omissions of its officers,

members, agents, employees or contractors. In no event shall any person participating in or performing any of UTPB's duties or responsibilities hereunder be considered an officer, agent, or employee of MDC. Additionally, in no event shall any person participating in or performing any of MDC's duties or responsibilities hereunder be considered an officer, agent, or employee of UTPB. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability of either Party. UTPB and MDC shall each be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. MDC does not have the power to direct the order in which the work is done. MDC shall not have the right to control the means, methods or details of UTPB's work. MDC and UTPB shall assume sole and exclusive responsibility for the performance of their obligations under this Agreement.

IV. TERM OF AGREEMENT

Upon execution by the Parties, this Agreement becomes effective August 24, 2021, and shall terminate on September 30, 2022, or when terminated by mutual agreement of the Parties, or when terminated as hereinafter provided.

V. INSURANCE

UTPB shall, at all times during the term of this Agreement, maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):	
-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$100,000.00 per occurrence
Workers' Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on a claims-occurred basis. This insurance shall name MDC as an additional insured and waive subrogation in favor of MDC.

The Workers' Compensation coverage provided by UTPB shall inure to the benefit of employees injured during the course and scope of their employment by UTPB pursuant to this Agreement. The Workers' Compensation shall waive all rights of subrogation in favor of MDC.

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of MDC. All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name MDC as an additional insured on a claims-occurred basis. MDC shall be provided the notice by UTPB's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

UTPB shall contractually require all contractors, subcontractors, and sub-subcontractors

that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of MDC and policies that name MDC as an additional insured on a claims-occurred basis (except workers' compensation).

The Parties agree that, prior to the execution of the Agreement, UTPB shall provide one or more certificates of insurance specifically stating that these requirements have been met and subject to the approval of MDC. The Parties also agree that this Agreement shall not become effective until the City Attorney's Office of the City of Midland, Texas, reviews and approves of all certificates of insurance required under this Agreement. MDC shall not be required to provide any insurance whatsoever pursuant to this Agreement.

UTPB certifies that the certificate of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. UTPB shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of UTPB.

VI. GENERAL TERMS

A. Entire Agreement. This Agreement embodies the complete agreement of the Parties, superseding all oral or written, previous and contemporary agreements between the Parties relating to matters in this Agreement; and except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the Parties.

B. Termination. Either MDC or UTPB may terminate this Agreement at will for any or no reason upon giving at least ninety (90) days' written notice to the other Party. The Parties to this Agreement understand and agree that it is in each Party's sole and absolute discretion to cancel the Agreement during the term of the Agreement without penalty to that Party. Neither MDC nor UTPB has any expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The Parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective. In the event of the termination of this Agreement, MDC will pay UTPB an amount that fairly compensates UTPB for the products or services that UTPB provides to MDC prior to such termination, including reimbursing UTPB for any non-cancelable obligations that were incurred prior to termination.

C. Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original.

D. Payments from Current Revenues. The payment of funds made by MDC for the UTPB's goods and services provided under this Agreement shall be paid from current revenues available to MDC.

E. Legal Construction. In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

F. Defenses. This Agreement is made pursuant to Chapter 791, Texas Government Code. It is agreed that, in the execution and performance of this Agreement, neither Party waives any immunity or defense that would otherwise be available to it, or against claims arising from the exercise of governmental powers and function. This Agreement shall not be construed as a waiver by either Party regarding the issues of governmental immunity, sovereign immunity or qualified immunity.

G. Third-Party Beneficiary. Neither MDC's nor UTPB's approval of this Agreement creates any third- party beneficiary to this Agreement. There is no third-party beneficiary to this Agreement. No person or entity who is not a Party to this Agreement shall have any third-party beneficiary or other rights hereunder.

H. Assignment. The Parties hereto shall not assign this Agreement, in whole or in part, any such attempted assignment being void.

I. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive, sole and mandatory venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the Parties shall be deemed to have occurred in Midland County, Texas.

J. Notices. All notices to either Party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such Party at its respective address shown below. All notices shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Either Party hereto may change the address below by sending written notice of such change to the other Party.

If to UTPB:

The University of Texas
Permian Basin
Attn: Cesario Valenzuela,
VP Business Affairs/CFO
4901 E. University Blvd
Odessa, Texas 79762

If to MDC:

Midland Development Corporation
Attn: Executive Director
200. N. Loraine Street, Suite 610
Midland, Texas 79701

K. Severability. If any one or more of the provisions of this Agreement will for any reason be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality or unenforceability will not affect any other provision, and this Agreement will be construed as if the

invalid, illegal, or unenforceable provisions had never been included.

L. Public Records. It will be the independent responsibility of the Parties to comply with Chapter 552, Government Code (Public Information Act), as it applies to the Parties' respective information. A Party is not authorized to receive public information requests or take any action under the Public Information Act on behalf of the other Party.

[Signature Pages Follow]

The Parties have caused this Agreement to be executed by their duly authorized representatives on this_____day of_____, 2021.

MIDLAND DEVELOPMENT
CORPORATION

_____
Wesley Bownds, Chairman

ATTEST:

_____
Berry Simpson, Secretary

THE UNIVERSITY OF TEXAS
PERMIAN BASIN

_____
Cesario Valenzuela, VP Business Affairs/CFO

Exhibit A

Promotional Services to be Provided by

The University of Texas Permian Basin

1. Branding the City of Midland for the purpose of developing new and expanded business enterprises in the new Midland Entrepreneurial Challenge website, brochure and media materials.
2. Promoting the Midland Entrepreneurial Challenge on the UTPB website.
3. Adding a link from the Midland Entrepreneurial Challenge website to the Midland Development Corporation's website.
4. Including a description and logo for the Midland Development Corporation in the Midland Entrepreneurial Challenge promotional materials, when feasible.
5. Including a reference to the Midland Entrepreneurial Challenge and the City of Midland's support of this new program in press releases and live or prerecorded media soundbites, when feasible.

Exhibit B: Please See Attached Document

THE UNIVERSITY OF TEXAS PERMIAN BASIN

MIDLAND ENTREPRENEURIAL CHALLENGE

Dr. Ryan Peckham, Roden Fellow for Entrepreneurship
University of Texas Permian Basin
Mesa Building 2225
4901 E. University Blvd
Odessa, Texas 79762
Phone: 432-552-2175

MIDLAND DEVELOPMENT CORPORATION

THE UNIVERSITY OF TEXAS PERMIAN BASIN
COLLEGE OF BUSINESS

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UT Permian Basin College of Business Overview

Introduction and Overview

The **UT Permian Basin College of Business** Entrepreneurship programs have fully invested in the future of Entrepreneurship in our community. Over the last year we have introduced the Blackstone Launchpad, a student driven entrepreneurship network funded by the Blackstone Charitable foundation, providing tools, mentorship and entrepreneurship opportunities for our students, regardless of their chosen major or college of study. We are aiming to open our state of the art Blackstone Launchpad and Entrepreneurship Physical space in the fall of 2022 that will include co-working facilities, sound and audio recording spaces, as well as a fabrication and innovation lab where prototypes can be created. With revamped and reintroduced Entrepreneurship Minor and Certificate options, we are meeting the needs of today's aspiring entrepreneurs, with applicable knowledge based materials. We have also worked over the past few months with the UT Austin IC2 institute to bring to life the Small.biz-XLR8 program in West Texas. This 10-week training program has run over the summer, providing more in depth knowledge to small business to help them thrive. We have 20 companies participating in this program.

Mission

Provide consulting, training and research to small businesses.

Vision

To be a leading economic development organization by empowering entrepreneurs.

Meet Our Team

The UT Permian Basin College of Business illustrates a team highly flexible and capable of adapting to various cultures, while providing cohesive expertise to solve key problems faced by local businesses. The process includes the development of business plans, financial projections, and risk analysis unique to the business. We provide advice to solve problems, create value, improve growth, and maximize business efficiency and profitability. The team is committed to staying relevant with the latest developments in our field of expertise, bring the latest knowledge and skills to support our clients. Our primary goal is to educate and instruct, partner during development of the business, build trust and advance business objectives.

Dr. Ryan Peckham, Business Consultant, Assistant Professor and Roden Fellow of Entrepreneurship
Ryan is an assistant professor of management and entrepreneurship within the College of Business at UTPB, having taught multiple management, finance, and entrepreneurship courses at the undergraduate and graduate levels. He is also a registered investment advisor (RIA) and has owned a

private investment firm for ten years. Previous to these roles, Dr. Peckham was VP of Business Development for Security Bank and worked with many small businesses across West Texas. He received his Doctorate of Business Administration from the University of Liverpool, England, United Kingdom, with a behavioral finance concentration.

Mrs. Taylor Novak, MBA, Project Coordinator, UTPB Entrepreneurship Programs Coordinator

Taylor has a varied background, ranging from her start in sales, where she worked for several business to business and business to consumer roles over five years, including a Fortune 500 Company. She then moved into higher education to explore her passion for helping young adults, where she has brought students personalized attention and real-world advice, as well as marketing and professionalism learning in the workplace that students can take with them after leaving the university setting. She completed her undergraduate degree in Hospitality and Tourism at Oklahoma State University and her Master of Business Administration degree at University of the Southwest, Hobbs, NM.

TBD, Project Coordinator/Consultant

The selected person for this position will have a degree in business with experience in entrepreneurship programs. They will be available for one-on-one meetings and advisement.

The Entrepreneurial Challenge

1.0 Introduction

The Midland Entrepreneurial Challenge continues to empower innovative ideas and strategies proven to be both community inspiring and financially lucrative. The value provided by the competition includes a detailed critique from the expertise of our judges, encapsulating the importance of developing the necessary objectives to achieve market strength. Throughout the competition entrepreneurs are forced to think critically about virtually every aspect of their business. Contestants are obligated to assess their level of detail that is often overlooked, while becoming open to new and valuable suggestions that defines both short/long-term outcomes.

1.1 Midland Economic Challenge funding

The Midland Entrepreneurial Challenge (MEC), which will be funded by the Midland Development Corporation (MDC) and partnered with the University of Texas Permian Basin (UTPB), is designed to assist entrepreneurs with expanding an existing business or starting a new one.

1.2 The Purpose

Each participant will gain a better understanding of how to develop and follow a realistic business plan and model to ensure a growing business. This undoubtedly will have a positive economic impact for Midland.

1.3 Orientations

Through several orientation seminars presented by UTPB, entrepreneurs and business owners who are interested in participating, will better understand the requirements of the competition.

1.4 The Benefits

Once qualified, all entrants will have access to business coaching, expertise, and other pertinent resources offered via UTPB. These one-on-one meetings will discuss strategy, assist with building financials and finalize business plans before they are submitted.

1.5. Award Monies

This fiscal year, the plan includes $500,000 total available award money to be distributed up to $100,000 to each selected winner(s) concluded from the deliberation and decision of our judges.

FY 2019: $500,000 / 5 to 8 businesses = $62,500 to $100,000 approximately to each winner

2.0 Business Description

2.1. Midland Development Corporation

The idea to hold and fund a business plan competition in Midland, TX originated with the Midland Development Corporation in spring of 2017. Business competition of this nature have been held in Texas in the past. The research data and information has been gathered to mobilize the program came directly from the West Texas Enterprise Center in Amarillo, Texas, who has been successfully executing this type of event for over fifteen years. Midwestern State University in Wichita Falls, TX has been engaged with a business plan competition for the past ten years and has also provided information.

3.0. About the Challenge

3.1. The Objective

The objective of this program is provide another source of capital funding to business owners and entrepreneurs in Midland who might not be able to obtain the funding otherwise. The value participating in business plan process allows participants to gain a better understanding of how

to develop, build and grow strong businesses that will even further strengthen Midland's economic condition and development.

3.2 Partnership

The funding will be provided by the Midland Development Corporation and the program administration, workshops, and business plan consultation will be provided by UTPB College of Business.

3.3 The Future

Each fiscal year, the amount of funding available overall will be increased. Therefore, more winners can be chosen or the award amount will increase per participant enabling them to leave a larger economic footprint on Midland. No cap will be placed on how much a business owner can receive, but funds must not exceed the request made in the business plan. However, the business owners may be awarded less than what is requested in the business plan. Below are estimates on how the judges may choose the winners:

- ✓ ***FY 2019: $500,000 / 5 to 8 businesses = $62,500 to $100,000 approximately to each winner***

4.0 Partnership

The **Entrepreneurial Challenge** opportunity is funded by the **Midland Development Corporation** and overseen by the UT Permian Basin College of Business. The program is a fully integrated program that provides another source of capital funding to commercialize business concepts. This program is specifically directed at both startups and/or existing business wanting to expand. In addition, it is purposely designed to foster community involvement and innovation by bringing local entrepreneurs and professionals together to continue the economic diversification of the City of Midland. The outcomes contribute to a community's identity that preserves the unique character created by a vibrant small business community. Other benefits are the increased employment while keeping tax dollars close to home and improving the city as a result.

University of Texas Permian Basin College of Business provides knowledge, guidance, and a significant amount of value when preparing a strategic business plan, marketing strategies and financial projections to secure capital infusion. The applied benefits for participants include supportive workshops appropriate to scale a business, understanding organizational financials, intellectual property, exit strategies and social media marketing opportunities to grow and expand into a profitable market position.

The Plan for FY: 2021-2022

5.0 Guidelines (Contract Suggestions)

The newly developed guidelines ensure consistency and set standards with cohesive rules to protect the integrity of the program. The objective includes keeping the city brand values while safeguarding the opportunity to participating contestants. Additional suggestions protect the program and deliver necessary guidelines to ensure standards are enforced.

5.1 Proposed Guidelines for Midland Entrepreneurial Challenge

- ✓ The winning businesses must be headquartered in the City of Midland, in order to receive award monies.
- ✓ Winning businesses cannot sell or relocate the business outside city limits of Midland for a period of five years after receiving funding.
- ✓ Participants cannot be an immediate relative of administrative officials or judges or engaged in any other business partnerships with an administrative official or judge. All special circumstances will go under the review of the UTPB Lead Coordinator, who will make the final decision.
- ✓ Each participant in the challenge must become a client of the UTPB SBDC by completing the 641 SBA form.
- ✓ Award recipients must provide UTPB with economic impact data on time according to the Accountability section.
- ✓ Participants must have a credit score of at least 640 to participate. All special circumstances will be under review by the UTPB Lead Coordinator, who will make the final decision.
- ✓ Attendance is mandatory for all seminars throughout the competition unless excused by the UTPB Entrepreneurship Challenge Consultant.
- ✓ Past winners of the challenge cannot reenter the challenge for the same business for five years, however, if the past winner is in good standings with UTPB according to the Accountability section for a full three years, the winner may enter for a different business with approval from the UTPB Lead Coordinator.
- ✓ Past contestants who were not awarded any monies may reenter the following year.
- ✓ A participant is not allowed to participate in the challenge if he or she was convicted of a felony. UT Permian Basin will conduct background checks on all participants and the cost of the background check will be incorporated in the entry fee.

6.0 Basics of Receiving the Award Money

6.1 Payment method

In the event you are a recipient of the award money, the total awarded amount will be given in installments that will be distributed shortly after the completion of the challenge by UTPB, and be funded by Midland Development Corporation. The winning businesses must submit a W-9 form and UTPB New Vendor form to the program coordinator in order for funds to be dispersed. Checks will be mailed to the address listed. In addition, winners must:

- ✓ Be able to provide proof that the business headquarters is in the **city of Midland in order to receive** money.
- ✓ Show proof of a **"business account"** to deposit the monies. You must keep all personal purchases in a separate bank account.

6.2 Award Monies

Winners will receive their awarded monies from the challenge in installments. In order for a winner to receive an installment, they must provide invoices that are consistent with the strategy stated in the business plan. Those invoices will be approved or rejected by the UTPB MEC Program Coordinator. If approved, a check for the total amount of the approved invoices will be distributed by UTPB and mailed to the winner's address that was submitted on the UTPB New Vender Form. In the event that the winner changes his or her mailing address after submission of the UTPB New Vendor Form, it is the responsibility of the winner to notify the UTPB MEC Program Coordinator of the change.

After an installment has been issued to a winner, they will not be able to request additional funds until that winner provides receipts for the past approved invoices to be audited by the UTPB MEC Program Coordinator. This process will be repeated until the total award money has been distributed.

6.3 Installments

In the event that a winner receives an installment and does not spend the money in a specific amount of time determined by the UTPB MEC Program Coordinator, they will be required to give the money back to UTPB for holding. If a winner spends the approved installment on anything other than the approved invoices, without consent from the UTPB MEC Program Coordinator, that winner will be in violation of the terms and conditions of the challenge and all monies must be paid back to the Midland Development Corporation through UTPB, and the winner will be banned from any future business challenges in which UTPB is involved.

6.4 Financing

A challenge participant is allowed to acquire bank financing or other investor financing before the completion of the competition with the plan to pay off or make payments on those loans

with the anticipated award monies from the challenge. These plans need to be addressed in the business plan and/or approved by the UTPB MEC Program Coordinator before the funds are obtained and UTPB must receive a copy of the loan documents to keep on record. University of Texas Permian Basin, Midland Development Corporation, the judges, or any other entity involved with the Midland Entrepreneurial Challenge are not responsible for repaying the loans in the event the business does not receive funds from the challenge.

6.5 Seek Accounting Advice

Award money **"IS"** counted as taxable income. Please confide in a CPA for accounting advice regarding the funds.

7.0 Accountability

The newly developed guidelines ensure consistency, set standards with cohesive rules to protect the integrity of the program.

7.1 Award Monies Expenditures

The award money received from the challenge must only be spent on the items articulated in the business plan. The Midland Development Corporation also wants to track the benefit to the community. In order for this to happen, there are requirements you must follow. For the first 90 days after receiving the first installment of the award monies:

- ✓ Contestants must email income statement and balance statements (and loan payments receipts if applicable) **monthly** to the MEC Program Coordinator at UTPB. As long as the business is following the business plan, we will ask for no additional information.
- ✓ If you use the award money for equity in a loan, you must provide a copy of the loan agreement to the MEC Program Coordinator at UTPB along with payment receipts.

7.2 Meeting the Requirements

If you meet all the requirements during the first 90 days, for the remainder of the first year and the entirety of the second year, you are required to:

- ✓ Email P&L and balance statements (and loan payments receipts if applicable) **quarterly** to the MEC Program Coordinator at UTPB. As long as the business is following the business plan, we will ask for no additional information.
- ✓ If the business is not meeting goals, UTPB will work to reassess finical projections and make adjustments. New goals and strategies will be set to get the business back on track. Contestants will require to report in the same manner within the first 90 days.

7.3 Business Audit

If you met all the requirements through the first and second year, for the third year you are required to:

- ✓ Email P&L and balance statements (and loan payments receipts if applicable) **biannually** to the MEC Program Coordinator at UTPB.

7.4 Business Audit Continuation

If you meet all the requirements through the first three years, for the fourth and fifth year, you are required to:

- ✓ Email P&L and balance statements (and loan payment receipts if applicable) to the MEC Program Coordinator at UTPB **at the end of the year**.

7.5 Midland Presentation

At any time during the five year period after receiving award monies from the Midland Entrepreneurial Challenge, the Midland Development Corporation Board of Directors may request a "**State of your Business**" presentation to the Midland Development Corporation Board of Directors monthly meeting. If a presentation is requested, the business owner(s) is highly encouraged to attend.

7.6 Violation of Terms

If the business fails to adhere to the requirements listed in Guidelines and Accountability, the business will be in violation of the terms of the *Midland Entrepreneurial Challenge* and all monies received from the competition will have to be paid back to the Midland Development Corporation. UTPB will act as a liaison to recover the funds. If the business does not have the total amount available to reimburse at one time, a payment plan with interest will be arranged for the balance owed. The interest rate will be set at the SBA current loan rate plus prime. The length of the repayment plan will be determined by the Midland City Attorney's office. In addition to paying back the awarded monies, all past winners that violate the terms and conditions of the competition will not be allowed to participate in any future competitions involving UTPB.

8.0 Orientation Directions

8.1 Orientation

Orientations will begin as illustrated in section **13.0 Schedule of Events.** Three orientations, two in the evening and one in the afternoon will be offered.

8.2 Agreements

After attending at least one orientation, attendees that wish to join the challenge must pay the non-refundable entry fee, signed confidentiality agreement, and a signed winner's agreement to the UTPB MEC Program Coordinator by the date of the first seminar listed in the section **13.0 Schedule of Events**.

9.0. Business Challenge Terms

9.1. Submit Agreement

Must submit signed winners agreement by the date of the first seminar.

9.2. Submit confidentiality

Must submit signed confidentiality agreement by the date of the first seminar.

9.3. Submit Credit Report

Must submit a credit report for each owner of the business by the date of the first seminar. The owners' names must be clear on the document and the source of the credit score report must be deemed acceptable by the UTPB MEC Program Coordinator. Credit score must be 640 or higher in order to participate.

9.4. Payment

Must pay the non-refundable entry fee by the date of the first seminar. The fee will be determined by UTPB at a later date.

9.5. Submit Investor Fact Sheet

Must submit Investor Fact Sheet on Midlandentrepreneurialchallenge.com

9.6. Meeting Appointments

Must schedule at least two face-to-face one-on-one coaching sessions with a UTPB representative in order for business plan to be accepted.

9.7. Submit Business Plan

Must submit the business plan on Midlandentrepreneurialchallenge.com website.

9.8. Failure to adhere to the terms

Failure to adhere to the Business Challenge Terms could result in disqualification from the challenge.

10.0 Selection of Judges

In an effort to select the best judges for the competition, UTPB seeks individuals that have developed and owned a major business within the Midland community. Judges should be industry-related experts, someone with a specific market niche, previous winner, someone with a prestigious reputation, or individuals with a high-level experience and legitimacy to the program.

To the extent UTPB designates an "Eligible Judge", the Eligible Person is stated qualified to participate with a background of 10 or more years of experience in business and/or qualifications consisting of the following;

- Business Owner
- Local Bank Lender
- Community Leader

To the extent of **"NOT"** being qualified includes any "Person" with interrelationships relevant to board members of the Midland Development Corporation and all staff in representing or influencing the challenge outcome.

10.1 Judging of the Competition

The process of judging incorporates a distinctive competence to recognize a disruptive or unique business concept. Contestants will be required to demonstrate a clear market need and a viable method to supply the demand. Characteristically, candidates are evaluated on the ability to develop the company and position to manage risks. Other assessments include the ability to have a realistic potential to succeed and fully understanding the financial requirements. In addition, employment is evaluated as growth by determining the number of full-time or FTE within three years to five years. In the business plan, judges will validate funding, cash requirements, determine cost structures and revenue streams. In the final stage, contestants are evaluated on how well the team persuasively presents the plan and provide a logical overview.

10.2 Judging Criteria

First Round: Investor Fact Sheet **Second Round: Business Plan**

- Viability 15
- Team and Partners 15
- Financial 15
- Growth 15
- Strategy 15
- Competition 10
- Advancement 15

Total 100

- Business 15
- Product/Service 15
- Marketing 15
- Management 15
- New Job Creation 15
- New Revenue for City 15
- Watch to see Pitch 10

Total 100

Third Round: Pitch in Front of Judges

- Effective communication of the business plan, validation of funding request, and support for job creation. 1-20
- Judges questions are answered thoroughly and effectively. 1-20
- Knowledge, expertise, and ability of entrepreneur. 1-20
- Commercial viability of the venture. 1-20
- Overall effectiveness and quality of presentation. 1-20

Total 100

10.3 Biggest Hurdles for the Judges

- ✓ Marketing activities with no strategic focus (i.e. website – launch and take orders.)
- ✓ No competitive analysis
- ✓ Unrealistic sales expectations
- ✓ Financials that appear to be "pulled out of the air"
- ✓ Lack of job creation details

10.4 Judges Awarding Candidates

The program will include three to five independent judges chosen by UTPB, prior to the start of the Midland Entrepreneurial Challenge. Judges will remain anonymous to the participants until the final (live) pitch. Judges are required to sign a confidentiality agreements with each participating business. The judges will read and score the Investor Fact Sheet to determine who is going forward to the next round. The following round, the judges will read and score the strategic business plan to determine who will move to the last round. The final round, the judges will appear in person to listen to each finalist business pitch with the ability to questions to each contestant. Once the round is completed, judges will record their scores after deliberating. The UTPB MEC Program Coordinator will calculate the average scores and present them back to the judges. The judges will then decide where they will draw the line in the rankings and how much money each winner will receive based on the $500,000 provided by Midland Development Corporation.

10.5 Structure of Pitch

- ✓ Each finalist will receive a 30-minute block. Each block will consist of set up, presentation, question and answer with the judges, and clean up.
- ✓ The presentation order will be determined at random. All the finalists' names will be placed in a random name picker and assigned a time block.
- ✓ Only the business presenting, the judges, and the UTPB consultants are allowed in the room during the pitch.
- ✓ A one-hour break will be given to the judges half way through the pitch presentations.
- ✓ After all the pitches have been presented, the judges will score each business. The scores will be averaged and ranked by the UTPB MEC Program Coordinator and presented back to the judges.
- ✓ The judges will determine how many of the top average scores will be declared winners and how much of the $500,000 each winner will receive.
- ✓ Judges will not award more money than is requested by a business, however, less money can be awarded.
- ✓ The winners and losers will be informed of the results the next business day and the winners will be invited to the award ceremony.

11.0 Business Plan Outline & Entrants Focus

11.1 The Business

- Legal structure and ownership
- Industry, niche, or specialization
- Key goals
- Why does the business exist?
- Prior entrepreneurship and management experience

11.3 Product/Service

- Description of each product/service
- What problem will it solve?
- How does it benefit customers?

11.4 Marketing

- Target market
- Competitive environment
- Distribution strategy
- Pricing strategy
- Promotion strategy
- Positioning strategy

11.5 Management

- Operation systems and process
- Current employees
- Job creation
- Financials
- Utilization of MDC funds

12.0 Workshops

The UTPB provided workshops are essential for entrepreneurs to learn a particular subject, and initiatives to increase performance and longevity. Attending workshops often assist business owners to achieve success by providing new skills and methods of practice. The workshops selected for the Entrepreneurial Challenge will include;

12.1 QuickBooks course(s)

- Enter and track – Vendors, Customers, Employees, and banking requirements.

12.2 Type of Business Loans

- Line of Credit, Installment loans, Balloon Loans, Interim Loans, Letter of Credit
- Interim Loans, SBA Loans, Secured and Unsecured Loans, and many more

12.3 Marketing through social networks, website, and other types of media

- Develop a plan, create a social media channel and create a content library, scheduling, analytics, and posting consistency, and website development.

12.4 Developing the right business model

- Develop the cohesive vision, roadmap that analyzes market strategies, how revenue will be generated, acquiring investors and establishing partnerships.

12.5 Fact Sheet presentation emphasizing key points of the business

- Answer basic questions about the business, describe the products and services, and the vision of the business in a concise terms in a well-organized format
- Emphasize key performance indicators

12.6 Business Narrative – defining objectives, map strategies, and describing goals

- Focus on the specific steps and ideas to succeed, and also how to achieve both their short/long-term objectives

12.7 Emerging Financials Projections, future revenues and expenses

- Forecast sales, operational cost, cash-flow, income, assets and liabilities, and breakeven analysis

12.8 Methods applied to establish interest that enables conversation

- Stimulating interest with major points, using the right amount of slides, establishing the need, developing the message map, and defining the essentials derived from research.

The new fiscal year provides opportunity to apply more workshops to raise immediate awareness necessary to minimize operational budgets, capitalize on a target marketing strategy, and effectively factor in challenges and pitfalls. Within each topic, several diverse workshops are offered throughout

the year best suited for the business owner to achieve their objectives. Workshops are led by other successful business owners, skilled UTPB faculty and staff, and professionals such as accountants and tax specialists. These educational offerings help small business owners tackle many of the issues associated to the beginning of the operation.

13.0 Schedule Events

Date	Time	Topic
TBD	6 – 7:30 PM	Orientation
TBD	Noon – 1 PM	Orientation
TBD	6 – 7:30 PM	Orientation
TBD	6 – 7:30 PM	Brainstorming & Business Model Canvas Seminar
TBD	6 PM	Nondisclosure Agreements to be signed by Judges
TBD	6 – 7:30 PM	Fact Sheet Seminar
TBD	6 PM	Fact Sheets are due
TBD	6 – 7:30 PM	Business Plan Seminar
TBD	6 PM	Fact Sheets are sent to Judges
TBD	6 – 8 PM	Marketing Seminar
TBD	6 – 8 PM	QuickBooks Online Beginner Training Class
TBD	6 PM	Fact Sheet Score Cards are received from Judges
TBD	6 – 8 PM	QuickBooks Online Intermediate Training Class
TBD	6 PM	Business Plans are due
TBD	6 PM	Business Plans are sent to Judges
TBD	6 – 8 PM	Lender Seminar
TBD	6 – 7:30 PM	Pitch seminar
TBD	6 PM	Business Plan Score Card are received from Judges
TBD	10 AM – 4 PM	Pitch Presentation to Judges
TBD	7 – 9 PM	Award Ceremony

MEC Program Coordinator

14.0 Responsibilities to the Challenge

The ***MEC Program Coordinator*** will be the main point person for the challenge. This consultant will deliver comprehension developments of emerging business models, advances priorities to meet expectations, and guides the perspective owner(s) to undertake competitive differentiation and transformation of market challenges into a strategic business plan. Contestants can rely on assistance with critical business issues, how to thrive in an evolving marketplace and receive necessary guidance and preparation for each phase of the challenge. Our core solutions are customized for each participant specific to industry, needs and scale.

The responsibilities include analysis and evaluation of each contestant's requirements and business goals while recommending appropriate strategies and logistics to increase business opportunities. During the competition, the position requires identifying functional requirements, distribution paths and provide analytical suggestions appropriate to developing business models. The progression requires financial analyses collectively with a detail overview to advocate improvements and efficiencies while integrating best practices to develop objectives to achieve expected goals.

Contestants are routinely challenged to analyze and respond to the following topics

- Is the market big enough to ensure growth?
- Describe the company's major pitfalls to sustain market presence.
- Are your capital requirements realistic?
- What are associated risks?
- Are there ways to pivot the approach to market?
- How big is your market & who is going to buy?

The strategic business plan requires participants to respond to these difficult questions that require immediate answers to configure the hypothesis. The valuable aspect builds on informed decisions about how the entrepreneur should invest their time to generate success.

Other responsibilities of the coordinator(s) include speaking on behalf of the Challenge, working directly with a marketing firm to create brand driven booklets, website updates, and schedule meetings with participants, judges, and coordinate plans for activities throughout the challenge and award event.

Marketing the Opportunity

15.0 Increase participation

Our efforts are focused on brand awareness that promotes community opportunity. The success of our marketing campaigns are influenced by a strong strategy outlining both short/long-term objectives, timelines and specific channels to jumpstart awareness to increase participation.

15.1 Website

We will work with the web developer to reinvigorate the current version of the Entrepreneurial Challenge Website to increase visualization of the opportunity, improve the delivery of content and advance the brand of the City of Midland. The newly re-design website will offer many

benefits including informing prospects of the requirement; increase interest and enhance a professional “brand,” while improving customer service.

15.2 Brochures

Brochures provide the necessary details about the Challenge making them useful for many purposes. The brochure is shared with potential candidates, and provides the opportunity to explain the process, development and the outcome in promoting the opportunity. We aim to make a brochure in both English and Spanish.

15.3 Television

To grow interest and optimize marketing expenditures, this platform provides exceptional speed-to-market and can scale easily before, during and advocate the outcome. The motivation exemplifies the city’s support, branding of the program and provides the necessary integrity to promote the program. The platform provides interaction, personalization of the message while translating relevant information to increase community interest.

15.4 Radio

Radio enables the ability to target effectively to our audience because it's 100% audio-based. A radio ad is cost-efficient, targeted, easy to track, and effective without visualization of the brand. Research illustrates that each advertising dollar spent generates an average sales return of six dollars from the listeners 28 day after hearing the ad.

15.5 Newspaper

Utilizing our local newspaper triples ad campaign effectiveness along with website location to deliver pertinent information to potential contestants. The message in print increases the visibility of the opportunity and investment by three times.

15.6 News Release

The delivery of a press release is not an advertisement; it’s a way to promote the program and the opportunity to engage the community. The benefit is our ability to target audiences of other journalists with a well-designed message to speak to them specifically while promoting the program in addition to the attached advertisement of the benefit for community participation.

15.7 Facebook Ads/Social Media

Facebook ads are at the core of targeting our community for startups and newly developed businesses. Facebook offers the ability to advertise by age, interests, behavior, and especially within the local area.

15.8 Digital Ad Campaigns

The main advantage of digital marketing is the ability to target an audience in a cost-effective and measurable method. Other digital marketing advantages include increasing brand loyalty and driving the opportunity to create online interest.

Entrepreneurial Challenge Proposal (FY: 2021-2022)

Marketing

Our efforts are focus on growing and diversifying the City of Midland, providing new businesses, additional jobs and boosting tax revenue.

Introduction

While applying current marketing campaigns to attract contestants two months prior to the competition, by using various channels to promote and provide information relevant to promoting the event, our past outcome included 21 candidates to begin the competition, resulting in six winners. From the 15 contestants that did not make the finals, seven contestants (47 percent of the 15) continued their concept through hiring, add capital or opening a storefront.

Owners Name	Company Name	Process
Arceneaux, Britney	Flying Cow	Have not hired and are still working out of their home. They have still not taken any loans and only used profits to sustain their business.
Cole, Jaime	JT Properties and Staging	Hired 3 full-time employees, and will seek finance in the near future.
Gutierrez, Alma	Queen Bee Paleteria	No hires, and no recent financing, but the company continues to remains profitable.
Hearn, J.P.	Fountainville Creamery	Does not want to release information, but they are doing extremely well and currently growing.
Holguin, Dustin	Holguin Media	Will soon be hiring, and seeking necessary funding to sustain growth. Pivoted to servicing medical practices instead of car dealerships and doing well.
McFarlane, Debbie	Spotless Paws & Claws	No hires, no growth, no funding. Looking for social media help from Enactus group (campus student group) to begin developing a website and social media strategies.
McLelland, Maribel	Eagle's Shadow Trading Post	Has not received financing or hired any employees. Waiting for developer to complete construction on shopping center to rent space to begin their business.

Marketing Proposal

UTPB proposes to keep the same amount of advertising dollars from FY 2019-2020 to influence additional contestants, while advancing the message to inspire community interest and to drive the opportunity of starting a business in Midland. This awareness enables additional contestants with a probability of these businesses to continue to receive capital infusion, create jobs, and build diversify without the reliance of award money. The additional advertisement improves awareness and direct relationships with our target market, while personalizing the opportunity to increase a connection to the challenge. The benefits include increasing visibility and recognition of the opportunity, developing the audience, and providing the information.

Current Media Partners (Proposal)
TBD

Midland Entrepreneurial Challenge
OVERVIEW: Provide marketing and advertising services to support the 2021-2022 Midland Entrepreneurial Challenge.

Website: TBD
The utilization of advertising placement dollars and described channels are illustrated specifically for this event below:

Project	Description	Pricing
Website Update	Provide minor updates to existing website	$4,000
Brochure Design & Printing	Design of new brochure. Estimate includes printing of 500.	$2,750
Television Production	Includes script, voice over talent, graphics for a 30-second spot and a 4-second spot ID to promote the orientation sessions	$4,500
Television Placement	10-Week Television Buy - Network & Cable	$15,000
Social Media Development & Management	Set up social media accounts and manage posts/ boosts to promote the orientation. Post schedule will also include highlights on winners after awards ceremony.	$4,000
Social Media AD Campaign	Run targeted ads on Facebook to promote the challenge to Midland entrepreneurs.	$2,500
Digital Campaign	Digital ad campaign targeted to Midland entrepreneurs. Ads will be targeted based upon behaviors, keyword searches, and physical locations. All ads will drive back to the Challenge's website.	$3,500
Award Invitations	Design and printing of award ceremony invitations. Includes printing of 500 postcards.	$1,250
Banners/Pull Screen	Includes design and printing of one pull screen plus hardware.	$1,250
Coordination/Consultation	Coordination of all projects throughout the course of the orientations and awards	$2,500
	Total:	**$41,295**

Terms: "Current Media Partner" requires a 50% down payment and assets to be provided before we begin work. This proposal is an estimate, not a fixed bid. Remainder will be due prior to delivery of this

project. Estimate does not include out-of-pocket expenses including travel and other purchases. This estimate will be valid for 30 days. Estimate may be +/- 10%.

Marketing Budget Suggestion

FY: 2017-2018	FY: 2018-2019	FY 2021-2022
$30,000.00	$41,295.00	$42,000.00

MEC Program Coordinators

Our MEC Program Coordinator(s) organizes and executes venture developments on behalf of our clients according to specific requirements. Meeting with assigned clients when needed and perform an initial assessment of a problematic situation.

Clients are assisted in reforming their operations and supporting their business by providing intuitive guidance throughout the strategic planning process to include financial projections, and loan types and availability. Consultants will also undertake projects on behalf of the client's business when it lacks resources to perform them in-house. The assigned consultant has first and foremost a broad knowledge of the many facets of business that include competitive forces model, value chain models, synergies, core competencies and network-based strategies. The ideal candidate will also possess great problem-solving skills to provide solutions and recommendations that will increase profitability and efficiency. In referencing advertising dollars, the goal is to contribute to the contestants' long lasting success to enable a long-term relationship that expands our reputation into the community.

Business Challenge Consultant Budget Suggestion

FY: 2017-2018	FY: 2018-2019	FY 2021-2022
$22,900.00 FT Salary + $5,954.00 Fringe Benefits	$25,700.00 FT Salary + $6,682.00 Fringe Benefits	$29,438.00 PT Salary + $2,944.00 Fringe Benefits
$28,854	**$32,382**	**$32,382**

Awards Ceremony

The ceremony provides a chance for celebration and reflection of the commitment among our contestants, recognition of the devotion of our community judges and appreciation of the opportunity provided by Midland Development Corporation. This platform allows us to discuss the importance of their business in the community, and the achievement of the person being awarded. Gathering and sharing experiences is a very powerful means of encouragement. The first year, there were 20 people at the ceremony, and the last ceremony had a significant increase for a total 80 people, illustrating a

300 percent growth. Many attended including family of our contestants, MDC board members, city officials, UTPB faculty and staff.

FY: 2017-2018	FY: 2018-2019	FY: 2021-2022
$1,500.00	**$2,000.00**	**$3,500.00**

FY: 2017-2018

Annual Budget for Program FY 2017-2018	
Capital Funding Grant	$350,000.00 (MDC award)
Administrative Expenses	$30,854.00 (Operating Funds)
Advertising/Marketing (Red Pixel)	$15,000.00 + $15,000.00 = $30,000.00
Total	**$395,854.00**

Administrative Expenses	
Business Consultant	$22,900.00 (Full-time salary $45,800)
Fringe Benefits	$5,954.00 (26% of Salary)
Awards Ceremony	$1,500.00 (Banquet, Music, and Food)
Miscellaneous	$500.00
Total:	**$30,540.00**

FY: 2018-2019

Annual Budget for Program FY 2018-2019	
Capital Funding Grant	$500,000.00 (MDC award)
Administrative Expenses (Proposing)	$34,882.00 (Operating Funds)
Advertising/Marketing (Red Pixel)	$41,295.00 (Current Media Partners)
Total	**$576,177.00**

Administrative Expenses	
Business Consultant (Master's Degree)	$25,700.00 (Full-time salary $51,400)
Fringe Benefits	$6,682.00 (26% of Salary)
Awards Ceremony	$2,000.00 (Banquet, Music, Food and Dessert)
Miscellaneous	$500.00
Total:	**$34,882.00**

FY: 2021-2022

Annual Budget for Program FY 2021-2022 (Proposing)	
Capital Funding Grant	$500,000.00 (MDC award)
Administrative Expenses (Proposing)	$36,382.00 (UTPB Operating Expense)
Advertising/Marketing (TBD Agency)	$41,295.00 (Current Media Partners)
Grand Total	**$577,677.00**

Administrative Expenses Breakdown (Proposing)	
Business Consultant (Master's Degree)	$29,438.00
Fringe Benefits	$2,944 (10% of PT Salary)
Awards Ceremony	$3,500.00 (Banquet, Music, Food, and Dessert)
Miscellaneous	$500.00
Total:	**$36,382.00**

City Council Meeting

Item Number: 14

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Tina Jauz, Assistant City Manager

Subject: MOTION APPROVING A PROMOTIONAL AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND HIGHER ORBITS, INC. TO ADVERTISE AND PUBLICIZE THE CITY OF MIDLAND FOR THE PURPOSE OF DEVELOPING NEW AND EXPANDED BUSINESS ENTERPRISES (DISTRICT: NONE) (CITY MANAGER)

Purpose:

The Board of Directors of the Midland Development Corporation approved at a regular meeting on August 2, 2021, a resolution authorizing the execution of a promotional agreement with Higher Orbits, Inc. to advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises.

Recommended City Council Action:

Approve

Fiscal Impact:

$57,500.00

Discussion:

This promotional agreement provides funding for half of the costs ($57,500) associated with establishing a Go for Launch! program in Midland, to engage high school students about aerospace, STEM, and the possibilities of a career in aerospace. MISD will pay for the remaining half under a separate agreement with Higher Orbits. The Go for Launch! program will include three events, culminating in the launch of a student-led design project to the International Space Station.

City Manager's Office

PROMOTIONAL AGREEMENT

THIS PROMOTIONAL AGREEMENT ("***Agreement***") is made and effective the 24th day of August, 2021, by and between the MIDLAND DEVELOPMENT CORPORATION ("***MDC***"), an economic development corporation existing under the authority of Chapter of 504 of the Texas Local Government Code, and HIGHER ORBITS. ("***HIGHER ORBITS***"). In this Agreement, MDC and HIGHER ORBITS are sometimes individually referred to as a "***Party***" and collectively referred to as the "***Parties***."

W I T N E S S E T H:

WHEREAS, MDC is authorized to expend promotional funds in order to advertise or publicize the City of Midland for the purpose of developing new and expanded business enterprises pursuant to Section 504.105 of the Texas Local Government Code;

WHEREAS, MDC's expenditure of promotional funds for the advertising and promotional services described herein will advertise and publicize the City of Midland for the purpose of developing new and expanded business enterprises, and will thereby enhance and promote economic development within the City of Midland; and

WHEREAS, it is the desire of the Parties to combine their efforts for the purpose of promoting the City of Midland and HIGHER ORBITS by executing the *Go for Launch!* Program in Midland to engage high school students about aerospace and STEM, and excite Midland students about the possibilities of a career in aerospace;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits which will accrue to the Parties, as well as the general citizenry of the City of Midland, the Parties have agreed and do hereby agree as follows:

I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which HIGHER ORBITS shall perform advertising and promotional services for MDC for the purpose of developing new and expanded business enterprises in the City of Midland and thereby enhance and promote economic development within the City of Midland.

II. OBLIGATIONS OF THE PARTIES

A. MDC Payment. MDC agrees to make one (1) lump-sum payment to Higher Orbits in the amount of $57,500.00, with said payment to be made on or before September 30, 2021. The total funds provided by MDC under this Agreement shall not exceed $57,500.00. The Parties covenant and agree that all funds provided by MDC under this Agreement are in exchange for HIGHER ORBITS' advertising and promotional services as set forth herein.

B. Higher Orbits Services. HIGHER ORBITS shall use commercially reasonable efforts to provide those services described in **Exhibit A**, which is attached hereto and incorporated herein for all purposes. HIGHER ORBITS shall perform all services in a workmanlike manner. HIGHER ORBITS shall coordinate with MDC's Executive Director regarding the design, nature, content,

and implementation of the services to enable the advertising and promotional activities performed hereunder to be effective and efficient in achieving the purpose of this Agreement.

C. Higher Orbits Report. During the term of this Agreement, at a time and place mutually agreed to by the Parties, HIGHER ORBITS shall provide MDC with a report or presentation containing a detailed summary of HIGHER ORBITS' efforts to promote new and expanded business enterprises within the City of Midland.

III. INDEPENDENT CONTRACTOR

HIGHER ORBITS shall operate hereunder as an independent contractor and not as an officer, agent, servant, or employee of MDC. HIGHER ORBITS shall have exclusive control of, and the exclusive right to control, the details of the work to be performed hereunder and all personnel performing the same, and shall be solely responsible for the acts and omissions of its officers, members, agents, employees or contractors. In no event shall any person participating in or performing any of HIGHER ORBITS' duties or responsibilities hereunder be considered an officer, agent, or employee of MDC. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control," which would give rise to vicarious liability. HIGHER ORBITS shall be an independent contractor under this Agreement and shall assume all the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. MDC does not have the power to direct the order in which the work is done. MDC shall not have the right to control the means, methods or details of HIGHER ORBITS' work. HIGHER ORBITS shall assume exclusive responsibility for its work.

IV. TERM OF AGREEMENT

Upon execution by the Parties, this Agreement becomes effective August 24, 2021, and shall terminate on July 31, 2022, or when terminated by mutual agreement of the Parties, or when terminated as hereinafter provided.

V. GENERAL TERMS

A. Entire Agreement. This Agreement embodies the complete agreement of the Parties, superseding all oral or written, previous and contemporary agreements between the Parties relating to matters in this Agreement; and except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the Parties.

B. Termination. MDC may terminate this Agreement at will for any or no reason upon giving at least ninety (90) days' written notice to HIGHER ORBITS. The parties to this Agreement understand and agree that it is in MDC's sole and absolute discretion to cancel the Agreement during the term of the Agreement without penalty to MDC. HIGHER ORBITS has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The Parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

C. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

D. Legal Construction. In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

E. Notices. All notices to either Party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such Party at its respective address shown below. All notices shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Either Party hereto may change the address below by sending written notice of such change to the other Party.

If to MDC:	*If to HIGHER ORBITS:*
Executive Director Midland Development Corp. 200 N. Loraine St., Suite 610 Midland, Texas 79701	Michelle Lucas Higher Orbits PO Box 4092 Leesburg, VA 20177

F. Assignment. This Agreement shall be binding upon the Parties and their successors and assigns. This Agreement may not be assigned by HIGHER ORBITS without the prior written consent of MDC.

G. Release. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, HIGHER ORBITS HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES MDC, MDC'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH HIGHER ORBITS HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR MDC'S NEGLIGENCE.

H. Amendments. This Agreement may be amended by written instrument executed by both Parties expressly stating the intention to amend this Agreement.

I. Governmental Immunity. By executing this agreement, MDC is not waiving its right of governmental immunity. MDC is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.**

J. Waiver of Attorney Fees. By executing this Agreement, **THE PARTIES AGREE TO WAIVE AND DO HEREBY WAIVE ANY CLAIM THEY HAVE OR MAY HAVE AGAINST THE OTHER PARTY REGARDING THE AWARD OF ATTORNEY FEES, WHICH ARE IN ANY WAY RELATED TO THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION, OR BREACH OF THIS AGREEMENT. THE**

PARTIES SPECIFICALLY AGREE THAT IF EITHER PARTY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), THAT PARTY AGREES TO WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY FEES TO WHICH IT MIGHT OTHERWISE BE ENTITLED.

K. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the Parties shall be deemed to have occurred in Midland County, Texas.

L. Third-Party Beneficiary. MDC's approval of this Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. No person or entity who is not a Party to this Agreement shall have any third-party beneficiary or other rights hereunder.

M. Governmental Function. MDC and HIGHER ORBITS hereby acknowledge and agree that the entirety of MDC's performance and obligations under this Agreement are governmental functions. By entering into this Agreement, HIGHER ORBITS releases MDC from any present or future claims asserting that MDC's performance or obligations under this Agreement are not governmental functions.

[Signature Pages Follow]

EXECUTED by the duly authorized officials of the Parties as of the day and year first above written.

MIDLAND DEVELOPMENT CORPORATION

By _____
Wesley Bownds, Chairman

ATTEST:

_____
Berry Simpson, Secretary

HIGHER ORBITS

By Michelle Lucas

Name Michelle Lucas

Title Founder & President

THE STATE OF VIRGINIA §
§
COUNTY OF LOUDOUN §

BEFORE ME, the undersigned authority, on this day personally appeared MICHELLE LUCAS, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of HIGHER ORBITS

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 27TH day of JULY, 2021.

Notary Public, State of VIRGINIA

CUADUANA P TERRY
NOTARY PUBLIC
REG. #7582844
MY COMMISSION EXPIRES
09/30/2022
COMMONWEALTH OF VIRGINIA

City Council Meeting

Item Number: 15

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Tina Jauz, Assistant City Manager

Subject: MOTION APPROVING A SECOND AMENDMENT TO THAT CERTAIN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND SUSIE'S SOUTH FORTY CONFECTIONS, INC. (DISTRICT 2) (CITY MANAGER)

Purpose:

The Board of Directors of the Midland Development Corporation approved at a regular meeting on August 2, 2021, a resolution authorizing the execution of a second amendment to that certain economic development agreement between the Midland Development Corporation and Susie's South Forty Confections, Inc.

Recommended City Council Action:

Approve

Fiscal Impact:

$0.00

Discussion:

This amendment provides for reduced payroll requirements from Susie's South Forty. The original requirement was $850,950 in annual payroll by 1/31/20. The company was unable to meet that requirement, so the original agreement was amended to require $610,000 in annual payroll by 1/31/21. Adverse economic conditions, including the COVID-19 pandemic, resulted in the business shrinking in 2020. This second amendment requires that the business maintain its annual payroll at its current amount, $400,000, until 1/31/24.



City Manager's Office

SECOND AMENDMENT TO THE ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND SUSIE'S SOUTH FORTY CONFECTIONS, INC.

THIS SECOND AMENDMENT is made and effective August 25, 2021, by and between the Midland Development Corporation ("*MDC*"), a Type A corporation existing under the authority of Chapter 504 of the Texas Local Government Code, and Susie's South Forty Confections, Inc. ("*Company*").

WHEREAS, MDC and Company entered into that certain Economic Development Agreement dated January 24, 2018 (the "*Agreement*"), which was approved by the Midland Development Corporation Board of Directors and the Midland City Council; and

WHEREAS, MDC and Company executed an amendment to the Agreement on or about July 13, 2020 (the "*First Amendment*"), which was approved by the Midland City Council; and

WHEREAS, the Agreement, inclusive of the First Amendment, has been in full force and effect since its effective date and has not been allowed to lapse; and

WHEREAS, Company and MDC desire to make certain amendments to the Agreement as set forth below;

W I T N E S S E T H:

For and in consideration of the execution of this Second Amendment and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

1) Section I.F of the Agreement is hereby amended to read in its entirety as follows:

   Company anticipates maintaining Full-Time Jobs (as defined herein) at the Property by January 31, 2022, resulting in a total Annual Payroll (as defined herein) of not less than $400,000.00.

2) Section II.H of the Agreement is hereby deleted in its entirety.

3) Article III of the Agreement is hereby deleted in its entirety.

4) Article IV of the Agreement is hereby amended to read in its entirety as follows:

   A. **[INTENTIONALLY OMITTED]**

   B. **[INTENTIONALLY OMITTED]**

Exhibit A

C. **Annual Payroll as of January 31, 2022.** By January 31, 2022, Company shall certify to MDC, as described in Section X.B below, that Company has established an Annual Payroll of at least $400,000.00.

D. **Personal Property Investment.** By January 31, 2022, Company shall invest, or cause to be invested, a minimum of $95,000.00 in new Personal Property in the Business at the Property, and Company shall (i) maintain such minimum value of new Personal Property at the Property through December 31, 2024, and (ii) maintain said new Personal Property in good-working condition at the Business on the Property. Said investment in Personal Property in the Business at the Property facilities shall be evidenced by tax statements issued by the Midland Central Appraisal District, which shall be provided to MDC on a yearly basis during the term of this Agreement. Company shall provide paid invoices and certification that the Personal Property has been paid for, in full, and the Personal Property has been installed and is functioning properly.

E. **Annual Compliance Certifications.** Beginning on January 31, 2023 and continuing every anniversary thereof during the term of this Agreement, Company shall certify to MDC, as described in Section X.B below, the following:

1. The total Annual Payroll as of December 31 of the preceding year.

2. The total amount of Personal Property investment made at the Business on the Property as of December 31 of the preceding year. Company shall describe or list the Personal Property investment and provide certification as to the purchase price or cost of such Personal Property until such time as $95,000.00 has been invested in Personal Property.

Pursuant to this Section, there will be a total of four (4) Annual Compliance Certifications due, covering Full-Time Jobs created and maintained, and Personal Property expenditures in years 2021 through 2024.

F. **Security Agreement.** Company shall execute the Security Agreement in a form substantially similar to that of **Exhibit B**, attached hereto and incorporated herein for all purposes (the "*Security Agreement*"). MDC shall have the right to file a UCC-1 Financing Statement in the state of Company's incorporation in order to perfect a lien on the assets described in the Security Agreement. Company agrees that MDC may, in an event of default by Company under the Agreement, as amended, execute against Company's Personal Property pursuant to the terms of the Security Agreement.

5) Section X.B.1 of the Agreement is hereby amended to read in its entirety as follows:

As to the certification required in Section IV.C, Company shall provide reasonable evidence or supporting documentation. Documentation for employment numbers may be in the form of Texas Workforce Commission Employer Quarterly Reports, or certified employee rosters that show the hours worked and positions filled, or such

other reports as may be agreed upon by MDC and Company. Upon a reasonable request, MDC may review Company's Texas Workforce Commission Employer Quarterly Reports in Midland, Texas, but may not copy or retain a copy of said reports

6) The Agreement, inclusive of this Second Amendment, is hereby ratified and affirmed by Company and MDC, and the Agreement shall in all respects remain in full force and effect in accordance with its provisions and as amended above.

[Signature Pages Follow]

EXECUTED by the duly authorized officials as of the day and year first above written.

MIDLAND DEVELOPMENT CORPORATION

Wesley Bownds, Chairman

ATTEST:

Berry Simpson, Secretary

SUSIE'S SOUTH FORTY CONFECTIONS, INC.

Susie Hitchcock-Hall

Susie Hitchcock-Hall, President/Owner

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, Angie Lozano, a notary public, on this day personally appeared Susie Hitchcock-Hall, President/Owner of Susie's South Forty Confections, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said Company for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 28 day of July, A.D., 2021.

ANGIE LOZANO
Notary ID #125696996
My Commission Expires
June 27, 2022

Angie Lozano

Notary Public, in and for
the State of Texas

City Council Meeting

Item Number: **16**

Meeting Date: **August 24, 2021**

To: **City Council / City Manager**

From: **Tina Jauz, Assistant City Manager**

Subject: **Motion authorizing the execution of a Fiscal Sponsorship Agreement with the Permian Basin Area Foundation to provide for certain facility improvements and enhancements located at Hogan Park (DISTRICT 2) (CITY MANAGER)**

Purpose:

Motion authorizing execution of a fiscal sponsorship agreement between the City of Midland and the Permian Basin Area Foundation.

Recommended City Council Action:

Approve

Fiscal Impact:

$0.00

Discussion:

Efforts are underway to raise funds to renovate Hogan Park. The Midland Development Corporation (MDC), and the city, approved an agreement with Dini Spheris to provide advertising and promotional services to promote economic development through fundraising for the project.

This item, as a next step, allows the Permian Basin Area Foundation (PBAF) to act as the fiscal representative for receiving the donations. If approved, the MDC Board of Directors will consider an item, at their next meeting in September, allowing quarterly administrative fee payments to the PBAF instead of the fees being paid for through received donations.

City Manager's Office

FISCAL SPONSORSHIP AGREEMENT

This Fiscal Sponsorship Agreement (this "**Agreement**") is entered into by and between Permian Basin Area Foundation, a Texas nonprofit corporation ("**Sponsor**"), and the City of Midland, Texas ("**Grantee**"). This Agreement shall be effective as set out below at Section 1.

RECITALS

A. Sponsor is organized and operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "**Code**"), and has an Internal Revenue Service ("**IRS**") determination letter of qualification under Section 501(c)(3) of the Code, and is further classified as a public charity under Sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code;

B. Grantee is a political subdivision of the State of Texas within the meaning of Section 170(c)(1) of the Code. Grantee desires to operate a charitable program (the "**Sponsored Charitable Program**") as described in Exhibit A to this Agreement;

C. Grantee desires to have Sponsor act as its fiscal sponsor for the purpose of receiving gifts, grants, and contributions (collectively, "**Donations**") and distributing such funds to Grantee, subject to Sponsor's oversight, to be used exclusively in support of the Sponsored Charitable Program.

D. In connection with entering into this Agreement, Sponsor and Midland Development Corporation, an economic development corporation existing under the authority of Chapter of 504 of the Texas Local Government Code ("**MDC**"), are entering into that certain written Promotional Agreement in the form attached hereto as Exhibit B (the "**MDC Agreement**"), pursuant to which MDC will pay the Administrative Charge set forth therein in lieu of Grantee being required to pay such Administrative Charge under the terms of this Agreement.

E. Sponsor's Board of Governors has determined that the Sponsored Charitable Program furthers Sponsor's tax-exempt charitable purposes within the meaning of Section 501(c)(3) of the Code. Sponsor's Board of Governors has authorized Sponsor to enter into a fiscal sponsorship agreement with Grantee whereby Sponsor will receive Donations on its own behalf and disburse such funds to Grantee in support of the Sponsored Charitable Program, in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, the parties hereby agree as follows:

1. Effective Date. This Agreement shall become effective on August 25, 2021.

2. Fiscal Sponsorship.

a. Sponsored Charitable Program Activities. Grantee's City Manager (or the City Manager's designee) shall act as principal coordinator of the Sponsored Charitable Program. Sponsor retains oversight authority to ensure that the funds disbursed by Sponsor to Grantee in support of the Sponsored Charitable Program are used for their intended charitable purposes.

b. Receipt and Disbursement of Funds; Variance Power. In connection with its sponsorship of Grantee's Sponsored Charitable Program, Sponsor agrees to receive Donations that are designated as made in support of the Sponsored Charitable Program ("**Sponsored Charitable Program Funds**") from donors unless Sponsor determines in its sole discretion that any such proposed Donation is in violation of Sponsor's Gift Acceptance Policies (as in effect at the time of the Donation) or that acceptance of the Donation would otherwise be materially harmful to Sponsor. Sponsor anticipates granting Sponsored Charitable Program Funds to Grantee, in furtherance of the Sponsored Charitable Program. Upon request by Grantee, Sponsor will disburse Sponsored Charitable Program Funds to Grantee, assuming sufficient funds are available; provided, however, that in order to receive further disbursements Grantee must be in compliance with all of its obligations under this Agreement, including specifically the reporting requirements set forth in Section 5 of this Agreement, and further provided that the date and amount of each disbursement of Sponsored Charitable Program Funds shall be within the discretion and control of Sponsor. Sponsor and Grantee both hereby agree that they intend that this Agreement be interpreted to provide Sponsor with variance powers necessary to enable Sponsor to treat the Sponsored Charitable Program Funds as Sponsor's assets while this Agreement is in effect for U.S. federal income tax purposes. Accordingly, Sponsor, in its sole discretion, shall have the right to withhold, withdraw, or demand the immediate return of any Sponsored Charitable Program Funds if Sponsor determines that Grantee has materially breached this Agreement or cannot accomplish the Section 501(c)(3) charitable purposes of the Sponsored Charitable Program. Grantee hereby irrevocably agrees that the failure of MDC to timely pay the Administrative Charge pursuant to the terms of the MDC Agreement shall constitute a material breach of this Agreement by Grantee for purposes of all provisions of this Agreement. Sponsor retains the right, in its sole discretion, to redirect the Sponsored Charitable Program Funds to a different charitable purpose or beneficiary if the purpose of the Sponsored Charitable Program becomes unnecessary or incapable of fulfillment or otherwise fails to accomplish a charitable purpose within the meaning of Section 501(c)(3) of the Code.

c. Substantiation of Charitable Donations. Sponsor agrees that all Sponsored Charitable Program Funds will be reported for U.S. federal income tax purposes as contributions to Sponsor and further agrees to acknowledge receipt of such Sponsored Charitable Program Funds in writing to donors, as required under U.S. federal income tax law, and to furnish evidence of Sponsor's status as an organization qualified under Section 501(c)(3) of the Code to donors on request.

d. Net Funds; Contributions of Non-Publicly Traded Property. For the avoidance of doubt, the amount of any Sponsored Charitable Program Funds received by Sponsor shall be determined net of any credit card fees, brokerage fees, or similar charges imposed in connection with any donor making a contribution or Sponsor liquidating any non-cash contribution. Sponsor anticipates that the majority of the contributions received in support of the Sponsored Charitable Program will be in the form of monetary contributions or contributions of publicly traded securities. Sponsor and Grantee hereby acknowledge that accepting, owning, and liquidating contributions of property other than publicly traded securities ("**Non-Publicly Traded Property**") may involve unique costs and considerations. Accordingly, prior to accepting any contribution of Non-Publicly Traded Property, Sponsor and Grantee shall communicate in good faith to determine the terms upon which the Sponsor may accept such contribution. Further, Sponsor and Grantee hereby agree that the amount of the cash proceeds received by Sponsor upon

a liquidation of Non-Publicly Traded Property and any other income received in respect of such Non-Publicly Traded Property shall be determined net of any costs associated with owning or liquidating such Non-Publicly Traded Property and only such net cash amount shall be treated as Sponsored Charitable Program Funds. For the avoidance of doubt, Sponsor shall have sole discretion to determine whether to accept or reject any proposed contribution of Non-Publicly Traded Property.

e. Administrative Charge. MDC will pay the Administrative Charge to Sponsor pursuant to the terms of the MDC Agreement. Sponsor and Grantee covenant and agree that (i) all Administrative Charges paid by MDC to Sponsor under the MDC Agreement are in exchange for Sponsor's services set forth in this Agreement, (ii) such Administrative Charges are being paid by MDC to Sponsor in lieu of the comparable administrative charges Sponsor otherwise would require Grantee to pay as a condition to entering into Agreement, and (iii) such Administrative Charges are consistent with the customary fees charged by sponsoring charities under fiscal sponsorship agreements and do not constitute unrelated business taxable income to Sponsor. Pursuant to the terms of the MDC Agreement, Grantee is a third-party beneficiary to the MDC Agreement.

3. Review by Sponsor. Sponsor and its representatives shall be given full access to the books, records, and senior management and financial personnel of Grantee with respect to the Sponsored Charitable Program as Sponsor may reasonably request. Sponsor may, at its own expense, conduct an independent financial audit and/or program audit of Grantee's books and records in relation to the charitable activities for which Sponsor has disbursed Sponsored Charitable Program Funds.

4. Financial Accounting and Reporting. Sponsor and Grantee will maintain books and financial records for the Sponsored Charitable Program in accordance with generally accepted accounting principles, and shall retain records as long as required by law and make records available to auditors as required by law.

5. Grantee Reporting Requirements. Grantee shall submit full and complete quarterly reports to Sponsor on the progress of the Sponsored Charitable Program. Such reports shall be due within thirty (30) days of the end of each calendar quarter, for so long as this Agreement remains in effect. Such reports shall describe Grantee's use of the Sponsored Charitable Program Funds, compliance with the terms of all grants made to Sponsor pursuant to this Agreement, and the progress made by Grantee in accomplishing the purposes of the Sponsored Charitable Program. If any funding source of Donations in support of the Sponsored Charitable Program imposes financial reporting requirements on Sponsor as a condition to such funding source making the Donation, Sponsor and Grantee shall work together in good faith to provide such funding source with the requested financial reports. To the extent Sponsor determines such financial reports required by any potential funding source are materially more onerous than the financial reports already required to be provided by Grantee to Sponsor pursuant to this Section 5, Sponsor shall consult with Grantee prior to accepting Donations from such funding source.

6. Notices. All notices or reports under this Agreement shall be addressed as follows:

If to Sponsor:

Permian Basin Area Foundation
Attn: President and CEO
3312 Andrews Highway
Midland, Texas 79703

If to Grantee:

City of Midland
Attn: City Manager
300 N. Loraine Street, Suite 310
Midland, Texas 79701

Such addresses may be changed by written notice or email notice given by such party to the other or by other form of notice agreed to by the parties.

7. Restrictions on Use of Sponsored Charitable Program Funds.

a. Tax-Exempt Purposes. Grantee shall use the funds it receives from Sponsor solely for the charitable purposes of the Sponsored Charitable Program and shall not use such funds in any way that will jeopardize the tax-exempt status of Sponsor as a charitable organization described in Section 501(c)(3) of the Code. Grantee agrees to comply with any written request by Sponsor to cease activities that, in Sponsor's reasonable judgment, might jeopardize the tax-exempt status of Sponsor, and further agrees that Sponsor's obligation to make funds available to Grantee from the Sponsored Charitable Program Funds pursuant to this Agreement shall be automatically suspended in the event that Grantee fails to comply with any such request.

b. Prohibited Activities. No portion of the Sponsored Charitable Program Funds shall be used in any attempt to influence legislation. No portion of the Sponsored Charitable Program Funds shall be used to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, induce or encourage violations of law or public policy, cause private inurement or improper private benefit to occur, support terrorist activities, terrorist organizations or individuals who engage in or support terrorist activities, or take any other action inconsistent with qualification under Section 501(c)(3) of the Code.

8. Relationship of the Parties. Nothing in this Agreement shall constitute the naming of either party hereto as an agent or legal representative of the other party for any purpose whatsoever except as specifically and to the extent set forth herein. This Agreement shall not be deemed to create any relationship of agency, employment, partnership, or joint venture between the parties hereto and Grantee shall make no such representation to anyone. It is the intention of the parties that all employees, contractors, and advisors for Grantee will be employed or engaged directly by Grantee and not by Sponsor.

9. Indemnification. Grantee hereby irrevocably and unconditionally agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless Sponsor, its officers, governors and/or directors, trustees, employees and agents, from and against any and all claims,

liabilities, losses and expenses (including reasonable attorneys' fees) directly, indirectly, wholly or partially arising from or in connection with any act or omission of Grantee, its employees or agents, in applying for, accepting, expending or applying Sponsored Charitable Program Funds, or in carrying out the Sponsored Charitable Program, except to the extent that such claims, liabilities, losses or expenses arise from or in connection with any act or omission of Sponsor or its officers, governors and/or directors, trustees, employees or agents that constitutes gross negligence or willful misconduct as reasonably determined by Grantee after consulting with competent legal counsel and submitting a written reasoned basis to Sponsor supporting such determination.

10. Representations by Grantee. Grantee hereby represents that it is duly authorized to enter into this Agreement and has obtained all necessary approvals required under applicable federal, state, or local law to enter into this Agreement. Grantee shall only use Sponsored Charitable Program Funds in a manner that is consistent with the purposes set forth on Exhibit A to this Agreement and charitable purposes as defined in Section 501(c)(3) of the Code.

11. Fundraising. All solicitation materials that use the name of Sponsor or its affiliates, including both written solicitation materials and scripts for oral solicitation communications, shall be subject to Sponsor's advance approval. Grantee shall comply with all laws and regulations concerning the solicitation of charitable contributions. All original letters of inquiry and grant proposals that use the name of Sponsor or any of its affiliates shall be subject to Sponsor's advance approval in its sole discretion and shall be signed by an officer or executive level employee of Sponsor. All written grant agreements, pledges, or other commitments with funding sources desiring to make Donations to the Sponsored Charitable Program shall be subject to Sponsor's advance written approval in its sole discretion and shall be signed by an officer or executive level employee of Sponsor.

12. Publicity. Any and all use of Sponsor's name in media communications and fundraising materials with respect to the Sponsored Charitable Program shall be subject to Sponsor's prior review and approval. Grantee shall provide Sponsor with reasonable advance notice with respect to any proposed use of Sponsor's name in order to allow for such prior review.

13. Duration of Agreement. This Agreement shall remain in effect until the earliest of the following:

a. Grantee notifies Sponsor that (i) a nonprofit corporation has been organized and shall be operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Code, such nonprofit corporation desires to carry out the Sponsored Charitable Program, and such nonprofit corporation has received a determination letter from the IRS recognizing the nonprofit corporation as a Section 501(c)(3) charitable organization further classified as a public charity (a "**Successor Charity**"), or (ii) Grantee has entered into a binding fiscal sponsorship agreement with another charitable organization recognized as a tax-exempt charitable organization under Section 501(c)(3) of the Code and further classified as a public charity within the meaning of Section 509(a) of the Code (a "**Successor Fiscal Sponsor**"); or

b. Sponsor or Grantee terminates this Agreement pursuant to the provisions of Section 14 below.

14. Termination. Either party may terminate this Agreement without cause by giving forty-five (45) days' written notice to the other party.

15. Disposition of Sponsored Charitable Program Funds in Termination. If there are any Sponsored Charitable Program Funds remaining after this Agreement has terminated, the following terms and conditions shall apply, subject to Sponsor's variance power set forth above at Section 2b:

a. If a Successor Charity has received a determination letter from the IRS of its qualification under Section 501(c)(3) of the Code, upon Grantee's written request Sponsor shall transfer the balance of all Sponsored Charitable Program Funds, net of any liabilities incurred by Sponsor in connection with the Sponsored Charitable Program, to such Successor Charity for use in the Sponsored Charitable Program.

b. If Grantee has entered into a written fiscal sponsorship agreement with a Successor Fiscal Sponsor, upon Grantee's written request Sponsor shall transfer the balance of any Sponsored Charitable Program Funds, net of any liabilities that Sponsor has incurred in connection with the Sponsored Charitable Program, to such Successor Fiscal Sponsor for use in the Sponsored Charitable Program.

c. In the event that Grantee has not directed Sponsor to transfer the balance of any Sponsored Charitable Program Funds, net of any liabilities incurred by Sponsor in connection with the Sponsored Charitable Program, to a Successor Charity or a Successor Fiscal Sponsor, Sponsor shall have complete discretion to allocate the Sponsored Charitable Program Funds in any manner that furthers charitable purposes within the meaning of Section 501(c)(3) of the Code and is consistent with any applicable charitable trust laws.

16. Miscellaneous Provisions.

a. Amendments. This Agreement may not be amended or modified, except in writing signed by both Sponsor and Grantee.

b. Dispute Resolution. In the event of a dispute under this Agreement, Sponsor and Grantee shall make a good faith effort to resolve such dispute cooperatively before seeking to resolve any dispute by arbitration or otherwise proceeding with any remedy available at law or in equity.

c. Choice of Forum. The parties agree that venue in any suit, proceeding, arbitration, mediation, or other action arising out of this Agreement shall be in Midland County, Texas.

d. Consent to Jurisdiction. For all purposes related to this Agreement, the parties hereby consent to personal jurisdiction in the state courts in and for the State of Texas.

e. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof; it supersedes any prior agreement and understandings between the parties as to such matters, oral or written, all of which are hereby cancelled.

f. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas without regard to any choice of law provisions.

g. Severability. Each provision of this Agreement shall be separately enforceable, and the invalidity of one provision shall not affect the validity or enforceability of any other provision.

h. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

i. Attorneys' Fees. In the event of any controversy, claim, or dispute between the parties arising out of or related to this Agreement, or the alleged breach thereof, the prevailing party shall, in addition to any other relief, be entitled to recover its reasonable attorneys' fees and related legal costs (such as court filing fees).

Remainder of page intentionally left blank

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized their respective representatives to execute this Agreement effective as of the day and year set out in Section 1 of this Agreement.

SPONSOR

Permian Basin Area Foundation

By: _____
Its: _____

GRANTEE

City of Midland

_____
Robert Patrick, City Manager

EXHIBIT A

DESCRIPTION OF SPONSORED CHARITABLE PROGRAM

Project Scope: Hogan Park (the "**Park**") is a community park covering approximately 600 acres in the City of Midland (the "**City**"), which received the real estate that comprises the Park through a gift several decades ago. The Park provides facilities for baseball, softball, soccer, run by volunteer leagues and associations, and playgrounds for children and dogs. A group of citizens working with the City have envisioned a new design for the Park, which includes improved facilities, as well as new enhancements that would attract families from around the West Texas region and large organized sports tournaments.

- The City will retain ownership of the Park throughout the term of this Agreement. The City contemplates that a new tax-exempt organization that will function as a "conservancy" for the Park may eventually be incorporated as a nonprofit corporation and apply for recognition from the IRS of its status as a tax-exempt organization described in Section 501(c)(3) of the Code and further classified as a public charity within the meaning of Section 509(a) of the Code. However, in the interim, the City will carry out the activities necessary to operate and maintain grounds, facilities, and amenities, at the Park.

- Grants made by Permian Basin Area Foundation pursuant to the terms of the written Fiscal Sponsorship Agreement with the City shall be used by the City solely for the payment of invoices from consultants, contractors, and other vendors or service providers, as well as other reasonable expenses related to the construction, operation, and maintenance of the Park and the improved facilities located thereon. The City shall not use any such grants in a manner that is inconsistent with charitable purposes, as such term is defined in Section 501(c)(3) of the Code.

EXHIBIT B

FORM OF PROMOTIONAL AGREEMENT WITH MIDLAND DEVELOPMENT CORPORATION

City Council Meeting

Item Number: 17

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Ron Jenkins, Oil and Gas Coordinator

Subject: RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO PERMIAN DEEP ROCK OIL CO., LLC ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED IN SECTION 3, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED 2,373 FEET EAST OF SOUTH GARFIELD STREET AND 320 FEET NORTH OF WEST COUNTY ROAD 111); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

Resolution approving the issuance of permit Permian Deep Rock Oil Co., LLC for the drilling of the oil and gas well Charger #H130LS; said well being generally located 2,373 feet east of South Garfield Street and 320 feet north of West County Road 111. The required 30-day public comment has passed, and the Council may consider this request. Currently no notices of objection received.

Recommended City Council Action:

Approve

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed the well site in detail and recommends approval. This application is for a previously approved permit that has expired. A 16 ft. sound wall will be used during drilling and fracing operations being located on the north side of location. This well application was approved under a previous permit but has expired. The

operator has a surface agreement with the surface owner. Receiving support of the Oil & Gas Advisory Committee, Permian Deep Rock Oil is requesting the following variances:

(1) Permian Deep Rock Oil Company requests to allow for twenty-four-hour fracing operations.
(2) Permian Deep Rock Oil Company requests variance for fence of the drill pad instead of individual well
(3) Permian Deep Rock Oil Company requests a variance to the requirement of landscaping and irrigation since city water is not available.
(4) Permian Deep Rock Oil Company requests variance to the Road Repair Agreement due to no city streets will be used.

Attachments: Applications; Location maps; Exhibit - Drill site maps, Exhibit – Flow Line Location.

Robert Patrick

City Manager's Office

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO PERMIAN DEEP ROCK OIL CO., LLC ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED IN SECTION 3, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED 2,373 FEET EAST OF SOUTH GARFIELD STREET AND 320 FEET NORTH OF WEST COUNTY ROAD 111); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, "Police Regulations," Chapter 1, "General Offenses," of the City Code of Midland, Texas, so as to establish Section 23, "Oil and Gas Well Permits issued on or after January 1, 2010," which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted an application to the City of Midland to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance

with Section 6-1-23(H)(1) and a public hearing was held on July 13, 2021; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's application to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny a permit to Operator to drill an oil and gas well on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of a permit to Operator to drill an oil and gas well on the property described in Section Two hereof;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill the following oil and gas well:

Charger #H130LS

located in Section 3, Block 39, T-2-S, T&P RR Co. Survey, City of Midland, Midland County, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That the requirement of a Road Repair Agreement between Operator and the City of Midland is hereby waived in regard to said permit.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the

City of Midland at a regular meeting on the _____ day of _____, A.D., 2021, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on August 24, 2021, considered the application of Permian Deep Rock Oil Co., LLC ("Operator") dated May 3, 2021, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's Charger #H130LS oil and gas well shall be 108 feet from the south line and 2,310 feet from the west line, Section 3, Block 39, T-2-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from August 24, 2021 through August 24, 2022, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

NOTWITHSTANDING ANY OTHER PROVISION, OPERATOR HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY OF MIDLAND, CITY OF MIDLAND'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH OPERATOR HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKING CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS OR CITY OF MIDLAND'S NEGLIGENCE.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.
3. No landscaping or irrigation is required because City water is not available.
4. No road repair agreement is required because no City streets will be used to access the well site.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of August 2021.

CITY OF MIDLAND, TEXAS

BY: _____

Patrick N. Payton, Mayor

UNDERSTOOD AND AGREE THIS _____day of August 2021.

Permian Deep Rock Oil Co., LLC

By: _____

Keith E. Bucy

General Manager

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
05/03/2021	Permian Deep Rock Oil Co., LLC	P.O. Box 11405 Midland, TX 79702

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. / Rep. Fax
Keith E. Bucy	500 W. Wall St. Ste 300 Midland, TX 79701	Rep. Tele. 432-682-6685 Rep. Fax 432-684-4519
Fee: $4,000.00 Rec'd Yes ✓ No___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4

Permit Compliance Contact (Choose 1):

Option A:

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B:

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):*** See Exhibit "A"

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):

See Exhibit "A"

Other Permitted Wells in City ***(ATTACH EXHIBIT B*** **[see § J(26)]).** See Exhibit "B"

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

1.

2.

3.

ATTACHED AS EXHIBIT C **is** List of subdivisions within Charger Unit

See Exhibit "C"

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):
Surface use: Undeveloped Rangeland, service company yards and apartment complex
Surface ownership: Two residences, apartment complex and service company yards:

See Exhibit "D"

ATTACHED AS EXHIBIT D **is** ,
Current Tax Roll from Midland Central Appraisal District), **which lists**
the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].

ATTACHED AS EXHIBIT E **is a** ***(map/p lat/satellite/aerial photo)*** **depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The** ***(map/p lat/satellite/aerial photo)*** **includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].**

ATTACHED AS EXHIBIT F **is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].**

IV. Well & Operations Information

Proposed Well Name: Charger #H130LS Original approved city permit (Charger A H130LS) expired 05/18/2020

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See Exhibit "G"

Legal Description of Proposed Well Site: SHL: 108' FSL & 2310' FWL, Section 3
Block 39, T-2-S, T&PRR Co. Survey, Midland County, Texas

ATTACHED AS EXHIBIT G **is the Location Site Plan [See § J(9)].**

ATTACHED AS EXHIBIT H **is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].**

ATTACHED AS EXHIBIT I **is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments** ***(also file copy of W-1 with City Secretary before commencement of drilling operations).*** **[See § J(16) and (20)].**

ATTACHED AS EXHIBIT J **is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].**

ATTACHED AS EXHIBIT K (if applicable) **is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].**

ATTACHED AS EXHIBIT L **is the Fencing and Irrigation Plan. [See § J(30)].**

ATTACHED AS EXHIBIT M: **No city roads will be used**

ATTACHED AS EXHIBIT N **is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].**

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: None

(2) Operations: Oncor

Description of water source to be used during Drilling: Water is to be piped in from our water wells, drill additional water wells or truck fresh water in. All brine water will be trucked in.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

See Exhibit "N"

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: Trench and encapsulate per TXRRC Rule 27(c)(10)(v)

See Exhibit "O"

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P **is the** ***Letter of Credit/Certificate of Deposit*** **in accordance with Subsection (K)(2). [See § J(18)].**

ATTACHED AS EXHIBIT Q **: Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by applicant are current. (See § J(29)**

ATTACHED AS EXHIBIT R **is the required Insurance Certificate. [See § J(19) and § K(3)].**

ATTACHED AS EXHIBIT S (if applicable) **is the Drainage Plan relating to Applicant's proposed operations. [See § J(21)].**

ATTACHED AS EXHIBIT T **is Applicant's Emergency Action Response Plan. [See § J(22)].**

ATTACHED AS EXHIBIT U **is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].**

Attached as Exhibit V: Applicants variances

Permian Deep Rock Oil Co. LLC
[NAME OF COMPANY]

By _____
Its General Manager

State of Texas)

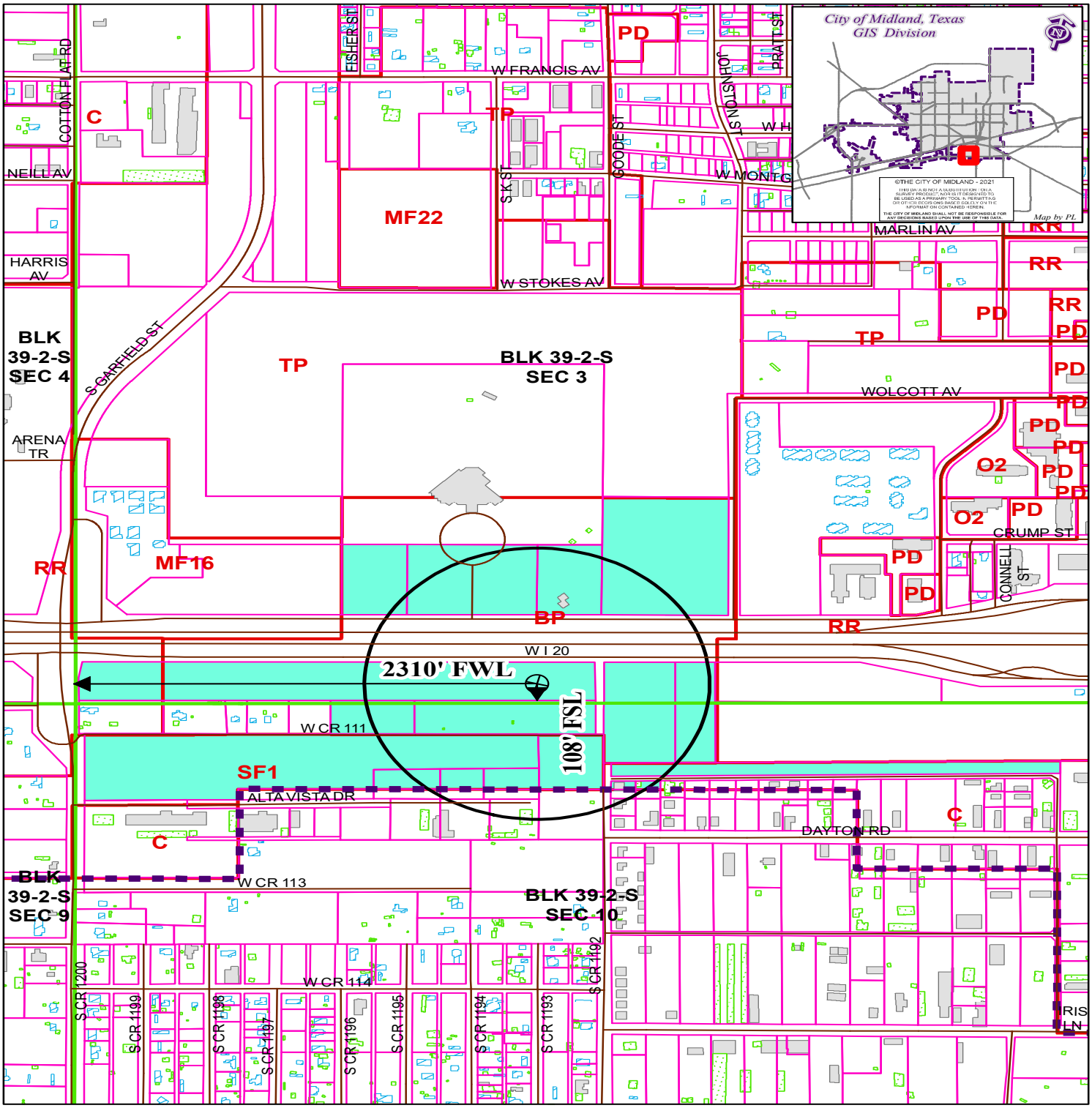
County of Midland)

Keith E. Bucy , personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.

Lindsay Jonell Venerable
Notary Public, State of Texas

LINDSAY JONELL VENERABLE
Notary ID #128754089
My Commission Expires
September 29, 2023

SEAL



LOCATION AND ZONING MAP

Oil - 034482 - 2021 **Scale: 1" = 700'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 108' FSL and 2,310' FWL, Section 3, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 2,273 feet east of South Garfield Street and 320 feet north of West County Road 111.

Charger #H130LS

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	GR	GENERAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

SCALE: 1" = 300'

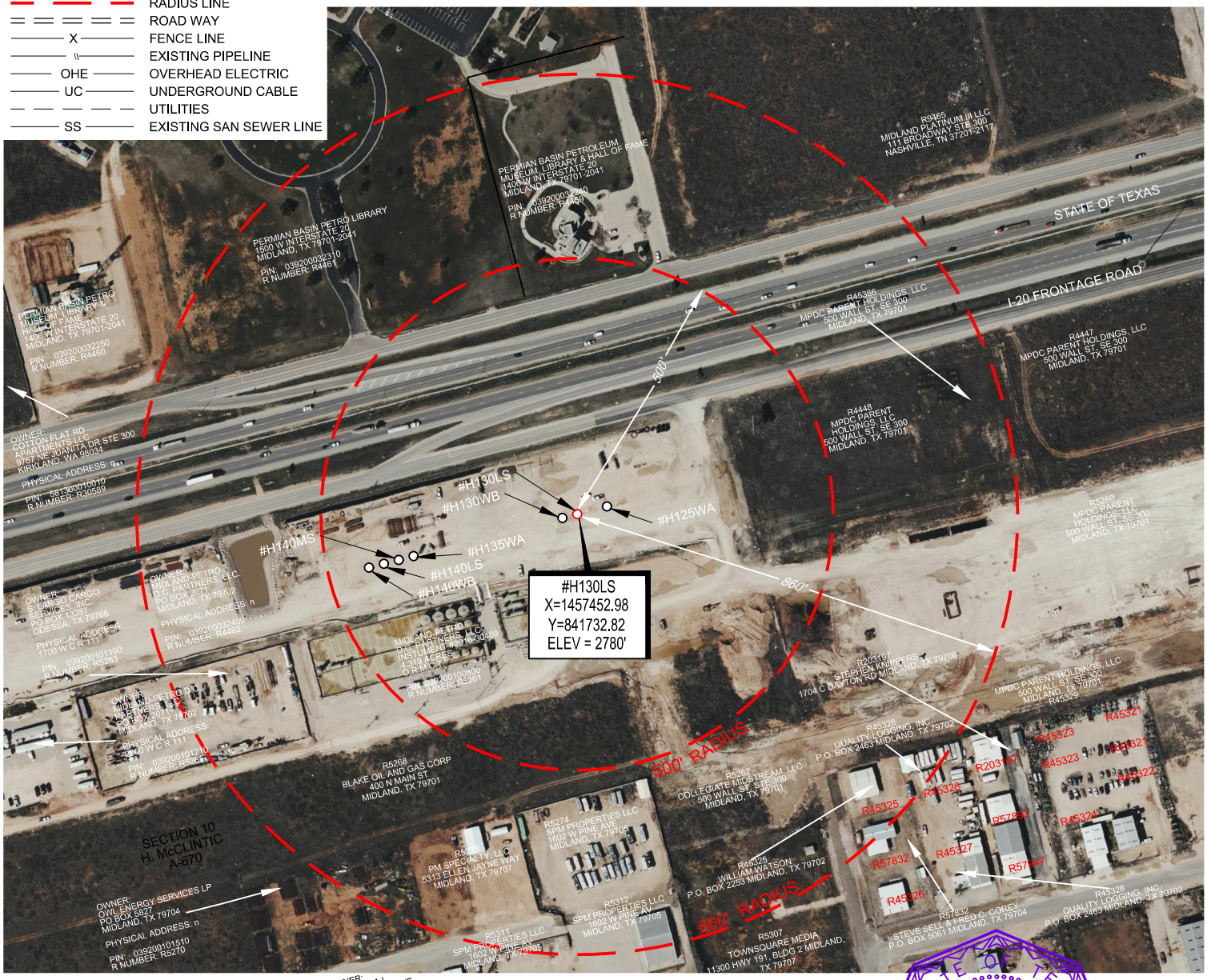
0' 150' 300'

LEGEND

- SURVEY/SECTION LINE
- RADIUS LINE
- ROAD WAY
- X — FENCE LINE
- \\ — EXISTING PIPELINE
- OHE — OVERHEAD ELECTRIC
- UC — UNDERGROUND CABLE
- UTILITIES
- SS — EXISTING SAN SEWER LINE

SECTION 3, BLOCK 39, T-2-S
T. & P. RR. CO. SURVEY, A-181
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS
SHOWING STRUCTURES WITHIN 500' RADIUS
FOR PROPOSED **CHARGER #H130LS**
108' FSEL & 2310' FSWL (SECTION 3)

PERMIAN DEEP ROCK OIL CO., L.L.C.





TOPOGRAPHIC
LOYALTY INNOVATION LEGACY

1400 EVERMAN PARKWAY, Ste. 146 • FT. WORTH, TEXAS 76140
TELEPHONE: (817) 744-7512 • FAX (817) 744-7548
TEXAS FIRM REGISTRATION NO. 10042504
WWW.TOPOGRAPHIC.COM



Jeffrey N. Lueders, R.P.L.S. No. 6512
SURVEYED ON THE GROUND: MAY 24, 2018

CHARGER #H130LS	REVISION:	
	INT	DATE
	DRH	04/22/2021
DATE: 07/03/2018	DRH	04/23/2021
FILE: CD_CHARGER_A_H130LS_REV3	DRH	04/27/2021
DRAWN BY: PAC		
SHEET : 1 OF 2		

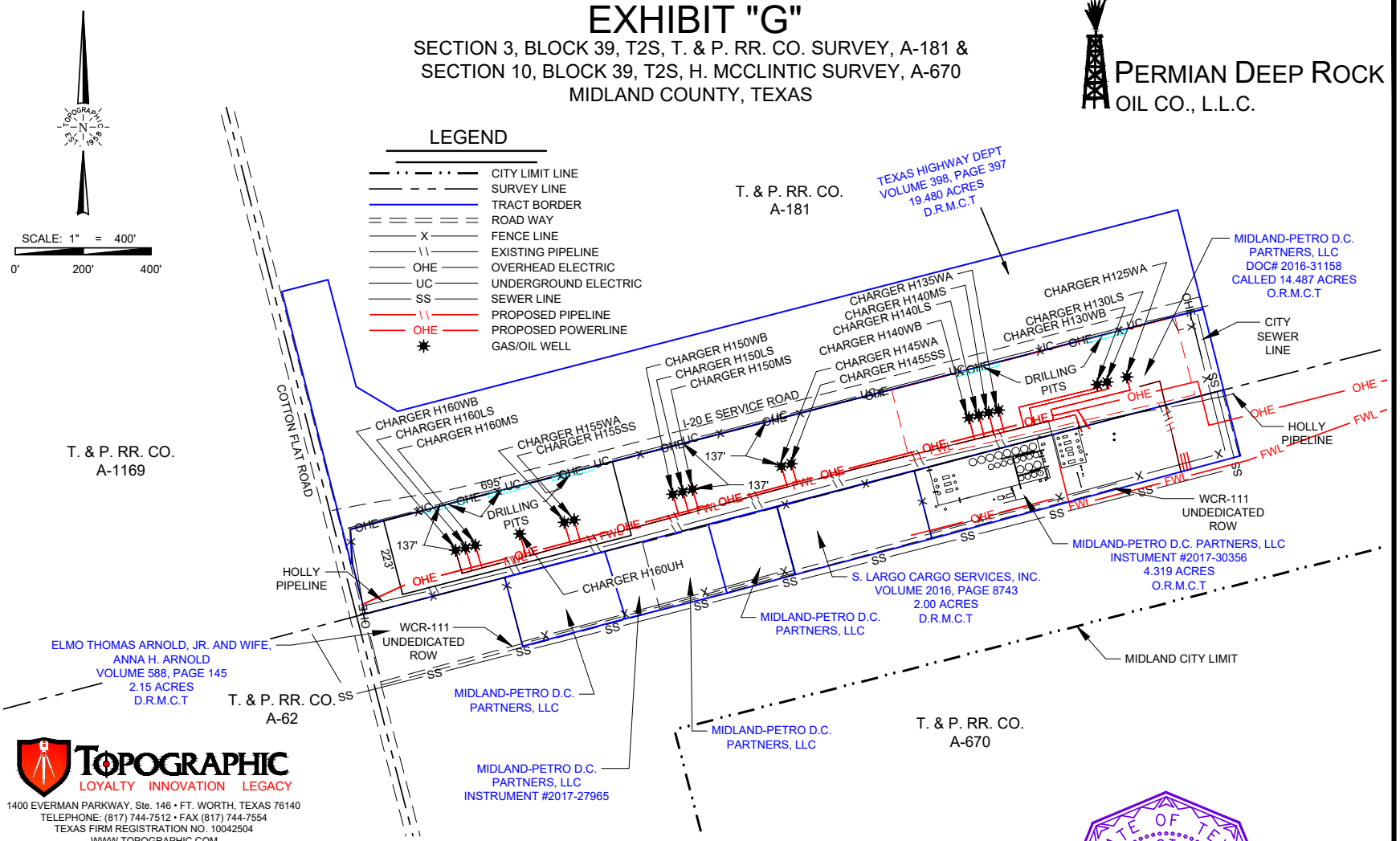
NOTES:
1. ORIGINAL DOCUMENT SIZE: 8.5" X 11"
2. ALL BEARINGS, DISTANCES, AND COORDINATE VALUES CONTAINED HEREIN ARE GRID BASED UPON THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, U.S. SURVEY FEET, NORTH AMERICAN DATUM 1927.
3. THIS PROPOSED LOCATION HAS BEEN CAREFULLY SURVEYED ON THE GROUND UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE ACCORDING TO THE EVIDENCE, OFFICIAL SURVEY RECORDS, MAPS, AND OTHER DATA PROVIDED PERMIAN DEEP ROCK OIL CO., LLC. THIS PLAT WAS CREATED FOR THE SOLE PURPOSE OF FILING A PERMIT WITH THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS AND SHOULD NOT BE CONSTRUED AS A "BOUNDARY SURVEY" IN COMPLIANCE WITH T.B.P.L.S. MINIMUM STANDARDS OF PROCEDURES FOR BOUNDARY SURVEYS. THIS CERTIFICATION IS MADE AND LIMITED TO THOSE PERSONS OR ENTITIES SHOWN ON THE FACE OF THIS PLAT AND IS NON-TRANSFERABLE.
4. OWNERSHIP INFORMATION SHOWN HEREON WAS TAKEN FROM THE CITY OF MIDLAND, TEXAS GIS SITE.
5. DISTANCES SHOWN HEREON TO EXISTING STRUCTURES ARE SCALED PER AERIAL MAP.

PACKET
17.15
August 24, 2021

EXHIBIT "G"

SECTION 3, BLOCK 39, T2S, T. & P. RR. CO. SURVEY, A-181 &
SECTION 10, BLOCK 39, T2S, H. MCCLINTIC SURVEY, A-670
MIDLAND COUNTY, TEXAS

PERMIAN DEEP ROCK OIL CO., L.L.C.



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TELEPHONE: (817) 744-7512 • FAX (817) 744-7554
TEXAS FIRM REGISTRATION NO. 10042504
WWW.TOPOGRAPHIC.COM

CHARGER UNIT CITY PERMIT	REVISION:	
	JRH	07/18/18
	JRH	05/24/19
	JRH	11/07/19
DATE: 07/05/2017	DRH	08/12/20
FILE: SK_CHARGER_UNIT_CL_PERMIT_REV24	DRH	08/26/20
DRAWN BY: CAR	DRH	04/12/21
SHEET : 4 OF 12	DRH	04/28/21

NOTES:
1. ORIGINAL DOCUMENT SIZE: 11" X 8.5"
2. ALL BEARINGS, DISTANCES, AND COORDINATE VALUES CONTAINED HEREIN ARE GRID BASED UPON THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, U.S. SURVEY FEET, NORTH AMERICAN DATUM 1927.
3. CERTIFICATION IS MADE ONLY FOR PROPOSED UTILITIES AND SITES, IN RELATION TO THE EVIDENCE FOUND DURING A FIELD SURVEY, MADE ON THE GROUND, UNDER MY SUPERVISION, AND USING DOCUMENTATION PROVIDED BY PERMIAN DEEP ROCK OIL CO., L.L.C. ONLY UTILITIES/EASEMENTS THAT WERE VISIBLE ON THE DATE OF THIS SURVEY, WITHIN/ADJOINING THIS EASEMENT, HAVE BEEN LOCATED AS SHOWN HEREON OF WHICH I HAVE KNOWLEDGE. THIS CERTIFICATION IS LIMITED TO THOSE PERSONS OR ENTITIES SHOWN ON THE FACE OF THIS PLAT AND IS NON-TRANSFERABLE, AND MADE FOR THIS TRANSACTION ONLY.
4. ALL PROPOSED INFRASTRUCTURE SHOWN HEREON IS SOLELY FOR THE PURPOSE OF APPLYING FOR A PERMIT WITH THE CITY OF MIDLAND, TEXAS. THIS IS EXHIBIT IS NOT TO BE CONSTRUED AS A "BOUNDARY SURVEY" IN COMPLIANCE WITH THE T.B.P.L.S. MINIMUM STANDARDS OF PROCEDURES FOR BOUNDARY SURVEYS. THESE ARE FOR PLANNING PURPOSES ONLY.
5. ADJOINER INFORMATION SHOWN FOR INFORMATIONAL PURPOSES ONLY.
6. D.R.M.C.T. = DEED RECORDS MIDLAND COUNTY, TEXAS
7. C.C.O.R.M.C.T. = C. C. OFFICIAL RECORDS MIDLAND COUNTY, TEXAS

STATE OF TEXAS REGISTERED JEFFREY N. LUEDERS 6512 PROFESSIONAL LAND SURVEYOR

JEFFREY N LUEDERS, R.P.L.S. No. 6512
SURVEYED ON THE GROUND: APRIL 12, 2021

S:\SURVEY\ARRINGTON\CHARGER_UNIT\FINAL_PRODUCTS\SKETCH\SK_CHARGER_UNIT_CL_PERMIT_REV24.DWG 4/28/2021 7:32:18 AM dharris

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on August 24, 2021, considered the application of Permian Deep Rock Oil Co., LLC ("Operator") dated May 3, 2021, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's Charger #H130LS oil and gas well shall be 108 feet from the south line and 2,310 feet from the west line, Section 3, Block 39, T-2-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from August 24, 2021 through August 24, 2022, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

NOTWITHSTANDING ANY OTHER PROVISION, OPERATOR HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY OF MIDLAND, CITY OF MIDLAND'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH OPERATOR HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKING CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS OR CITY OF MIDLAND'S NEGLIGENCE.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.
3. No landscaping or irrigation is required because City water is not available.
4. No road repair agreement is required because no City streets will be used to access the well site.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of August 2021.

CITY OF MIDLAND, TEXAS

BY: _____

Patrick N. Payton, Mayor

UNDERSTOOD AND AGREE THIS _____day of August 2021.

Permian Deep Rock Oil Co., LLC

By: _____

Keith E. Bucy

General Manager

City Council Meeting

Item Number: 18

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Ron Jenkins, Oil and Gas Coordinator

Subject: RESOLUTION APPROVING THE ISSUANCE OF PERMITS TO ENDEAVOR ENERGY RESOURCES, L.P. ("OPERATOR") TO DRILL THREE OIL AND GAS WELLS LOCATED IN SECTION 4, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 580 FEET NORTH OF THE WEST INTERSTATE 20 SERVICE ROAD AND BETWEEN 1,157 FEET AND 1,207 FEET EAST OF SOUTH MIDKIFF ROAD); AND PROVIDING THAT SAID PERMITS DO NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

Resolution approving the issuance of permits Endeavor Energy Resources, L.P. for the drilling of the following oil and gas wells: Bankhead 4-33 Unit 2A #162; Bankhead 4-33 Unit 2A #173; and Bankhead 4-33 Unit 2A #182; said wells being generally located 580 feet north of West I-20 Service Road and between 1,157 feet and 1,207 feet east of South Midkiff. The required 30-day public comment has passed, and the Council may consider this request. Currently no notices of objection received.

Recommended City Council Action:

Approve

Fiscal Impact:

There is no cost to the City to process this application.

Discussion:

The Oil and Gas Advisory Committee has reviewed these well sites in detail and recommends

approval. A sound study has been completed and a 260’ long and 24’ high sound wall will be used during completions operation. Endeavor has a has a surface agreement with the surface owner. Receiving support of the Oil & Gas Advisory Committee, Endeavor Energy Resources is requesting the following variances:

1. Requesting a variance to have a perimeter fence around the well pad instead of individual wellheads.
2. Requesting a variance to the hours of operation for fracture stimulations and to allow for frac operations and completion to occur during a 24-hour period.
3. Requesting a variance to the landscaping, would impede future commercial development for the surface owner.
4. Requesting a variance to a larger reserve pit being 307 ft. X 281 ft. for the drilling of five wells on the pad and have cuttings transported off site and processed in accordance with Railroad Commission regulations

Attachments: Applications, Location maps, Exhibit - Drill site maps, Exhibit – Flow Line Location.

Robert Patrick

City Manager’s Office

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF PERMITS TO ENDEAVOR ENERGY RESOURCES, L.P. ("OPERATOR") TO DRILL THREE OIL AND GAS WELLS LOCATED IN SECTION 4, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 580 FEET NORTH OF THE WEST INTERSTATE 20 SERVICE ROAD AND BETWEEN 1,157 FEET AND 1,207 FEET EAST OF SOUTH MIDKIFF ROAD); AND PROVIDING THAT SAID PERMITS DO NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, "Police Regulations," Chapter 1, "General Offenses," of the City Code of Midland, Texas, so as to establish Section 23, "Oil and Gas Well Permits issued on or after January 1, 2010," which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted applications to the City of Midland to drill oil and gas wells on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on July 13, 2021; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's applications to drill oil and gas wells on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny permits to Operator to drill oil and gas wells on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of permits to Operator to drill oil and gas wells on the property described in Section Two hereof;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute permits, on behalf of the City of Midland, that will allow Operator to drill the following oil and gas wells:

> Bankhead 4-33 Unit 2A #162; Bankhead 4-33 Unit 2A #173; and Bankhead 4-33 Unit 2A #182;

located in Section 4, Block 39, T-2-S, T&P RR Co. Survey, City of Midland, Midland County, Texas. Said permits shall be in forms substantially similar to those attached hereto as Exhibits "A" through "C" and incorporated herein for all legal purposes.

SECTION THREE. That said permits do not require a new road repair agreement but shall be consolidated under the existing road repair agreement between Operator and the City of Midland for Operator's wells located on the property described in Section Two

hereof.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2021, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on August 24, 2021, considered the application of Endeavor Energy Resources, L.P. ("Operator") dated April 26, 2021, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's Bankhead 4-33 Unit 2A #162 oil and gas well shall be 1,027 feet from the south line and 1,207 feet from the west line, Section 4, Block 39, T-2-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from August 24, 2021 through August 24, 2022, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

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NOTWITHSTANDING ANY OTHER PROVISION, OPERATOR HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY OF MIDLAND, CITY OF MIDLAND'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH OPERATOR HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKING CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS OR CITY OF MIDLAND'S NEGLIGENCE.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.
2. Twenty-four hour hydraulic fracturing and completion operations are permitted.
3. In order to not impede future commercial development of the surface, no landscaping or irrigation is required.
4. Use of a lined and bermed reserve pit that is 307 feet x 281 feet for drilling operations is permitted, and cuttings may be transported off-site and processed in accordance with Texas Railroad Commission regulations.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of August 2021.

CITY OF MIDLAND, TEXAS

BY: _____

Patrick N. Payton, Mayor

UNDERSTOOD AND AGREE THIS _____day of August 2021.

Endeavor Energy Resources, L.P.

By: _____

Ryan Burrow

Production Foreman

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The location of Operator's Bankhead 4-33 Unit 2A #173 oil and gas well shall be 1,027 feet from the south line and 1,182 feet from the west line, Section 4, Block 39, T-2-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

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Ryan Burrow

Production Foreman

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The location of Operator's Bankhead 4-33 Unit 2A #182 oil and gas well shall be 1,027 feet from the south line and 1,157 feet from the west line, Section 4, Block 39, T-2-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

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CITY OF MIDLAND, TEXAS

BY: _____

Patrick N. Payton, Mayor

UNDERSTOOD AND AGREE THIS _____day of August 2021.

Endeavor Energy Resources, L.P.

By: _____

Ryan Burrow

Production Foreman

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
April 26, 2021	Endeavor Energy Resources, L.P.	110 N. Marienfeld, Suite 200 Midland, TX 79701

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432)-556-0588
Alex Bedford, Reservoir Engineer	110 N. Marienfeld, Suite 200 Midland, TX 79701	Rep. Fax (432)-682-3088
Fee: $4,000.00 Rec'd Yes X No___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4

Permit Compliance Contact (Choose 1): Option B

Option B: Ryan Burrow
1700 ECR 115
Midland, Texas 79706
Office: (432) 262-4271
Cell: (432) 813-3060

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):***

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):
Ryan Burrow, Production Foreman for Endeavor Energy Resources, L.P.: Cell: 432-813-3060
Endeavor Energy Resources, L.P. -**24-Hour Emergency Hotline- 432-570-0186**
Midland Police Department: 911 or 432-685-7110
Midland Fire Department: 911
Ambulance: 911
Paramedics: 911

Other Permitted Wells in City ***(ATTACHED AS EXHIBIT B*** **[see § J(26)]).**

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): ***ATTACHED AS EXHIBIT C***

ATTACHED AS EXHIBIT C –is a letter from a licensed Texas Attorney indicating that the Operator has the legal right to develop the mineral estate that is the subject to this application. **[See § J(5)].**

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location): Open Field, Commercial

ATTACHED AS EXHIBIT D **are the most** ***Current Tax Cards from Midland Central Appraisal District,*** **which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].**

ATTACHED AS EXHIBIT E **is a** ***(map/plat/satellite/aerial photo)*** **depicting all residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The** ***(map/p lat/satellite/aerial photo)*** **includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].**

ATTACHED AS EXHIBIT F **is a copy of the notification letter(s) sent to one hundred (100%) percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].**

IV. Well & Operations Information

Proposed Well Name: Bankhead 4-33 Unit 2A #162

ATTACHED AS EXHIBIT G is **Proposed Hole Size, Casing Program and Cementing Program [See § J(11) and § L(4)]:**
ATTACHED AS EXHIBIT G is **24 hour Fracing Operations Variance**

Legal Description of Proposed Well Site:

Surface Hole Location: 1027' FSL 1207' FWL, Section 4, Block 39, T-2-S, T&P RR Co Survey, Midland County, Texas

ATTACHED AS EXHIBIT G **is the Plat and Location Site Plan [See § J(9)].**

ATTACHED AS EXHIBIT H **is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].**

ATTACHED AS EXHIBIT I **is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments** ***(also file copy of W-1 with City Secretary before commencement of drilling operations).*** **[See § J(16) and (20)].**

ATTACHED AS EXHIBIT J **is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].**

ATTACHED AS EXHIBIT K **is the location agreement letter with current Surface Owner. [See § J(27)].**

ATTACHED AS EXHIBIT L **is the Fencing and Irrigation Plan. [See § J(30)].**

ATTACHED AS EXHIBIT M **is the Road Repair Agreement and** ***Letter of Credit/Certificate of Deposit/Surety Bond*** **in the amount of at least $75,000.** ***Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable):*** **Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary $75,000** ***letter of credit/certificate of deposit/surety bond*** **in conjunction with this request. [See § J(31)].**

ATTACHED AS EXHIBIT N **is the written Concept Plan and Site Plan. [See § J(32)].**

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: Electricity TXU: 1-800-233-2133

(2) Operations: Electricity TXU: 1-800-233-2133

Description of water source to be used during Drilling: Operator will attempt to use water from the Santa Rosa Aquifer for most all drilling and completion purposes. Operator also has freshwater wells in the area, and will be utilizing a frac pond located outside of City limits.

Description of all electric lines to production facilities (reference exhibits as necessary)
ATTACHED AS EXHIBIT G. **[See § L(10)]**

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary)
ATTACHED AS EXHIBIT O. **[See § J(35)]**

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P **is the *Blanket Bond and Rider* in accordance with Subsection (K)(2). [See § J(18)].**

ATTACHED AS EXHIBIT Q **is an Affidavit indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].**

ATTACHED AS EXHIBIT R **is the required Insurance Certificate. [See § J(19) and § K(3)].**

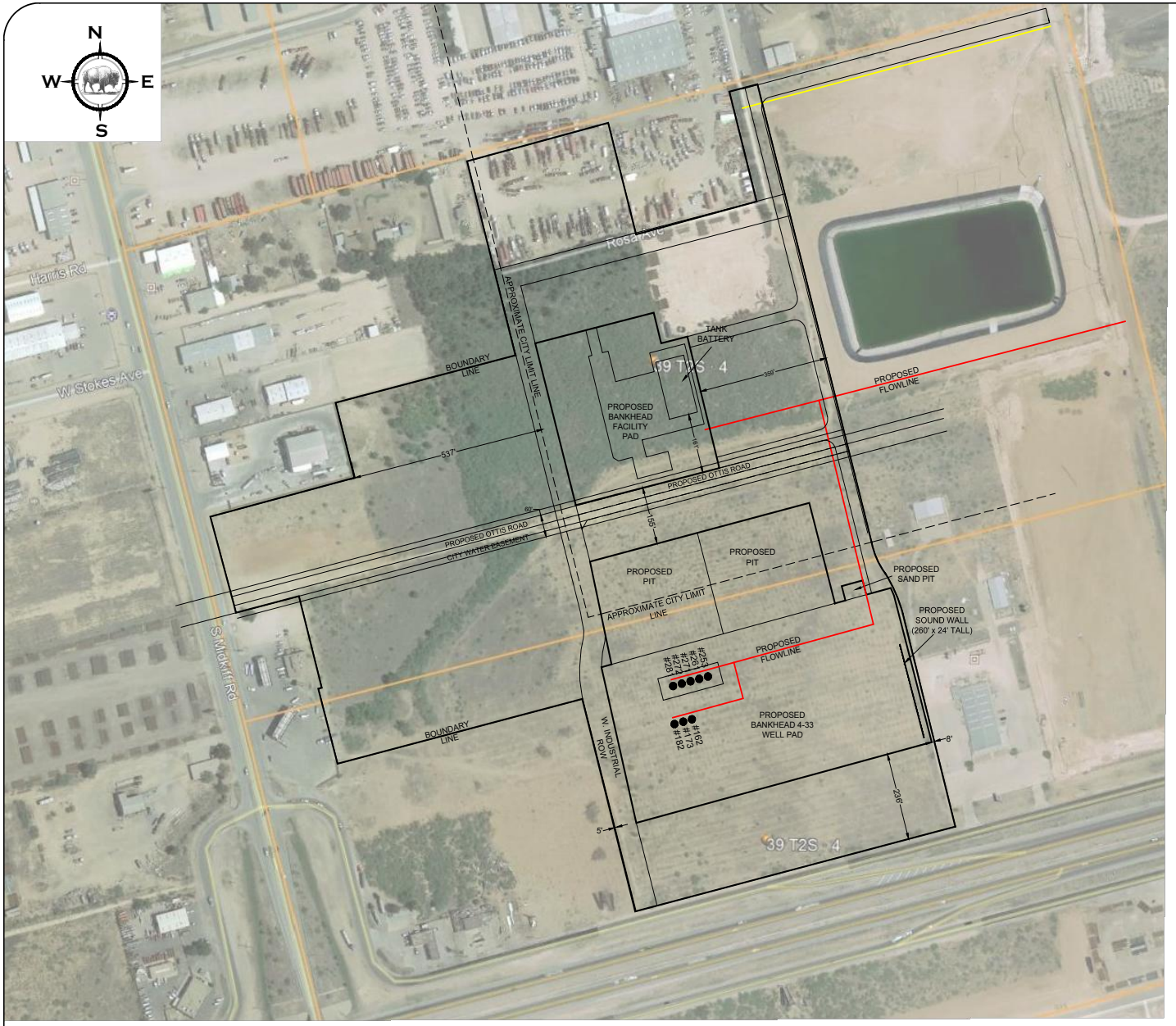
ATTACHED AS EXHIBIT S (if applicable) **is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].**

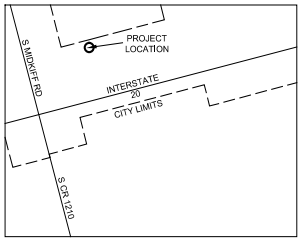
ATTACHED AS EXHIBIT T **is Applicant's Emergency Action Response Plan. [See § J(22)].**

ATTACHED AS EXHIBIT U **is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].**

ATTACHED AS EXHIBIT V **is Applicant's Summary List of Variances**

ATTACHED AS EXHIBIT W **is Acoustic Impact Study and Noise Mitigation Plan**





VICINITY MAP
NOT TO SCALE

LEGEND
- PROPOSED FLOWLINE
- PROPOSED ELECTRIC
- PROPOSED LEASE ROAD
- PROPOSED FUTURE LEASE ROAD
- PROPOSED FRESH WATER LINE

SCALE: = 1" = 200'
200 100 0 200 400
GRAPHIC SCALE

OVERALL SITE PLAN
SCALE: 1"=200'

COORDINATES		
BANKHEAD 4-33 #253 (SHL) NORTHING: 10683697.5 EASTING: 1747530.2	COORDINATES SHOWN ARE THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE NAD 83	BANKHEAD 4-33 #281 (SHL) NORTHING: 10683671.8 EASTING: 1747433.6
BANKHEAD 4-33 #261 (SHL) NORTHING: 10683691.1 EASTING: 1747506.0	BANKHEAD 4-33 #182 (SHL) NORTHING: 10683569.4 EASTING: 1747437.5	CENTER OF BANKHEAD WELL PAD NORTHING: 10683612.8 EASTING: 1747657.6
BANKHEAD 4-33 #271 (SHL) NORTHING: 10683684.7 EASTING: 1747481.9	BANKHEAD 4-33 #173 (SHL) NORTHING: 10683575.8 EASTING: 1747461.6	CENTER OF BANKHEAD FACILITY PAD NORTHING: 10684380.2 EASTING: 1747260.7
BANKHEAD 4-33 #272 (SHL) NORTHING: 10683678.2 EASTING: 1747457.7	BANKHEAD 4-33 #162 (SHL) NORTHING: 10683582.2 EASTING: 1747485.8	

STATE OF TEXAS REGISTERED JAMES P. KEENE 5100 PROFESSIONAL LAND SURVEYOR

PACKET 18.21 August 24, 2021

BISON CREEK LAND SERVICES, LLC
WWW.BISON-CREEK.COM
FIRM LICENSE NO. 10193880

COPYRIGHT 2021

OVERALL SITE PLAN
BANKHEAD
OVERALL SITE PLAN SITUATED IN THE CITY OF MIDLAND, SECTION 4, BLOCK 39, T-2-S, T & P RR CO. SURVEY, ABSTRACT NO. 1168, MIDLAND COUNTY, TEXAS.

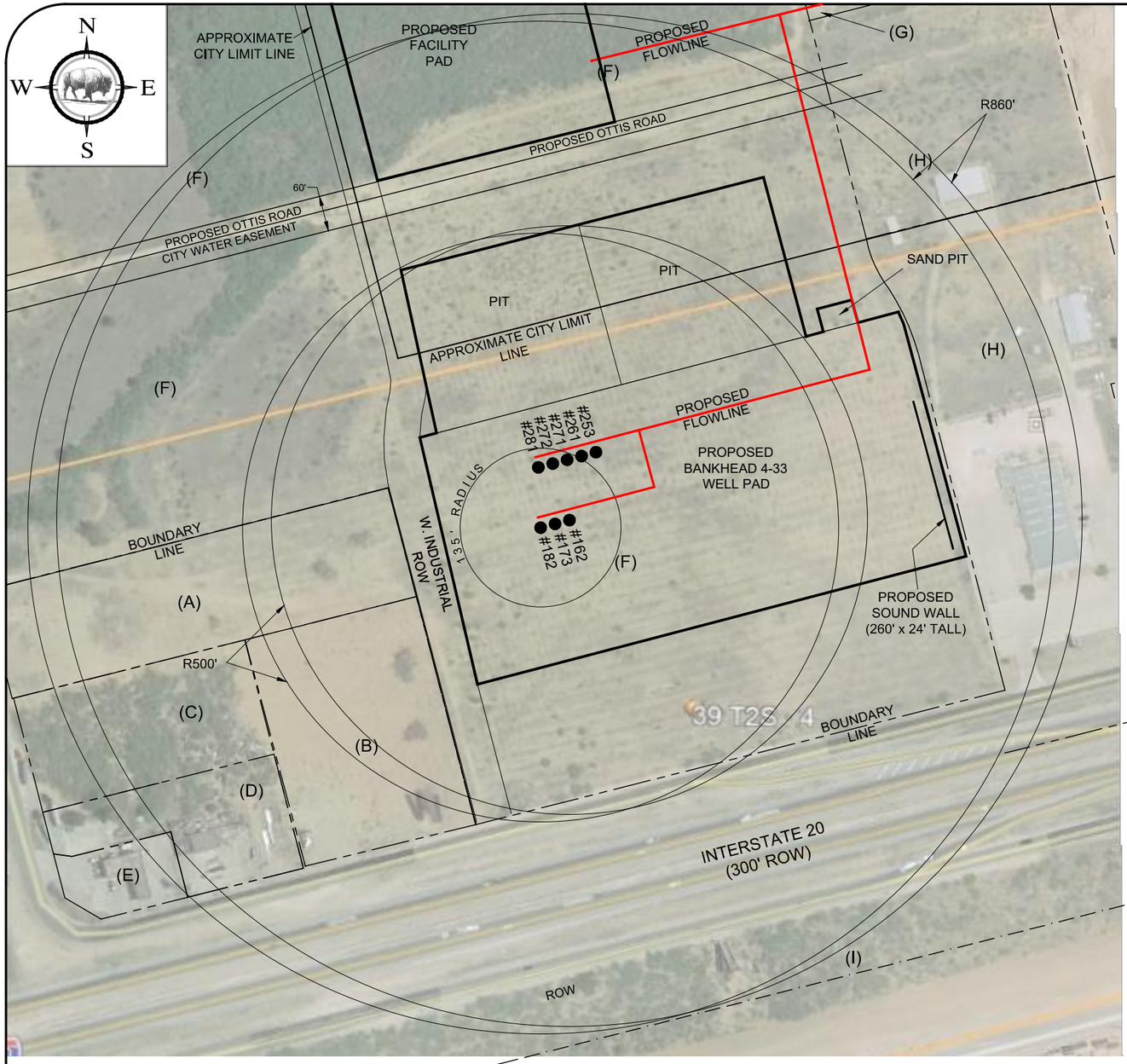
ENDEAVOR ENERGY RESOURCES, L.P.

BISON CREEK LAND SERVICES, LLC 2445 INTERSTATE 20, BLDG. 9, WILLS POINT, TEXAS 75169 PHONE: 903-873-3600 WWW.BISON-CREEK.COM

REVISED: 02/18/20 UPDATED SITE PLAN -DV

SCALE: 1" = 200'
DATE: 09/06/19
APPROVED BY: JPK
DRAWN BY: BEM
CREW: RJR
PROJECT NO.: 16-0249 OVERALL SITE PLAN

SHEET 1 OF 1



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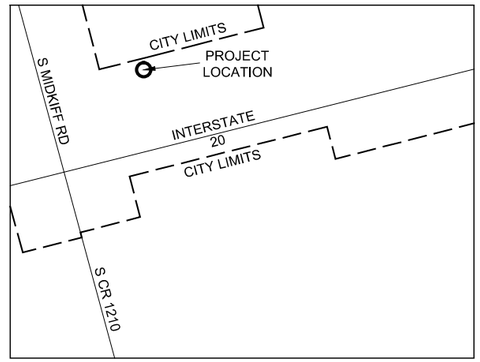

VICINITY MAP
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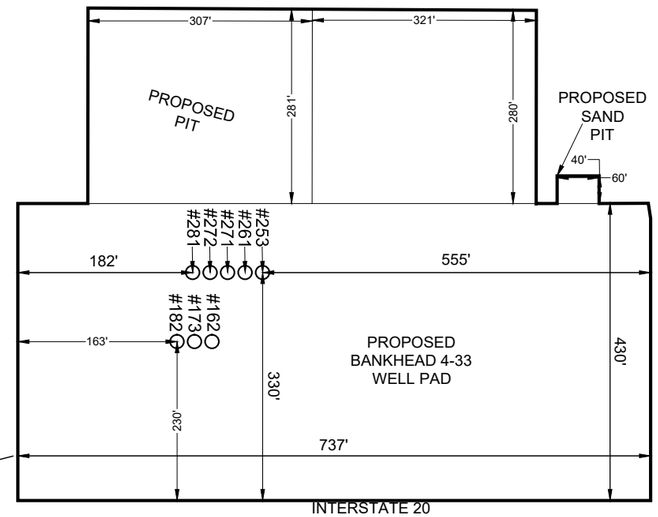

LAYOUT PLAN
1" = 200'

LEGEND
PROPOSED FLOWLINE
— E — PROPOSED ELECTRIC
PROPOSED LEASE ROAD
PROPOSED FUTURE LEASE ROAD
— W — PROPOSED FRESH WATER LINE

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COORDINATES SHOWN ARE THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE NAD 83			
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SCALE: 1" = 200'

200 100 0 200 400
GRAPHIC SCALE

STATE OF TEXAS
REGISTERED
JAMES P. KEENE
5100
PROFESSIONAL LAND SURVEYOR

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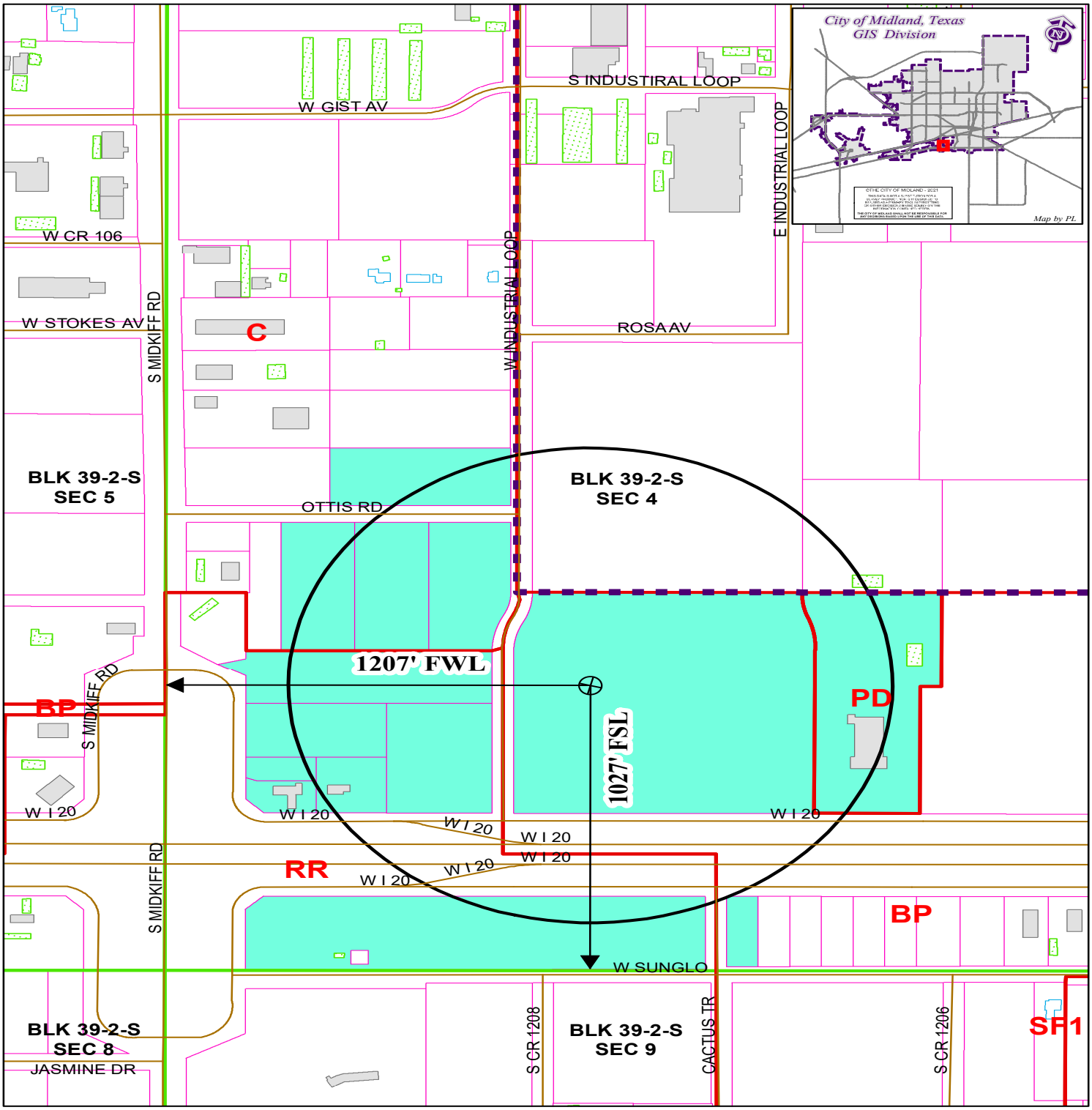
FIRM LICENSE NO. 10193880
BISON CREEK LAND SERVICES, LLC 24443 I-20, BLDG. 9, WILLS POINT,TEXAS 75169 PHONE: (903) 873 - 3600

SITE PLAN
ENDEAVOR ENERGY RESOURCES, L.P.
BANKHEAD 4-33 WELL PAD
(ROUND 2)
SITUATED IN THE
CITY OF MIDLAND, SECTION 4, BLOCK 39, T-2-S, T & P RR CO.
SURVEY, ABSTRACT NO. 1168, MIDLAND COUNTY, TEXAS.

SCALE: 1"= 200' DATE: 03/01/21
DRAWN BY: BEM
APPROVED: JPK
FIELD CREW: DC
PROJECT NO: 16-02490-BANKHEAD WELL PAD1 ROUND 2

SHEET
1
OF 1

PACKET
18.22
August 24, 2021



LOCATION AND ZONING MAP

Oil - 034484 - 2021 **Scale: 1" = 400'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 1,027' FSL and 1,207' FWL, Section 4, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 580 feet north of West I-20 Service Road and 1,207' feet east of South Midkiff Road.

Bankhead 4-33 Unit 2A #162

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

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PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	GR	GENERAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

OIL AND GAS WELL PERMIT

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The location of Operator's Bankhead 4-33 Unit 2A #162 oil and gas well shall be 1,027 feet from the south line and 1,207 feet from the west line, Section 4, Block 39, T-2-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from August 24, 2021 through August 24, 2022, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

NOTWITHSTANDING ANY OTHER PROVISION, OPERATOR HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY OF MIDLAND, CITY OF MIDLAND'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH OPERATOR HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKING CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS OR CITY OF MIDLAND'S NEGLIGENCE.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.
2. Twenty-four hour hydraulic fracturing and completion operations are permitted.
3. In order to not impede future commercial development of the surface, no landscaping or irrigation is required.
4. Use of a lined and bermed reserve pit that is 307 feet x 281 feet for drilling operations is permitted, and cuttings may be transported off-site and processed in accordance with Texas Railroad Commission regulations.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of August 2021.

CITY OF MIDLAND, TEXAS

BY: _____

Patrick N. Payton, Mayor

UNDERSTOOD AND AGREE THIS _____day of August 2021.

Endeavor Energy Resources, L.P.

By: _____

Ryan Burrow

Production Foreman

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
April 26, 2021	Endeavor Energy Resources, L.P.	110 N. Marienfeld, Suite 200 Midland, TX 79701

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432)-556-0588
Alex Bedford, Reservoir Engineer	110 N. Marienfeld, Suite 200 Midland, TX 79701	Rep. Fax (432)-682-3088
Fee: $4,000.00 Rec'd Yes X No___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4

Permit Compliance Contact (Choose 1): Option B

Option B: Ryan Burrow
1700 ECR 115
Midland, Texas 79706
Office: (432) 262-4271
Cell: (432) 813-3060

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):***

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):
Ryan Burrow, Production Foreman for Endeavor Energy Resources, L.P.: Cell: 432-813-3060
Endeavor Energy Resources, L.P. -**24-Hour Emergency Hotline- 432-570-0186**
Midland Police Department: 911 or 432-685-7110
Midland Fire Department: 911
Ambulance: 911
Paramedics: 911

Other Permitted Wells in City ***(ATTACHED AS EXHIBIT B*** **[see § J(26)]).**

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): ***ATTACHED AS EXHIBIT C***

ATTACHED AS EXHIBIT C –is a letter from a licensed Texas Attorney indicating that the Operator has the legal right to develop the mineral estate that is the subject to this application. **[See § J(5)].**

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location): Open Field, Commercial

ATTACHED AS EXHIBIT D **are the most** ***Current Tax Cards from Midland Central Appraisal District,*** **which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].**

ATTACHED AS EXHIBIT E **is a** ***(map/plat/satellite/aerial photo)*** **depicting all residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The** ***(map/p lat/satellite/aerial photo)*** **includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].**

ATTACHED AS EXHIBIT F **is a copy of the notification letter(s) sent to one hundred (100%) percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].**

IV. Well & Operations Information

Proposed Well Name: Bankhead 4-33 Unit 2A #173

ATTACHED AS EXHIBIT G is **Proposed Hole Size, Casing Program and Cementing Program [See § J(11) and § L(4)]:**
ATTACHED AS EXHIBIT G is **24 hour Fracing Operations Variance**

Legal Description of Proposed Well Site:

Surface Hole Location: 1027' FSL 1182' FWL, Section 4, Block 39, T-2-S, T&P RR Co Survey, Midland County, Texas

ATTACHED AS EXHIBIT G **is the Plat and Location Site Plan [See § J(9)].**

ATTACHED AS EXHIBIT H **is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].**

ATTACHED AS EXHIBIT I **is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments** ***(also file copy of W-1 with City Secretary before commencement of drilling operations).*** **[See § J(16) and (20)].**

ATTACHED AS EXHIBIT J **is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].**

ATTACHED AS EXHIBIT K **is the location agreement letter with current Surface Owner. [See § J(27)].**

ATTACHED AS EXHIBIT L **is the Fencing and Irrigation Plan. [See § J(30)].**

ATTACHED AS EXHIBIT M **is the Road Repair Agreement and** ***Letter of Credit/Certificate of Deposit/Surety Bond*** **in the amount of at least $75,000.** ***Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable):*** **Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary $75,000** ***letter of credit/certificate of deposit/surety bond*** **in conjunction with this request. [See § J(31)].**

ATTACHED AS EXHIBIT N **is the written Concept Plan and Site Plan. [See § J(32)].**

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: Electricity TXU: 1-800-233-2133

(2) Operations: Electricity TXU: 1-800-233-2133

Description of water source to be used during Drilling: Operator will attempt to use water from the Santa Rosa Aquifer for most all drilling and completion purposes. Operator also has freshwater wells in the area, and will be utilizing a frac pond located outside of City limits.

Description of all electric lines to production facilities (reference exhibits as necessary)
ATTACHED AS EXHIBIT G. **[See § L(10)]**

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary)
ATTACHED AS EXHIBIT O. **[See § J(35)]**

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P **is the *Blanket Bond and Rider* in accordance with Subsection (K)(2). [See § J(18)].**

ATTACHED AS EXHIBIT Q **is an Affidavit indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].**

ATTACHED AS EXHIBIT R **is the required Insurance Certificate. [See § J(19) and § K(3)].**

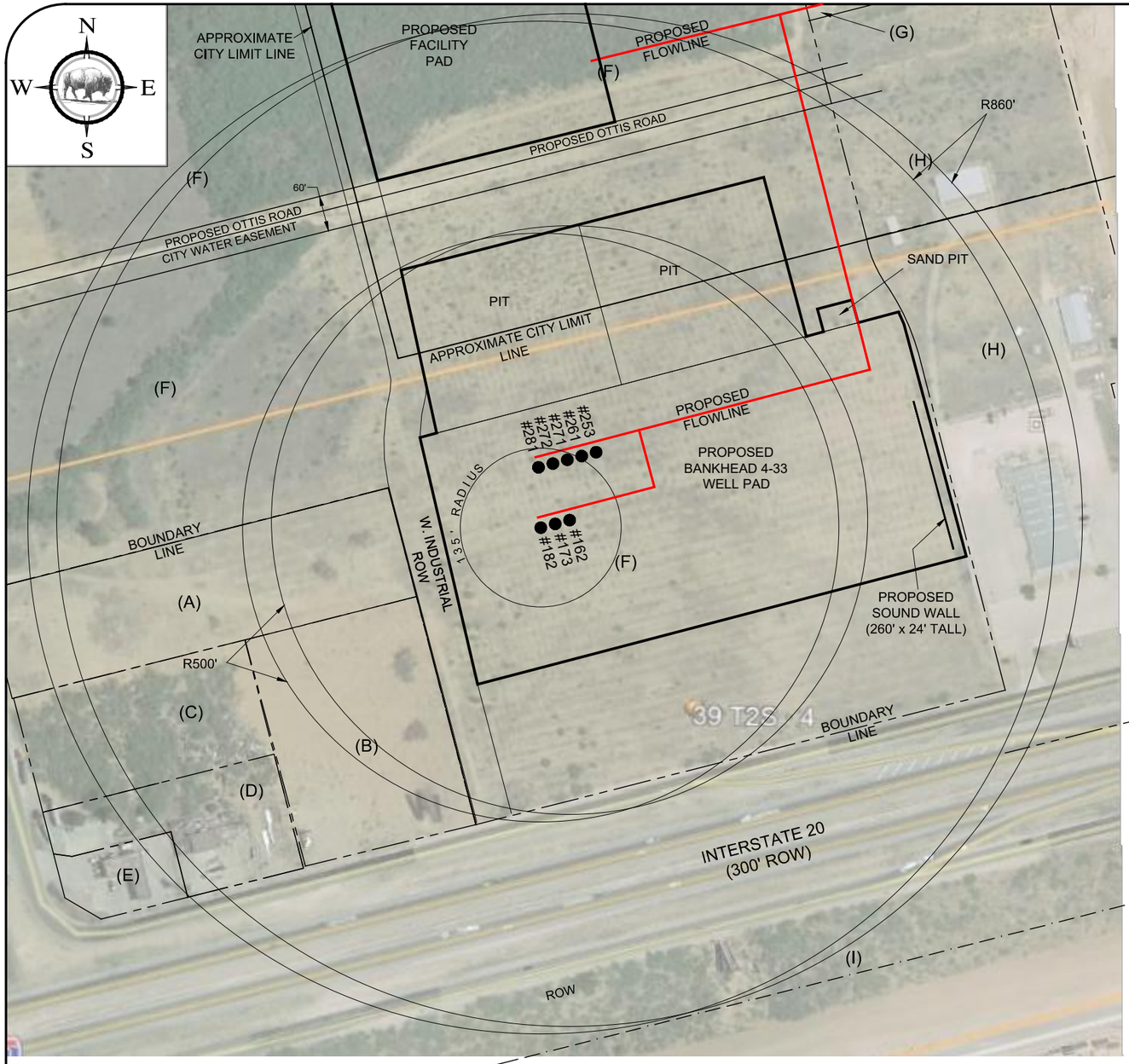
ATTACHED AS EXHIBIT S (if applicable) **is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].**

ATTACHED AS EXHIBIT T **is Applicant's Emergency Action Response Plan. [See § J(22)].**

ATTACHED AS EXHIBIT U **is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].**

ATTACHED AS EXHIBIT V **is Applicant's Summary List of Variances**

ATTACHED AS EXHIBIT W **is Acoustic Impact Study and Noise Mitigation Plan**



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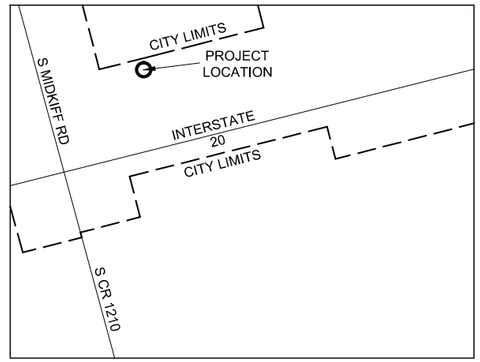

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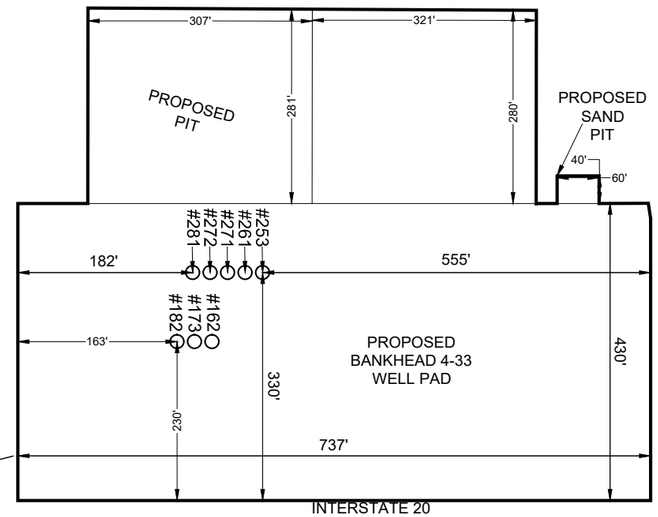

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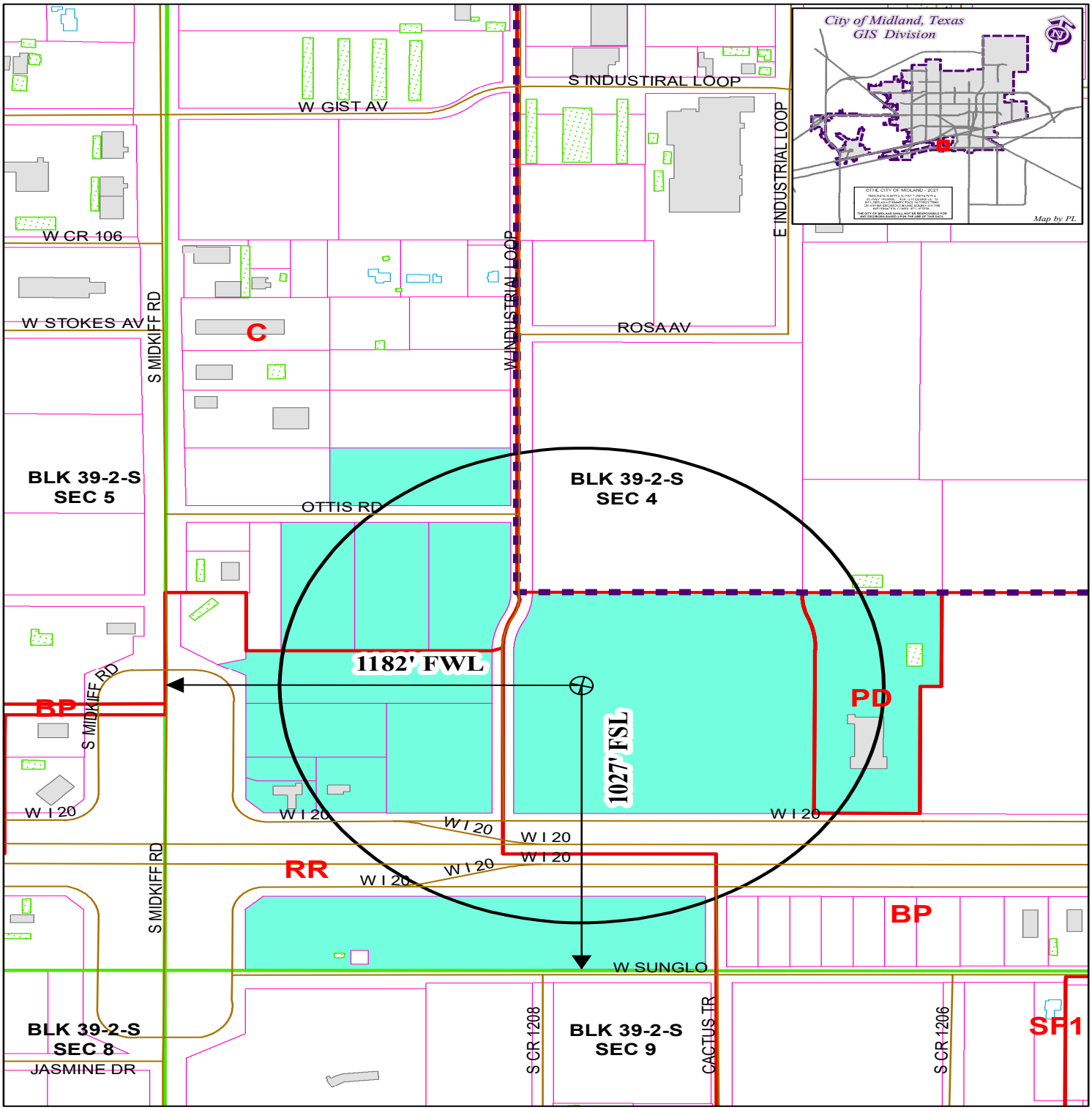

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Bankhead 4-33 Unit 2A #173

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This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

NOTWITHSTANDING ANY OTHER PROVISION, OPERATOR HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY OF MIDLAND, CITY OF MIDLAND'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH OPERATOR HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKING CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS OR CITY OF MIDLAND'S NEGLIGENCE.

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. In lieu of constructing a perimeter fence around this permitted well, a perimeter fence around the well pad site may be constructed. Said perimeter fence around the well pad site shall, at a minimum, meet the requirements of Ordinance No. 8769.
2. Twenty-four hour hydraulic fracturing and completion operations are permitted.
3. In order to not impede future commercial development of the surface, no landscaping or irrigation is required.
4. Use of a lined and bermed reserve pit that is 307 feet x 281 feet for drilling operations is permitted, and cuttings may be transported off-site and processed in accordance with Texas Railroad Commission regulations.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of August 2021.

CITY OF MIDLAND, TEXAS

BY: _____

Patrick N. Payton, Mayor

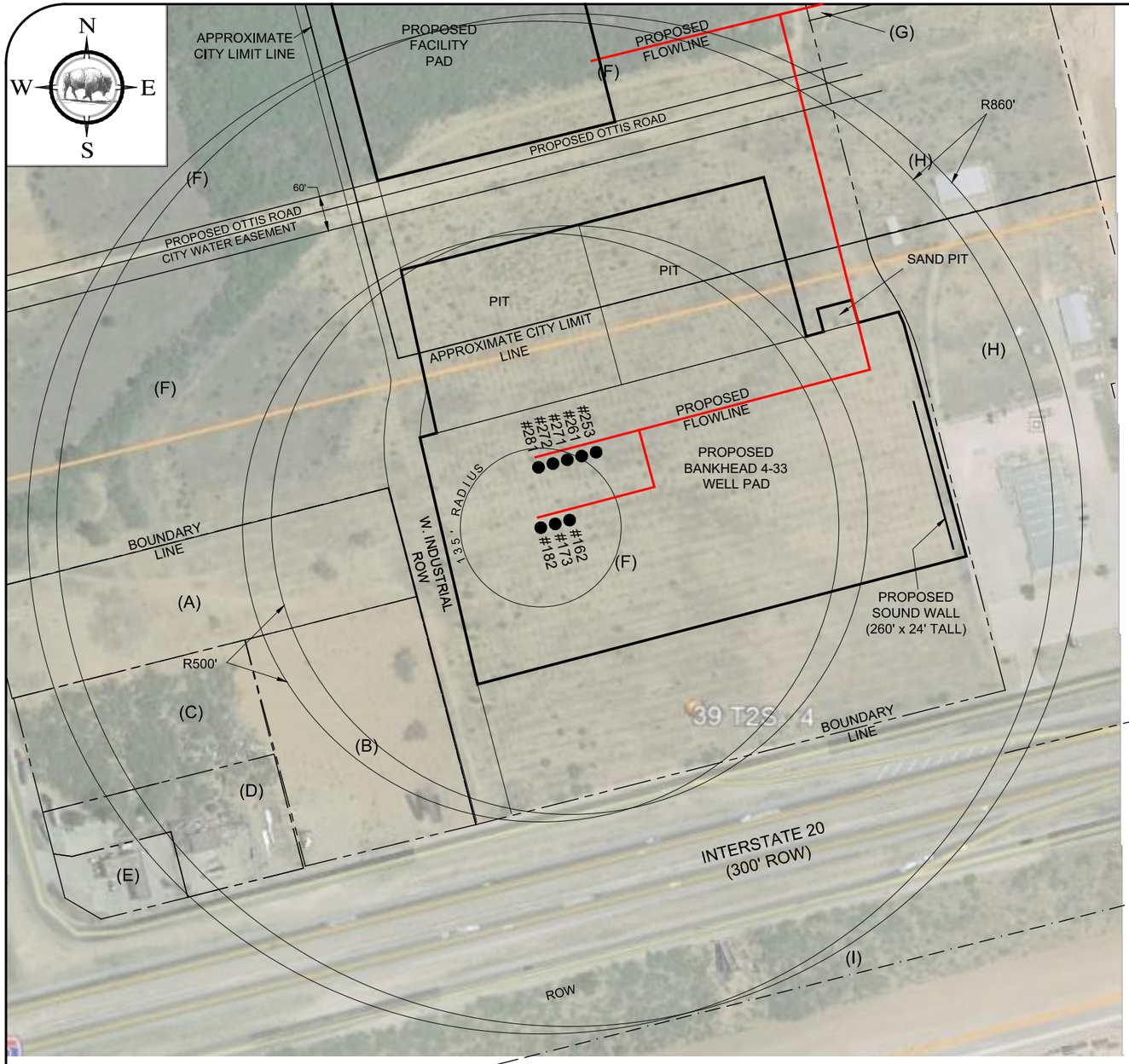
UNDERSTOOD AND AGREE THIS _____day of August 2021.

Endeavor Energy Resources, L.P.

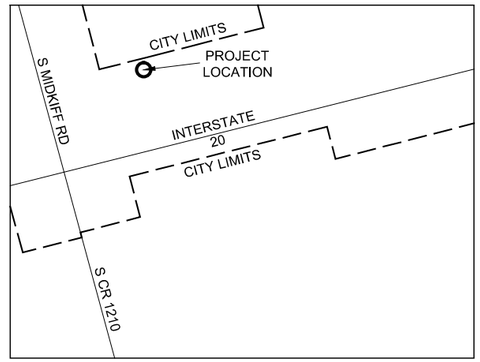
By: _____

Ryan Burrow

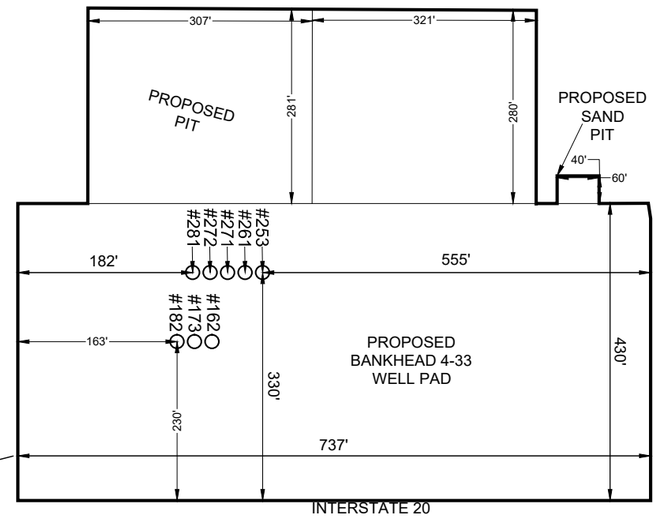
Production Foreman



TRACT & LOT NAMES & ADDRESSES
(A) Thomas H. Moore, 1309 Upland St., Midland, TX 79703, Doc. #2017-16450
(B) Thomas H. Moore, 1309 Upland St., Midland, TX 79703, Doc. #2017-23058
(C) John E. Johnson, 16120 N. Western Ave., Gardendale, TX 79758-4006, Vol 1402, Pg. 319
(D) Twelve Hands High, LLC, P.O. Box 2087, Fredricksburg, TX 78624, Doc. #2019-3017
(E) Twelve Hands High, LLC, P.O. Box 2087, Fredricksburg, TX 78624, Doc. #2019-3016
(F) Western T Corporation, P.O. Box, 10512, Midland, TX 79702, Vol. 2659, Pg. 52 and Endeavor Energy Resources LP, 110 N. Marienfield, Ste. 200, Midland, TX 79701-4412, Doc. #2018-2369
(G) Endeavor Energy Resources LP, 110 N. Marienfield, Ste. 200, Midland, TX 79701-4412, Doc. #2018-2369
(H) Towbots LLC, 2600 Mockingbird Ln, Midland, TX 79705, Doc. #2016-32923
(I) Perry L. Riggs, 2222 Quarterpath Dr., Richmond, TX 77469-6630, Col. 745, Pg. 139



VICINITY MAP
NOT TO SCALE



LAYOUT PLAN
1" = 200'

LEGEND
PROPOSED FLOWLINE
E PROPOSED ELECTRIC
PROPOSED LEASE ROAD
PROPOSED FUTURE LEASE ROAD
W PROPOSED FRESH WATER LINE

COORDINATES			
COORDINATES SHOWN ARE THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE NAD 83			
BANKHEAD 4-33 #182 (SHL) NORTHING: 10683569.4 EASTING: 1747437.5	BANKHEAD 4-33 #173 (SHL) NORTHING: 10683575.8 EASTING: 1747461.6	BANKHEAD 4-33 #162 (SHL) NORTHING: 10683582.2 EASTING: 1747485.8	CENTER OF BANKHEAD WELL PAD NORTHING: 10683620.8 EASTING: 1747689.4

SITE PLAN
1" = 200'
SCALE: 1" = 200'

200 100 0 200 400
GRAPHIC SCALE

STATE OF TEXAS
REGISTERED
JAMES P. KEENE
5100
PROFESSIONAL LAND SURVEYOR

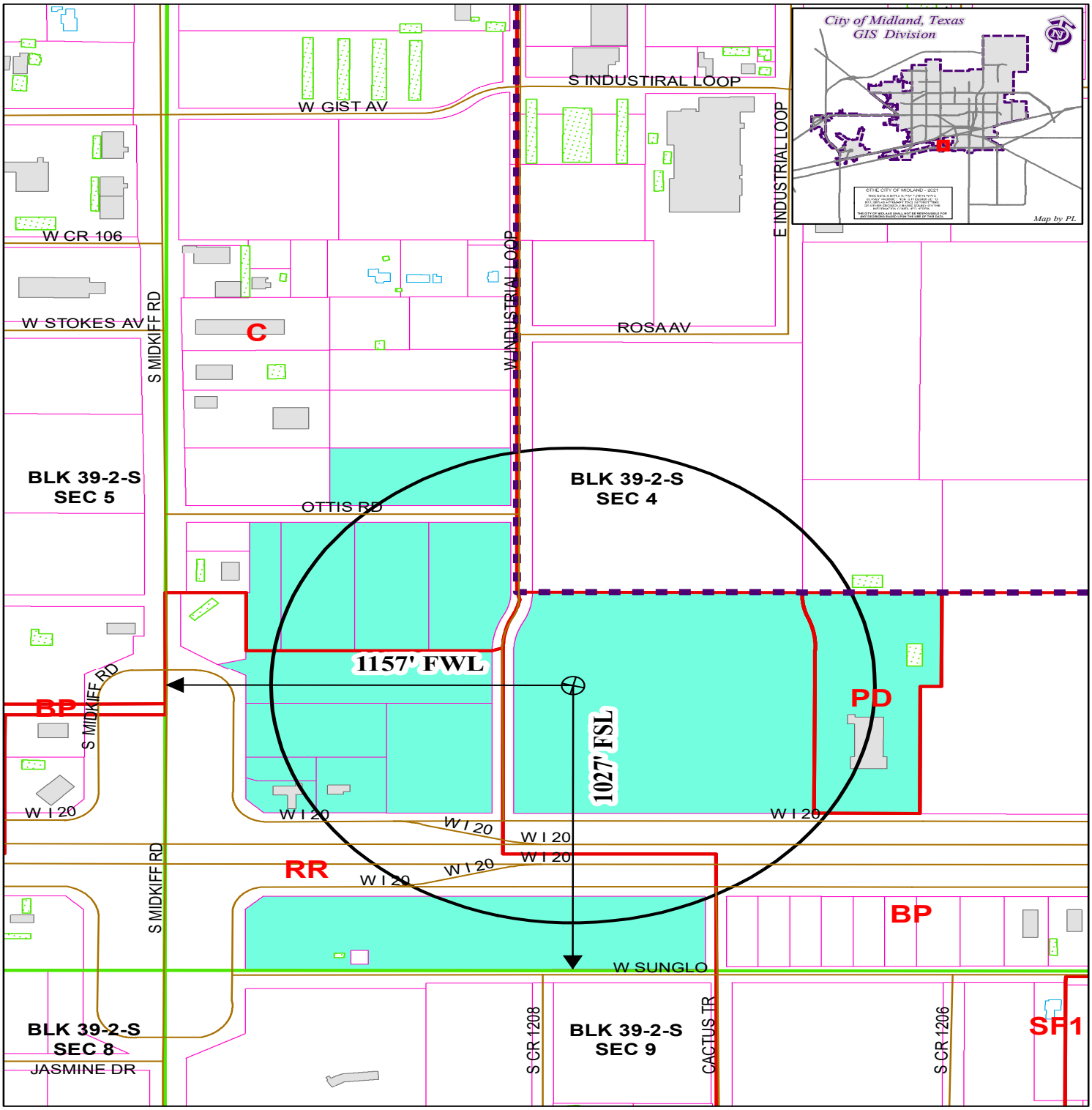
BISON CREEK
LAND SERVICES, LLC
WWW.BISON-CREEK.COM
COPYRIGHT 2021
FIRM LICENSE NO. 10193880
BISON CREEK LAND SERVICES, LLC 24443 I-20, BLDG. 9, WILLS POINT,TEXAS 75169 PHONE: (903) 873 - 3600

SITE PLAN
ENDEAVOR ENERGY RESOURCES, L.P.
BANKHEAD 4-33 WELL PAD
(ROUND 2)
SITUATED IN THE
CITY OF MIDLAND, SECTION 4, BLOCK 39, T-2-S, T & P RR CO. SURVEY, ABSTRACT NO. 1168, MIDLAND COUNTY, TEXAS.

SCALE: 1"= 200' DATE: 03/01/21
DRAWN BY: BEM
APPROVED: JPK
FIELD CREW: DC
PROJECT NO: 16-02490-BANKHEAD WELL PAD1 ROUND 2

SHEET
1
OF 1

PACKET
18.37
August 24, 2021



LOCATION AND ZONING MAP

Oil - 034483 - 2021 **Scale: 1" = 400'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 1,027' FSL and 1,157' FWL, Section 4, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 580 feet north of West I-20 Service Road and 1,157 feet east of South Midkiff Road.

Bankhead 4-33 Unit 2A #182

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	GR	GENERAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
April 26, 2021	Endeavor Energy Resources, L.P.	110 N. Marienfeld, Suite 200 Midland, TX 79701

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432)-556-0588
Alex Bedford, Reservoir Engineer	110 N. Marienfeld, Suite 200 Midland, TX 79701	Rep. Fax (432)-682-3088
Fee: $4,000.00 Rec'd Yes X No___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4

Permit Compliance Contact (Choose 1): Option B

Option B: Ryan Burrow
1700 ECR 115
Midland, Texas 79706
Office: (432) 262-4271
Cell: (432) 813-3060

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):***

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):
Ryan Burrow, Production Foreman for Endeavor Energy Resources, L.P.: Cell: 432-813-3060
Endeavor Energy Resources, L.P. -**24-Hour Emergency Hotline- 432-570-0186**
Midland Police Department: 911 or 432-685-7110
Midland Fire Department: 911
Ambulance: 911
Paramedics: 911

Other Permitted Wells in City ***(ATTACHED AS EXHIBIT B*** **[see § J(26)]).**

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): ***ATTACHED AS EXHIBIT C***

ATTACHED AS EXHIBIT C –is a letter from a licensed Texas Attorney indicating that the Operator has the legal right to develop the mineral estate that is the subject to this application. **[See § J(5)].**

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location): Open Field, Commercial

ATTACHED AS EXHIBIT D **are the most** ***Current Tax Cards from Midland Central Appraisal District,*** **which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].**

ATTACHED AS EXHIBIT E **is a** ***(map/plat/satellite/aerial photo)*** **depicting all residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The** ***(map/p lat/satellite/aerial photo)*** **includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].**

ATTACHED AS EXHIBIT F **is a copy of the notification letter(s) sent to one hundred (100%) percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].**

IV. Well & Operations Information

Proposed Well Name: Bankhead 4-33 Unit 2A #182

ATTACHED AS EXHIBIT G is **Proposed Hole Size, Casing Program and Cementing Program [See § J(11) and § L(4)]:**
ATTACHED AS EXHIBIT G is **24 hour Fracing Operations Variance**

Legal Description of Proposed Well Site:

Surface Hole Location: 1027' FSL 1157' FWL, Section 4, Block 39, T-2-S, T&P RR Co Survey, Midland County, Texas

ATTACHED AS EXHIBIT G **is the Plat and Location Site Plan [See § J(9)].**

ATTACHED AS EXHIBIT H **is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].**

ATTACHED AS EXHIBIT I **is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments** ***(also file copy of W-1 with City Secretary before commencement of drilling operations).*** **[See § J(16) and (20)].**

ATTACHED AS EXHIBIT J **is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].**

ATTACHED AS EXHIBIT K **is the location agreement letter with current Surface Owner. [See § J(27)].**

ATTACHED AS EXHIBIT L **is the Fencing and Irrigation Plan. [See § J(30)].**

ATTACHED AS EXHIBIT M **is the Road Repair Agreement and** ***Letter of Credit/Certificate of Deposit/Surety Bond*** **in the amount of at least $75,000.** ***Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable):*** **Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary $75,000** ***letter of credit/certificate of deposit/surety bond*** **in conjunction with this request. [See § J(31)].**

ATTACHED AS EXHIBIT N **is the written Concept Plan and Site Plan. [See § J(32)].**

Description of Public Utilities required during (1) drilling and (2) operations:

(1) **Drilling:** Electricity TXU: 1-800-233-2133

(2) **Operations:** Electricity TXU: 1-800-233-2133

Description of water source to be used during Drilling: Operator will attempt to use water from the Santa Rosa Aquifer for most all drilling and completion purposes. Operator also has freshwater wells in the area, and will be utilizing a frac pond located outside of City limits.

Description of all electric lines to production facilities (reference exhibits as necessary)
ATTACHED AS EXHIBIT G. **[See § L(10)]**

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary)
ATTACHED AS EXHIBIT O. **[See § J(35)]**

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Blanket Bond and Rider* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q is an Affidavit indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

ATTACHED AS EXHIBIT V is Applicant's Summary List of Variances

ATTACHED AS EXHIBIT W is Acoustic Impact Study and Noise Mitigation Plan

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on August 24, 2021, considered the application of Endeavor Energy Resources, L.P. ("Operator") dated April 26, 2021, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's Bankhead 4-33 Unit 2A #182 oil and gas well shall be 1,027 feet from the south line and 1,157 feet from the west line, Section 4, Block 39, T-2-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from August 24, 2021 through August 24, 2022, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

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A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

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GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of August 2021.

CITY OF MIDLAND, TEXAS

BY: _____

Patrick N. Payton, Mayor

UNDERSTOOD AND AGREE THIS _____day of August 2021.

Endeavor Energy Resources, L.P.

By: _____

Ryan Burrow

Production Foreman

City Council Meeting

Item Number: 19

Meeting Date: August 24, 2021

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: Motion authorizing the execution of a Right-of-Way License (21-329-031) with Centurion Pipeline L.P., regarding city-owned property described as Section 9, Block 39, Township 2 South, T&P RR Co. Survey, Midland County, Texas (DISTRICT 2) (UTILITIES)

Purpose:

This motion will provide a right of way to bore 60' in this location and place a common carrier crude oil pipeline under City of Midland owned Kerry Road / South County Road 1206. Both bore pits will be on private property and the pipeline will be cased.

This Right-of-Way License is proposed for a single five (5) year period with the option for a single five (5) year renewal. Terms are consistent with the City's standard license for pipeline facilities of this nature.

Recommended City Council Action:

Approve

Fiscal Impact:

Application fee (one time): $1,000

Annual Lease Rate,

Annual Lease Rate (3.75 rods x $20/rod): $75.00 / $400.00 minimum per year

Surface Damages: none

Total Collected: $1,400.00

Discussion:

This is a common carrier, carbon steel constructed 8.625” DR-11 crude oil pipeline running East – West, bored under the road and required to be cased for the duration of the crossing and buried at a minimum depth of eight (8) feet. Right of Way width will be 10’.

Certificates of Insurance are on file

City Secretary to record all documents

Robert Patrick

City Manager’s Office

RIGHT OF WAY LICENSE

THE STATE OF TEXAS	§	
	§	KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND	§	

Date:	August 25, 2021
Licensor:	CITY OF MIDLAND, TEXAS, a home-rule municipal corporation
Licensor's Representative:	Robert Patrick, City Manager
Licensor's Mailing Address:	P.O. Box 1152 Midland, Texas 79702
Licensee:	Centurion Pipeline L.P.
Licensee's Representative:	**Christopher Cantrell**
Licensee's Mailing Address:	3600 W. Sam Houston Parkway South, Suite 500 Houston, Texas 77042
Property:	See **Exhibit A** attached hereto and incorporated herein for all purposes.

Licensee desires use of property owned by Licensor in Midland County, Texas (the "Property"), for purposes set forth below. Licensee acknowledges and agrees that it must obtain a license (the "License") in order to use the public lands of Licensor.

W I T N E S S E T H:

For and in consideration of the execution of this License and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

I. Term

A. Initial Term. This License shall be for a term of five (5) years (the "Initial Term"), commencing with the date of this License (the "Commencement Date") unless terminated earlier as provided hereafter.

B. Renewal Term. This License shall automatically renew at the end of the Initial Term for one (1) additional term of five (5) years, upon the written request of Licensee received by Licensor on or before one hundred twenty (120) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of Licensor.

C. Termination. Licensor may terminate this License if Licensee fails to pay, when due, any amount owing under this License and that failure continues for sixty (60) days or, if Licensee

commits any material breach or material default in performance of any obligation, prohibition, restriction, provision or covenant contained in this License, and the breach or default continues for a period of thirty (30) days after Licensor delivers notice to Licensee reasonably detailing the breach or default.

Additionally, Licensor may terminate this License at will for any or no reason upon giving at least three hundred sixty-five (365) days' written notice to Licensee. The parties to this License understand and agree that it is in Licensor's sole discretion to cancel the License during the term of the License without penalty to Licensor. Licensee has no expectation and has received no guarantees that this License will not be terminated before the end of the License term. The parties have bargained for the flexibility of terminating this License upon tender of the requisite notice at any time during the term of the License. All work and services under the License shall be suspended upon termination of the License becoming effective.

Upon termination of this License, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of Licensee to its original condition, as close thereto as may be practical, subject to the approval of Licensor upon inspection by Licensor's Representative, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this License.

II. Financial Consideration

A. License Fee. The first year's license fee in the amount of FOUR HUNDRED and No/100 Dollars ($400.00) shall be due and payable on or prior to the Commencement Date of this License ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay Licensor a late charge of five percent (5%).

B. Surface Damage Fee. Intentionally omitted.

C. Annual Fee. Licensee shall pay to Licensor an annual fee in the amount of FOUR HUNDRED and No/100 Dollars ($400.00), which shall be payable each year on or before the anniversary of the Commencement Date of this License.

D. Application Fee. At the same time the first year License Fee is due, Licensee shall pay a non-refundable one-time fee of ONE THOUSAND and No/100 Dollars ($1,000.00) to Licensor's Representative. Said fee shall revert to Licensor and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

E. Fee Adjustment. Prior to commencement of any renewal term, Licensor and Licensee shall negotiate in good faith to agree to an adjustment of the Annual Fee. If Licensor and Licensee are unable to reach an agreement regarding an adjustment to the Annual Fee, then the Annual Fee shall be determined by Licensor in its sole discretion, provided the new Annual Fee shall not exceed twenty-five percent (25%) of the Annual Fee paid for the last year of the Initial Term.

F. Delivery of Payment. The License Fee payment shall be made to Licensor at the office of

Licensor's Representative, Attn: Right of Way Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon the Property, being ten (10) feet in width of the pipeline location as shown on **Exhibit A** attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, a carbon steel pipeline, not to exceed eight and six hundred twenty-five thousandths (8.625) inches in diameter, for the transportation of crude oil, to have the right of ingress and egress at convenient points for such purpose. **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein. The parties agree Licensee's failure to provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein may result in the termination of this License. The decision to accept a complete as-built survey after the sixty-day deadline prescribed herein, or, conversely, to terminate this License shall be in the sole and absolute discretion of Licensor.**

B. Road Repair. Licensee covenants and agrees that it will repair any of Licensor's roads that Licensee damages on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

C. Utility Repair. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by Licensor that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of Licensor's Standard Specifications.

D. Depth. Licensee covenants and agrees that it will bury the pipeline(s) to be constructed hereunder no less than eight (8) feet in depth. All backfill used in burying such line shall be compacted to a density of ninety percent (90%), except where such pipeline(s) crosses under a paved or traveled portion of City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). Licensor shall be afforded the opportunity to test the density on all backfill. Notwithstanding any provision to the contrary contained herein, Licensee covenants and agrees that, at any point that Licensee's pipeline(s) intersects with a City of Midland utility line location, the pipeline(s) shall be bored at a depth of a least (i) nine (9) feet under all City of Midland water utility lines and (ii) two (2) feet under all City of Midland sewer utility lines. Licensee agrees that it shall comply with 30 Tex. Admin. Code § 290.44(e), as amended, to the extent applicable to this License.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by Licensor's Representative.

F. Reservation of Rights. Licensor expressly reserves the right to install, repair, or reconstruct streets or roads and all ancillary public uses usual and customary in connection with streets and

roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of Licensor, in, on, across, along, over, under, and through any property occupied by Licensee. In permitting such work to be done, Licensor shall not be liable to Licensee for any damage so caused to Licensee's system or property, **NOR SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY DAMAGES TO LICENSEE'S PIPELINE(S), CASING, OR COMPRESSOR STATION, ARISING OUT OF THE NEGLIGENCE BY LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS**. If Licensor requires Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

G. Non-exclusive. Licensor expressly reserves the full right to grant other easements or rights of way crossing or running parallel with the rights of way used by Licensee.

H. Abandonment. It is especially provided, however, that as an express condition of this License, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the Property ceases to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty (120) days' written notice, then and in that event, this License shall automatically revert to Licensor, its successors or assigns, free and clear of any right, title, or interest in Licensee, or any re-entry by Licensor.

I. Approval of Specifications. In the event Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to Licensor's Representative for his or her approval. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative before making any repairs if during a Licensor work day. If not on a work day, Licensee shall notify Licensor's Representative on the first work day after repairs have begun.

J. Gates and Fences. Licensee agrees to use existing gates and roadways where available, to enter, leave and cross the Property; provided that Licensee shall not use any road marked "Closed." Licensee and all persons entering or leaving the Property in connection with Licensee's operations hereunder shall keep all outside and interior gates securely closed except during operations related to this License. Licensee shall keep all outside gates, and all other gates designated by Licensor, securely locked except during operations related to this License. At any gate that is to be locked,

Licensor may install its own lock in addition to Licensee's lock.

Licensee agrees that Licensee shall not cut or go over any fence at any time or in connection with any operations on the Property without first obtaining Licensor's express consent thereto in writing. All gates or openings in fences shall be at mutually agreeable location(s) between Licensee and Licensor and shall be constructed as reasonably required by Licensor. Upon the termination of this License, at Licensor's election, gates in fences shall be left in place and shall thereafter be owned by Licensor or Licensee shall remove such gates and restore the fence to its original condition as nearly as reasonably practicable. The terms, provisions and requirements of this provision shall survive the termination or expiration of this License.

K. Trash. Licensee shall keep the Property free of trash and debris at all times. Under no circumstances, will Licensee be allowed to bury any trash, debris or foreign material of any kind on or under the Property. Licensor shall have the right to expel and permanently ban from the Property any person observed disposing of trash on the Property. Upon the completion of any operations, all ribbons, flags, stakes and similar items shall by promptly removed from the Property.

L. Hunting, Fishing and Alcohol Prohibited. No agent, employee, representative, contractor or subcontractor of Licensee or any other person allowed to enter the Property by Licensee shall be permitted to hunt, fish, trap, camp, picnic, ride motorcycles or four-wheelers or otherwise conduct any social gathering on the Property, nor shall any such persons be permitted to bring firearms, archery equipment, dogs, alcoholic beverages or illegal drugs on the Property at any time. Violations of this provision shall cause the violator to be regarded as a trespasser and subject to prosecution under trespass laws of the State of Texas. Licensor shall have the right to expel and permanently ban from the Property any person observed on the Property in violation of this provision.

M. Storage of Machinery and Equipment. Licensee shall use no part of the Property to store machinery, equipment, or other property of Licensee while it is not being used.

N. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace above the land covered by this License for any purpose allowed by law and deemed necessary by Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by Licensor in, on, across, along, over, under, and through said right of way occupied by Licensee. In the event of such work in connection with said purposes it shall be deemed necessary by Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline, property, or casing of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable federal or state laws with respect to relocation payments.

IV. Standard General Conditions

A. Insurance. Licensee shall at all times during the term of this License maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):	
■ Personal Injury:	$1,000,000.00 per person $1,000,000.00 per occurrence
■ Property Damage:	$100,000.00 per occurrence
Business Automobile Liability:	$1,000,000.00 combined single limit-- Personal Injury and Property Damage
Workers' Compensation:	Statutory limits
Employers' Liability:	$1,000,000.00 per accident or occurrence
Umbrella Liability:	$10,000,000.00 each occurrence $10,000,000.00 aggregate

The Commercial General Liability shall be on an occurrence basis. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The Workers' Compensation coverage provided by Licensee shall inure to the benefit of employees injured during the course and scope of their employment by Licensee pursuant to this License. The Workers' Compensation insurance shall waive all rights of subrogation against Licensor.

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this License. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The parties agree that, prior to the execution of the License, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

Licensor shall be provided the notice by Licensee's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Licensor shall not be required to provide any insurance whatsoever pursuant to this License.

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this License to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured. Licensee certifies that the one or more

certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Licensee shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Licensee.

B. Indemnity. LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S),CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE AGREES THAT LICENSEE SHALL INDEMNIFY AND SAVE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION DESCRIBED HEREIN.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSOR, LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY

CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S),CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, AND ALL COSTS AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF FAILURE OF LICENSEE, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER TO COMPLY WITH ALL APPLICABLE LOCAL, FEDERAL AND/OR STATE ENVIRONMENTAL LAWS, INCLUDING BUT NOT LIMITED TO THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) (AS THEY MAY BE REAUTHORIZED AND/OR AMENDED) AND ALL OTHER LOCAL, FEDERAL AND STATE LAWS, IN CONNECTION WITH OR RELATED TO ANY OF LICENSEE'S OPERATIONS OR ACTIVITIES ON THE PROPERTY, OR ANY OF LICENSEE'S HANDLING, STORING, RELEASING, TRANSPORTING OR DISPOSING OF ALL SUBSTANCES, INCLUDING, BUT NOT LIMITED TO HAZARDOUS SUBSTANCES AND HAZARDOUS WASTES, ON OR FROM THE PROPERTY OR ANY OTHER LANDS OF LICENSOR.

C. Assignment. The rights granted by this License inure to the benefit of Licensee. The rights and privileges shall not be assignable by Licensee without the express written consent of Licensor's City Manager. Any required consent is to be evidenced by a letter written by Licensor's City Manager that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor's City Manager.

D. Independent Contractor. It is expressly understood and agreed that Licensee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of Licensor; that Licensee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between Licensor and Licensee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Licensor and Licensee. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of Licensor. Further, it is specifically understood and agreed that nothing in this License is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Licensee shall be an independent contractor under this License and shall assume all of the rights, obligations and liabilities applicable to it as such

independent contractor hereunder. Licensor does not have the power to direct the order in which the work is done. Licensor shall not have the right to control the means, methods or details of Licensee's work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way.

E. Waiver of Attorney Fees. BY EXECUTING THIS LICENSE, LICENSEE AGREES TO WAIVE, AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE, ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST LICENSOR REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE LICENSE, THE CONSTRUCTION, OR INTERPRETATION, VALIDITY OR BREACH OF THE LICENSE. LICENSEE SPECIFICALLY AGREES THAT IF LICENSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS LICENSE, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS LICENSE, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, LICENSEE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LICENSEE MIGHT OTHERWISE BE ENTITLED.

LICENSEE AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING, KNOWN RIGHT. LICENSEE ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS LICENSE. LICENSEE FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN LICENSOR AND LICENSEE. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

LICENSEE AND LICENSOR ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS LICENSE WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

F. Governing Law & Venue. All performance and payment made pursuant to this License shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this License or the performance of this License shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this License shall be deemed to have been performed in Midland County, Texas. This License shall be construed, interpreted and enforced under the laws of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all other claims or disputes, arising from or relating in any way to the subject matter of this License, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

G. Release. NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS,

CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LICENSOR'S NEGLIGENCE.

H. Governmental Immunity. By executing this License, Licensor is not waiving its right of governmental immunity. Licensor is retaining its immunity from suit. Licensor is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY**.

I. Third Party Beneficiary. Licensor's approval of this License does not create a third party beneficiary. There is no third party beneficiary to this License. No person or entity who is not a party to this License shall have any third party beneficiary or other rights hereunder.

J. Notices. Any notice or communication required in the administration of this License shall be sent by certified mail, return receipt requested, to the parties' respective mailing addresses as set forth hereinabove.

K. Notice of Alleged Breach; Statutory Prerequisite. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this License, Licensee or its legal representative, shall give the City Manager, or any other reasonable official of Licensor, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this License) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except Licensor from any liability whatsoever. Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Licensee's failure to comply with the requirements herein shall perpetually bar Licensee's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if Licensor has actual or constructive notice or knowledge of said claim or alleged damages. Licensee agrees that the requirements of this entire License are reasonable.

L. Consideration. The terms of this License are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

M. Waiver of Governmental Immunity; Chapter 271, TEX. LOC. GOV'T CODE. The parties

agree that this License does not constitute a License or Contract for providing goods and/or services to Licensor as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and Licensor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Licensor expressly does not consent to be sued or be liable. To the greatest extent allowed by law, nothing in this License constitutes a waiver of Licensor's governmental immunity and the parties expressly agree that this License shall not constitute, nor be interpreted as a waiver of Licensor's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of Licensor's governmental immunity for the benefit of any third party lacking privity to the License.

This License does not obligate Licensee to use the Property to construct, repair, operate, replace, and maintain Licensor's facilities or structures described herein, it merely prohibits Licensee from using the Property for any other purpose. This License restricts the use of the Property to a specific purpose, but does not require the use of the Property for a specific purpose. This License does not require Licensee to construct, operate, repair, maintain, replace or remove any of Licensee's facilities or structures described herein. Licensee is not providing a service to Licensor but is providing a service to Licensee's customers. Licensee is paying Licensor for a temporary interest in real property not for a service. Any such provision shall be deemed to be a covenant against noncomplying use, not a covenant to use. Licensee's use of the Property in compliance with a restriction shall not constitute a service, and such complying use shall not operate to waive Licensor's governmental immunity.

N. Compliance. Licensee agrees that it shall comply with Texas Government Code Section 2252.908, as amended, to the extent that this statute applies to this License. Licensee agrees that it shall comply with Texas Local Government Code Section 176.006, as amended, to the extent that this statute applies to this License.

O. Texas Historical Commission Survey. Licensee agrees that it shall comply with Chapter 191 of the Texas Natural Resources Code. By executing this License, Licensee represents that it has contacted the Texas Historical Commission (the "Commission") for the purpose of determining whether the Commission will request that an archaeological survey be completed before Licensee commences operations on the Property, as contemplated herein. Licensee agrees that it shall complete or cause to be completed an archaeological survey before commencing any operations on the Property if the Commission so requests and deliver the same to Licensor. Notwithstanding any provision contained herein, in the event that any site, object, artifact, or other feature of archaeological, scientific, educational, cultural, or historical interest is encountered during the operations authorized by this License, Licensee will immediately notify Licensor and the Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Licensor or the Commission.

LICENSOR:
CITY OF MIDLAND, TEXAS

By:_____
Robert Patrick, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

LICENSEE:
CENTURION PIPELINE L.P.

By: _____
Printed Name: Christopher Cantrell
Title: Manager of Right-of-Way

THE STATE OF Texas §
§
COUNTY OF Harris §

BEFORE ME, the undersigned authority, on this 29 day of July, 2021 personally appeared Christopher Cantrell an officer of Centurion Pipeline L.P. known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 29 day of July, 2021.

LAUREN ANDREWS
Notary Public, State of Texas
Comm. Expires 01-13-2025
Notary ID 132867094

Notary Public, State of Texas

Reference No. 21-329-032

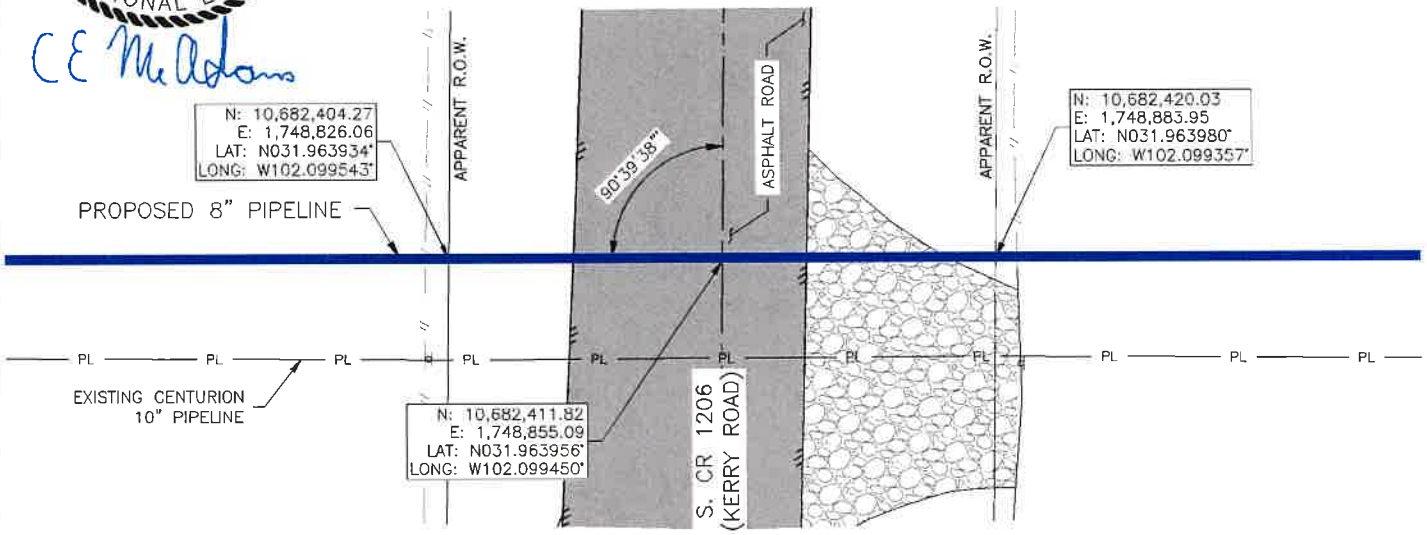
7/21/2021

STATE OF TEXAS
CLINTON E. MCADAMS
121932
LICENSED
PROFESSIONAL ENGINEER

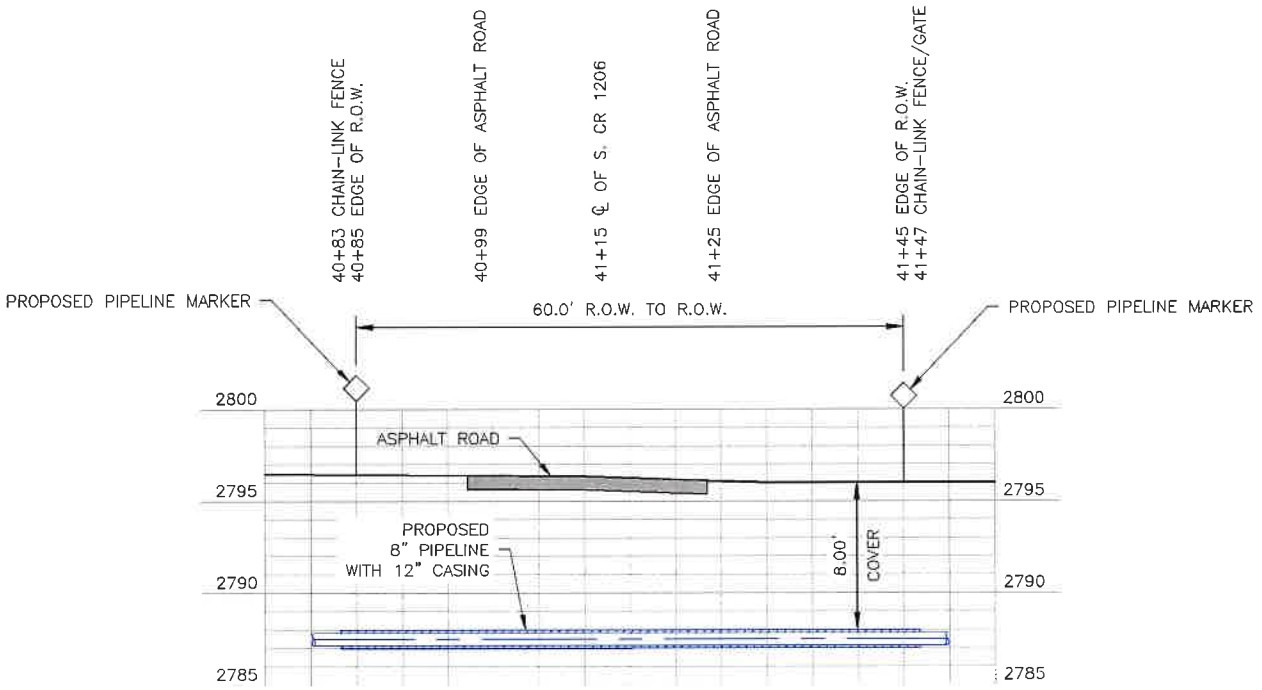
PLAN & PROFILE

PROPOSED 8" PIPELINE
ACROSS S. CR 1206
LOCATED IN
SECTION 9, BLOCK 39, TOWNSHIP 2 SOUTH
T.& P. RY. CO. SURVEY, A-62
MIDLAND COUNTY, TEXAS

GRAPHIC SCALE
0 20' 40'



PLAN VIEW



PROFILE VIEW

HORZ. 1:20
VERT. 1:10

LJA Surveying, Inc.
6 Desta Drive, Suite 1800 Phone 432.789.2880
Midland, Texas 79705 tmcadams@ljasurvey.com
TBPLS Firm Reg. No. 10194449 TBPE Firm Reg. No. F-19613

NO.	DATE	REVISION	DRWN	CHK'D	APP'D
D	07/21/2021	ISSUE FOR PERMITTING	JKB	CEM	CEM
C	07/12/2021	ISSUE FOR PERMITTING	JKB	CEM	CEM
B	07/06/2021	ISSUE FOR BID	JKB	CEM	CEM
A	06/25/2021	ISSUE FOR REVIEW	JKB	JCD	CEM

Centurion Pipeline L.P.

CLIENT AFE NO.	P00073
CLIENT PROJECT NO.	P00073
DRAWING NO.	CPL-075T-03-008

DESIGN DATA

PROPOSED 8" PIPELINE
ACROSS S. CR 1206,
LOCATED IN
SECTION 9, BLOCK 39, TOWNSHIP 2 SOUTH,
T.& P. RY. CO. SURVEY, A-62,
MIDLAND COUNTY, TEXAS

1. GENERAL INFORMATION
   - 1.1. APPLICANT/OWNER: CENTURION PIPELINE
   - 1.2. PIPELINE NAME: BANKHEAD TO ARRINGTON JUNCTION
   - 1.3. PRODUCT: OIL
   - 1.4. PROPOSED CONSTRUCTION ACTIVITIES SCHEDULED FOR AUGUST 1, 2021 THROUGH NOVEMBER 1, 2021
   - 1.5. READILY IDENTIFIABLE, DURABLE, AND WEATHERPROOF PIPELINE MARKERS WILL BE PLACED OVER THE PIPELINE CENTERLINE AT BOTH ROAD RIGHT-OF-WAY (R.O.W.) LINES WITH UTILITY NAME, PRODUCT, AND EMERGENCY NUMBER.
   - 1.6. SOUTH COUNTY ROAD (S. CR) 1206 CROSSING REQUIREMENTS: MINIMUM EIGHT (8) FEET UNDER THE LOWEST POINT OF THE SURFACE WITHIN R.O.W.

2. PIPELINE DESIGN DATA
   - 2.1. DESIGN CODES: THE DEPARTMENT OF TRANSPORTATION ("DOT") STANDARD CFR TITLE 49, PART 195, "TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE", ASME B31.4, API 5L.
   - 2.2. DESIGN PRESSURE: 740 PSIG
   - 2.3. HYDROSTATIC TEST PRESSURE: 925 PSIG MIN. 1050 PSIG MAX STRENGTH TEST
   - 2.4. CATHODIC PROTECTION WILL BE INSTALLED ON THE PIPELINE VIA IMPRESSED CURRENT.

3. CONSTRUCTION METHOD
   - 3.1. PIPELINE TO BE INSTALLED BY HORIZONTAL DIRECTIONAL DRILL METHODS, WITH 12" CASING.

4. BORE LINE PIPE
   - 4.1. OUTSIDE DIAMETER: 8.625"
   - 4.2. WALL THICKNESS: 0.322"
   - 4.3. PIPE SPECIFICATION: APL 5L
   - 4.4. GRADE: X52
   - 4.5. MATERIAL: CARBON STEEL

BARLOW EQUATION FOR STEEL PIPE: P = (2 x S x T x E x F)/D	
MOP	740
OUTSIDE DIAMETER (IN) = D	8.625
DESIGN FACTOR = F	0.72
LONGITUDINAL JOINT FACTOR = E	1 (ERW/HFW)
YIELD STRENGTH (PSI, LB/IN^2) = S	52000
WALL THICKNESS (IN) = T	0.322
PRESSURE (PSI, LB/IN^2) = P	2795
P > MOP	OK

7/21/2021

STATE OF TEXAS
CLINTON E. MCADAMS
121932
LICENSED
PROFESSIONAL ENGINEER

C E McAdams

LJA Surveying, Inc.
6 Desta Drive, Suite 1800 Phone 432.789.2880
Midland, Texas 79705 cmcadams@ljasurvey.com
TBPLS Firm Reg. No. 10194449 TBPE Firm Reg. No. F-19613

NO.	DATE	REVISION	DRWN	CHK'D	APP'D
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A	06/25/2021	ISSUE FOR REVIEW	JKB	JCD	CEM

Centurion Pipeline L.P.

CLIENT AFE NO.	P00073
CLIENT PROJECT NO.	20073
DRAWING NO.	CPL-075T-03-009

PACKET 19.16 August 24, 2021

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 5/10/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Bowen, Miclette & Britt Insurance Agency, LLC 1111 North Loop West, #400 Houston TX 77008	**CONTACT NAME:** Heather Cameron **PHONE (A/C, No, Ext):** 713-880-7100 **FAX (A/C, No):** 713-880-7166 **E-MAIL ADDRESS:** hcameron@bmbinc.com
INSURED LOTUSMIDST Centurion Pipeline L.P. 3600 W. Sam Houston Pkw. Houston TX 77042	**INSURER(S) AFFORDING COVERAGE** / **NAIC #** **INSURER A :** National Fire & Marine Ins Co — 20079 **INSURER B :** Liberty Mutual Fire Ins Co — 23035 **INSURER C :** Liberty Insurance Corp — 42404 **INSURER D :** **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** 1552637816 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	X **COMMERCIAL GENERAL LIABILITY** [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [ ] PRO-JECT [X] LOC [ ] OTHER:	Y	Y	TB2641445690030	9/28/2020	9/28/2021	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG 	$ 1,000,000 $ 300,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
B	**AUTOMOBILE LIABILITY** X ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY	Y	Y	AS2641445690020	9/28/2020	9/28/2021	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) 	$ 1,000,000 $ $ $ $
A	X **UMBRELLA LIAB** X OCCUR **EXCESS LIAB** [ ] CLAIMS-MADE [ ] DED X RETENTION $ 25,000	Y	Y	42UMO30620703	9/28/2020	9/28/2021	EACH OCCURRENCE AGGREGATE 	$ 10,000,000 $ 10,000,000 $
C	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		WC7641445690010	9/28/2020	9/28/2021	[ ] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The following policy provisions and/or endorsements form part of the policies of insurance represented by this certificate of insurance. The terms contained in the policies and/or endorsements supersede the representations made herein. Electronic copies of the policy provisions and/or endorsements listed below are available by emailing: certificates@bmbinc.com

General Liability:
Blanket additional insured Ongoing Operations per form # CG 20 10 04 13
Blanket additional insured Completed Operations per form # CG 20 37 04 13
Blanket waiver of subrogation per form # LC04101 04 18
See Attached...

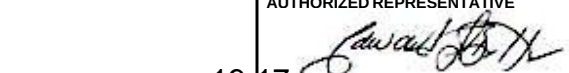
CERTIFICATE HOLDER

City of Midland
300 N. Loraine
Midland TX 78701

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



PACKET 19.17 August 24, 2021

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AGENCY CUSTOMER ID: LOTUSMIDST

LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY	NAMED INSURED
Bowen, Miclette & Britt	Centurion Pipeline L.P. 3600 W. Sam Houston Pkw. Houston TX 77042
POLICY NUMBER	
CARRIER / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Blanket primary/non-contributory per form # LC2420 11 18

Automobile:
Blanket additional insured per form # CA 20 48 10 13
Blanket waiver of subrogation per form # AC 84 07 11 17
Blanket primary/non-contributory per form # AC 84 23 08 11

Worker's Compensation:
Blanket waiver of subrogation per form # WC 00 03 13

Umbrella:
Blanket additional insured per form # ULP-UM-002-02/2014
Blanket waiver of subrogation per form # CL-UN-045-10/ 2016
Blanket primary/non-contributory per form # CLP-UN-065-10/2013

Certificate Holder Includes: City of Midland

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THE FACE OF THIS DOCUMENT CONTAINS MICROPRINTING

Wells Fargo Bank, N.A.

Centurion Pipeline, LP
P. O. Box 18589 Sugar Land, TX 77496

Land Account

Check No. 4100258
Date: August 3, 2021

PAY TO THE ORDER OF
City of Midland
P. O. Box 1152
Midland, TX 79702

$ 400.00
VOID AFTER 180 DAYS

Four Hundred and No/100 **DOLLARS**

MEMO 2021 Annual License Fee - SCR 1206/Kerry

Ratchaneewan Anderson MP
AUTHORIZED SIGNATURE

⑈4100258⑈ ⑆121000248⑆ 4978707941⑈

ORIGINAL DOCUMENT HAS A WATERMARK

THE FACE OF THIS DOCUMENT CONTAINS MICROPRINTING

Wells Fargo Bank, N.A.

Centurion Pipeline, LP
P. O. Box 18589 Sugar Land, TX 77496

Land Account

Check No. 4100248
Date: July 16, 2021

PAY TO THE ORDER OF
City of Midland
P. O. Box 1152
Midland, TX 79702

$ 1,000.00
VOID AFTER 180 DAYS

One Thousand and No/100 **DOLLARS**

MEMO Application Fee - SCR 1206/Kerry

Ratchaneewan Anderson MP
AUTHORIZED SIGNATURE

⑈4100248⑈ ⑆121000248⑆ 4978707941⑈

ORIGINAL DOCUMENT HAS A WATERMARK

City Council Meeting

Item Number: **20**

Meeting Date: **August 24, 2021**

To: **City Council / City Manager**

From: **John Simmons, Manager, Right-of-Way**

Subject: **Motion authorizing the execution of a Right-of-Way License (21-329-029) with Centurion Pipeline L.P., regarding city-owned property described as Sections 9 & 10, Block 39, Township 2 South, T&P RR Co. Survey, Midland County, Texas (DISTRICT 2) (UTILITIES)**

Purpose:

This motion will provide a right of way to bore 90' in this location and place a common carrier crude oil pipeline under City of Midland owned Cotton Flat Road / CR 1200. Both bore pits will be on private property and the pipeline will be cased.

This Right-of-Way License is proposed for a single five (5) year period with the option for a single five (5) year renewal. Terms are consistent with the City's standard license for pipeline facilities of this nature.

Recommended City Council Action:

Approve

Fiscal Impact:

Application fee (one time): $1,000

Annual Lease Rate,

Annual Lease Rate (5.6 rods x $20/rod): $112.00 / $400.00 minimum per year

Surface Damages: none

Total Collected: $1,400.00

Discussion:

This is a common carrier, carbon steel constructed 8.625” DR-11 crude oil pipeline running East – West, bored under the road and required to be cased for the duration of the crossing and buried at a minimum depth of eight (8) feet. Right of Way width will be 10’.

Certificates of Insurance are on file

City Secretary to record all documents

Robert Patrick

City Manager’s Office

RIGHT OF WAY LICENSE

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

Date: August 25, 2021

Licensor: CITY OF MIDLAND, TEXAS, a home-rule municipal corporation

Licensor's Representative: Robert Patrick, City Manager

Licensor's Mailing Address: P.O. Box 1152
Midland, Texas 79702

Licensee: Centurion Pipeline L.P.

Licensee's Representative: **Christopher Cantrell**

Licensee's Mailing Address: 3600 W. Sam Houston Parkway South, Suite 500
Houston, Texas 77042

Property: See **Exhibit A** attached hereto and incorporated herein for all purposes.

Licensee desires use of property owned by Licensor in Midland County, Texas (the "Property"), for purposes set forth below. Licensee acknowledges and agrees that it must obtain a license (the "License") in order to use the public lands of Licensor.

W I T N E S S E T H:

For and in consideration of the execution of this License and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

I. Term

A. Initial Term. This License shall be for a term of five (5) years (the "Initial Term"), commencing with the date of this License (the "Commencement Date") unless terminated earlier as provided hereafter.

B. Renewal Term. This License shall automatically renew at the end of the Initial Term for one (1) additional term of five (5) years, upon the written request of Licensee received by Licensor on or before one hundred twenty (120) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of Licensor.

C. Termination. Licensor may terminate this License if Licensee fails to pay, when due, any amount owing under this License and that failure continues for sixty (60) days or, if Licensee

commits any material breach or material default in performance of any obligation, prohibition, restriction, provision or covenant contained in this License, and the breach or default continues for a period of thirty (30) days after Licensor delivers notice to Licensee reasonably detailing the breach or default.

Additionally, Licensor may terminate this License at will for any or no reason upon giving at least three hundred sixty-five (365) days' written notice to Licensee. The parties to this License understand and agree that it is in Licensor's sole discretion to cancel the License during the term of the License without penalty to Licensor. Licensee has no expectation and has received no guarantees that this License will not be terminated before the end of the License term. The parties have bargained for the flexibility of terminating this License upon tender of the requisite notice at any time during the term of the License. All work and services under the License shall be suspended upon termination of the License becoming effective.

Upon termination of this License, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of Licensee to its original condition, as close thereto as may be practical, subject to the approval of Licensor upon inspection by Licensor's Representative, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this License.

II. Financial Consideration

A. License Fee. The first year's license fee in the amount of FOUR HUNDRED and No/100 Dollars ($400.00) shall be due and payable on or prior to the Commencement Date of this License ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay Licensor a late charge of five percent (5%).

B. Surface Damage Fee. Intentionally omitted.

C. Annual Fee. Licensee shall pay to Licensor an annual fee in the amount of FOUR HUNDRED and No/100 Dollars ($400.00), which shall be payable each year on or before the anniversary of the Commencement Date of this License.

D. Application Fee. At the same time the first year License Fee is due, Licensee shall pay a non-refundable one-time fee of ONE THOUSAND and No/100 Dollars ($1,000.00) to Licensor's Representative. Said fee shall revert to Licensor and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

E. Fee Adjustment. Prior to commencement of any renewal term, Licensor and Licensee shall negotiate in good faith to agree to an adjustment of the Annual Fee. If Licensor and Licensee are unable to reach an agreement regarding an adjustment to the Annual Fee, then the Annual Fee shall be determined by Licensor in its sole discretion, provided the new Annual Fee shall not exceed twenty-five percent (25%) of the Annual Fee paid for the last year of the Initial Term.

F. Delivery of Payment. The License Fee payment shall be made to Licensor at the office of

Licensor's Representative, Attn: Right of Way Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon the Property, being ten (10) feet in width of the pipeline location as shown on **Exhibit A** attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, a carbon steel pipeline, not to exceed eight and six hundred twenty-five thousandths (8.625) inches in diameter, for the transportation of crude oil, to have the right of ingress and egress at convenient points for such purpose. **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein. The parties agree Licensee's failure to provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein may result in the termination of this License. The decision to accept a complete as-built survey after the sixty-day deadline prescribed herein, or, conversely, to terminate this License shall be in the sole and absolute discretion of Licensor.**

B. Road Repair. Licensee covenants and agrees that it will repair any of Licensor's roads that Licensee damages on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

C. Utility Repair. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by Licensor that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of Licensor's Standard Specifications.

D. Depth. Licensee covenants and agrees that it will bury the pipeline(s) to be constructed hereunder no less than eight (8) feet in depth. All backfill used in burying such line shall be compacted to a density of ninety percent (90%), except where such pipeline(s) crosses under a paved or traveled portion of City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). Licensor shall be afforded the opportunity to test the density on all backfill. Notwithstanding any provision to the contrary contained herein, Licensee covenants and agrees that, at any point that Licensee's pipeline(s) intersects with a City of Midland utility line location, the pipeline(s) shall be bored at a depth of a least (i) nine (9) feet under all City of Midland water utility lines and (ii) two (2) feet under all City of Midland sewer utility lines. Licensee agrees that it shall comply with 30 Tex. Admin. Code § 290.44(e), as amended, to the extent applicable to this License.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by Licensor's Representative.

F. Reservation of Rights. Licensor expressly reserves the right to install, repair, or reconstruct streets or roads and all ancillary public uses usual and customary in connection with streets and

roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of Licensor, in, on, across, along, over, under, and through any property occupied by Licensee. In permitting such work to be done, Licensor shall not be liable to Licensee for any damage so caused to Licensee's system or property, **NOR SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY DAMAGES TO LICENSEE'S PIPELINE(S), CASING, OR COMPRESSOR STATION, ARISING OUT OF THE NEGLIGENCE BY LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS**. If Licensor requires Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

G. Non-exclusive. Licensor expressly reserves the full right to grant other easements or rights of way crossing or running parallel with the rights of way used by Licensee.

H. Abandonment. It is especially provided, however, that as an express condition of this License, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the Property ceases to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty (120) days' written notice, then and in that event, this License shall automatically revert to Licensor, its successors or assigns, free and clear of any right, title, or interest in Licensee, or any re-entry by Licensor.

I. Approval of Specifications. In the event Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to Licensor's Representative for his or her approval. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative before making any repairs if during a Licensor work day. If not on a work day, Licensee shall notify Licensor's Representative on the first work day after repairs have begun.

J. Gates and Fences. Licensee agrees to use existing gates and roadways where available, to enter, leave and cross the Property; provided that Licensee shall not use any road marked "Closed." Licensee and all persons entering or leaving the Property in connection with Licensee's operations hereunder shall keep all outside and interior gates securely closed except during operations related to this License. Licensee shall keep all outside gates, and all other gates designated by Licensor, securely locked except during operations related to this License. At any gate that is to be locked,

Licensor may install its own lock in addition to Licensee's lock.

Licensee agrees that Licensee shall not cut or go over any fence at any time or in connection with any operations on the Property without first obtaining Licensor's express consent thereto in writing. All gates or openings in fences shall be at mutually agreeable location(s) between Licensee and Licensor and shall be constructed as reasonably required by Licensor. Upon the termination of this License, at Licensor's election, gates in fences shall be left in place and shall thereafter be owned by Licensor or Licensee shall remove such gates and restore the fence to its original condition as nearly as reasonably practicable. The terms, provisions and requirements of this provision shall survive the termination or expiration of this License.

K. Trash. Licensee shall keep the Property free of trash and debris at all times. Under no circumstances, will Licensee be allowed to bury any trash, debris or foreign material of any kind on or under the Property. Licensor shall have the right to expel and permanently ban from the Property any person observed disposing of trash on the Property. Upon the completion of any operations, all ribbons, flags, stakes and similar items shall by promptly removed from the Property.

L. Hunting, Fishing and Alcohol Prohibited. No agent, employee, representative, contractor or subcontractor of Licensee or any other person allowed to enter the Property by Licensee shall be permitted to hunt, fish, trap, camp, picnic, ride motorcycles or four-wheelers or otherwise conduct any social gathering on the Property, nor shall any such persons be permitted to bring firearms, archery equipment, dogs, alcoholic beverages or illegal drugs on the Property at any time. Violations of this provision shall cause the violator to be regarded as a trespasser and subject to prosecution under trespass laws of the State of Texas. Licensor shall have the right to expel and permanently ban from the Property any person observed on the Property in violation of this provision.

M. Storage of Machinery and Equipment. Licensee shall use no part of the Property to store machinery, equipment, or other property of Licensee while it is not being used.

N. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace above the land covered by this License for any purpose allowed by law and deemed necessary by Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by Licensor in, on, across, along, over, under, and through said right of way occupied by Licensee. In the event of such work in connection with said purposes it shall be deemed necessary by Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline, property, or casing of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable federal or state laws with respect to relocation payments.

IV. Standard General Conditions

A. Insurance. Licensee shall at all times during the term of this License maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):	
■ Personal Injury:	$1,000,000.00 per person $1,000,000.00 per occurrence
■ Property Damage:	$100,000.00 per occurrence
Business Automobile Liability:	$1,000,000.00 combined single limit-- Personal Injury and Property Damage
Workers' Compensation:	Statutory limits
Employers' Liability:	$1,000,000.00 per accident or occurrence
Umbrella Liability:	$10,000,000.00 each occurrence $10,000,000.00 aggregate

The Commercial General Liability shall be on an occurrence basis. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The Workers' Compensation coverage provided by Licensee shall inure to the benefit of employees injured during the course and scope of their employment by Licensee pursuant to this License. The Workers' Compensation insurance shall waive all rights of subrogation against Licensor.

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this License. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The parties agree that, prior to the execution of the License, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

Licensor shall be provided the notice by Licensee's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Licensor shall not be required to provide any insurance whatsoever pursuant to this License.

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this License to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured. Licensee certifies that the one or more

certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Licensee shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Licensee.

B. Indemnity. LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S),CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE AGREES THAT LICENSEE SHALL INDEMNIFY AND SAVE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION DESCRIBED HEREIN.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSOR, LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY

CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S),CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

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C. Assignment. The rights granted by this License inure to the benefit of Licensee. The rights and privileges shall not be assignable by Licensee without the express written consent of Licensor's City Manager. Any required consent is to be evidenced by a letter written by Licensor's City Manager that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor's City Manager.

D. Independent Contractor. It is expressly understood and agreed that Licensee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of Licensor; that Licensee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between Licensor and Licensee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Licensor and Licensee. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of Licensor. Further, it is specifically understood and agreed that nothing in this License is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Licensee shall be an independent contractor under this License and shall assume all of the rights, obligations and liabilities applicable to it as such

independent contractor hereunder. Licensor does not have the power to direct the order in which the work is done. Licensor shall not have the right to control the means, methods or details of Licensee's work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way.

E. Waiver of Attorney Fees. BY EXECUTING THIS LICENSE, LICENSEE AGREES TO WAIVE, AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE, ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST LICENSOR REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE LICENSE, THE CONSTRUCTION, OR INTERPRETATION, VALIDITY OR BREACH OF THE LICENSE. LICENSEE SPECIFICALLY AGREES THAT IF LICENSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS LICENSE, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS LICENSE, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, LICENSEE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LICENSEE MIGHT OTHERWISE BE ENTITLED.

LICENSEE AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING, KNOWN RIGHT. LICENSEE ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS LICENSE. LICENSEE FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN LICENSOR AND LICENSEE. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

LICENSEE AND LICENSOR ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS LICENSE WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

F. Governing Law & Venue. All performance and payment made pursuant to this License shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this License or the performance of this License shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this License shall be deemed to have been performed in Midland County, Texas. This License shall be construed, interpreted and enforced under the laws of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all other claims or disputes, arising from or relating in any way to the subject matter of this License, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

G. Release. NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS,

CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LICENSOR'S NEGLIGENCE.

H. Governmental Immunity. By executing this License, Licensor is not waiving its right of governmental immunity. Licensor is retaining its immunity from suit. Licensor is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY**.

I. Third Party Beneficiary. Licensor's approval of this License does not create a third party beneficiary. There is no third party beneficiary to this License. No person or entity who is not a party to this License shall have any third party beneficiary or other rights hereunder.

J. Notices. Any notice or communication required in the administration of this License shall be sent by certified mail, return receipt requested, to the parties' respective mailing addresses as set forth hereinabove.

K. Notice of Alleged Breach; Statutory Prerequisite. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this License, Licensee or its legal representative, shall give the City Manager, or any other reasonable official of Licensor, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this License) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except Licensor from any liability whatsoever. Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Licensee's failure to comply with the requirements herein shall perpetually bar Licensee's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if Licensor has actual or constructive notice or knowledge of said claim or alleged damages. Licensee agrees that the requirements of this entire License are reasonable.

L. Consideration. The terms of this License are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

M. Waiver of Governmental Immunity; Chapter 271, TEX. LOC. GOV'T CODE. The parties

agree that this License does not constitute a License or Contract for providing goods and/or services to Licensor as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and Licensor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Licensor expressly does not consent to be sued or be liable. To the greatest extent allowed by law, nothing in this License constitutes a waiver of Licensor's governmental immunity and the parties expressly agree that this License shall not constitute, nor be interpreted as a waiver of Licensor's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of Licensor's governmental immunity for the benefit of any third party lacking privity to the License.

This License does not obligate Licensee to use the Property to construct, repair, operate, replace, and maintain Licensor's facilities or structures described herein, it merely prohibits Licensee from using the Property for any other purpose. This License restricts the use of the Property to a specific purpose, but does not require the use of the Property for a specific purpose. This License does not require Licensee to construct, operate, repair, maintain, replace or remove any of Licensee's facilities or structures described herein. Licensee is not providing a service to Licensor but is providing a service to Licensee's customers. Licensee is paying Licensor for a temporary interest in real property not for a service. Any such provision shall be deemed to be a covenant against noncomplying use, not a covenant to use. Licensee's use of the Property in compliance with a restriction shall not constitute a service, and such complying use shall not operate to waive Licensor's governmental immunity.

N. Compliance. Licensee agrees that it shall comply with Texas Government Code Section 2252.908, as amended, to the extent that this statute applies to this License. Licensee agrees that it shall comply with Texas Local Government Code Section 176.006, as amended, to the extent that this statute applies to this License.

O. Texas Historical Commission Survey. Licensee agrees that it shall comply with Chapter 191 of the Texas Natural Resources Code. By executing this License, Licensee represents that it has contacted the Texas Historical Commission (the "Commission") for the purpose of determining whether the Commission will request that an archaeological survey be completed before Licensee commences operations on the Property, as contemplated herein. Licensee agrees that it shall complete or cause to be completed an archaeological survey before commencing any operations on the Property if the Commission so requests and deliver the same to Licensor. Notwithstanding any provision contained herein, in the event that any site, object, artifact, or other feature of archaeological, scientific, educational, cultural, or historical interest is encountered during the operations authorized by this License, Licensee will immediately notify Licensor and the Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Licensor or the Commission.

LICENSOR:
CITY OF MIDLAND, TEXAS

By:_____
Robert Patrick, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

LICENSEE:
CENTURION PIPELINE L.P.

By: _____
Printed Name: Christopher Cantrell
Title: Manager of Right-of-Way

THE STATE OF Texas §
§
COUNTY OF Harris §

BEFORE ME, the undersigned authority, on this 29 day of July, 2021 personally appeared Christopher Cantrell an officer of Centurion Pipeline L.P. known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 29 day of July, 2021.

LAUREN ANDREWS
Notary Public, State of Texas
Comm. Expires 01-13-2025
Notary ID 132867094

Notary Public, State of Texas

Reference No. 21-329-030

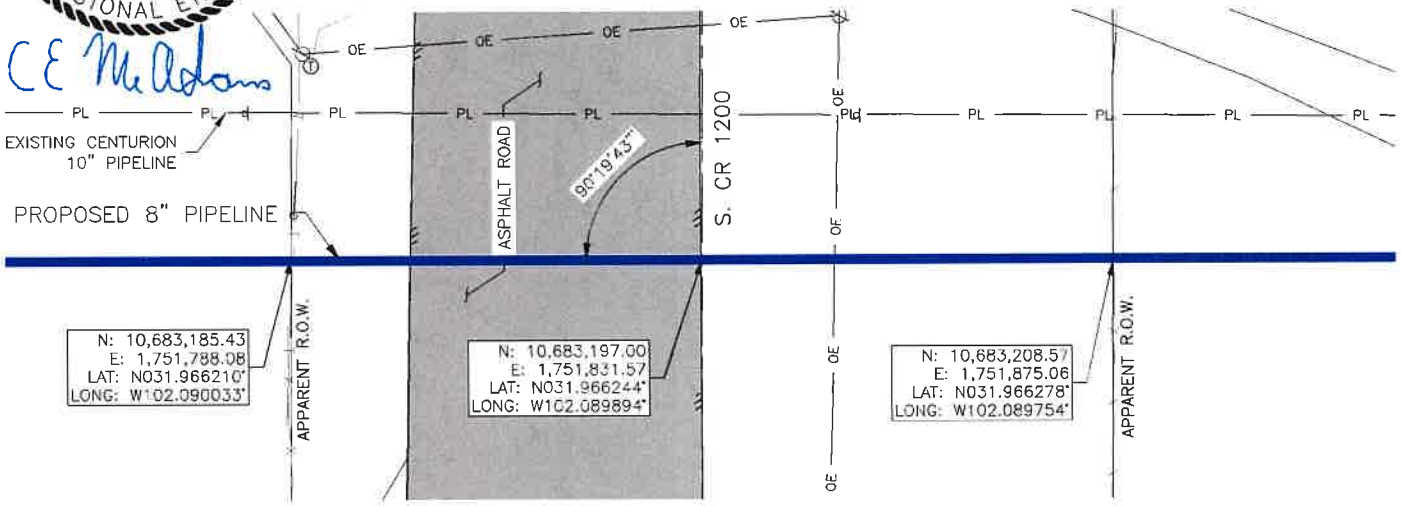
7/21/2021

STATE OF TEXAS
CLINTON E. MCADAMS
121932
LICENSED
PROFESSIONAL ENGINEER

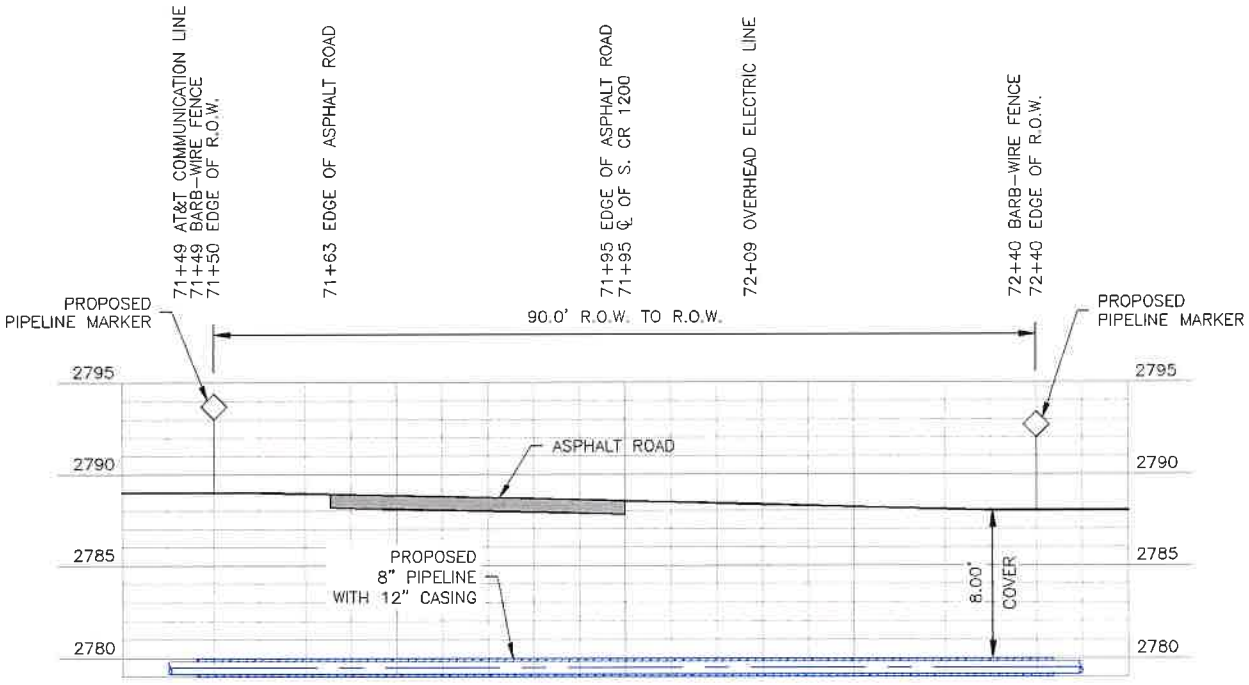
PLAN & PROFILE

PROPOSED 8" PIPELINE
ACROSS S. CR 1200
LOCATED IN
SECTION 9, BLOCK 39, TOWNSHIP 2 SOUTH
AND
SECTION 10, BLOCK 39, TOWNSHIP 2 SOUTH
T.& P. RY. CO. SURVEY, A-62 & A-670
MIDLAND COUNTY, TEXAS

GRAPHIC SCALE
0 20' 40'



PLAN VIEW



PROFILE VIEW

HORZ. 1:20
VERT. 1:10

D	07/21/2021	ISSUE FOR PERMITTING	JKB	CEM	CEM		
C	07/12/2021	ISSUE FOR PERMITTING	JKB	CEM	CEM		
B	07/06/2021	ISSUE FOR BID	JKB	CEM	CEM	CLIENT AFE NO.	P00073
A	06/25/2021	ISSUE FOR REVIEW	JKB	JCD	CEM	CLIENT PROJECT NO.	P00073
NO.	DATE	REVISION	DRWN	CHK'D	APP'D	DRAWING NO.	CPL-075T-03-014

LJA Surveying, Inc.
6 Desta Drive, Suite 1800 Phone 432.789.2880
Midland, Texas 79705 cmcadams@ljasurvey.com
TBPLS Firm Reg. No. 10194449 TBPE Firm Reg. No. F-19613

Centurion Pipeline L.P.

DESIGN DATA

PROPOSED 8" PIPELINE
ACROSS S. CR 1200,
LOCATED IN
SECTION 9, BLOCK 39, TOWNSHIP 2 SOUTH & SECTION 10, BLOCK 39, TOWNSHIP 2 SOUTH
T.& P. RY. CO. SURVEY, A-62 & A-670,
MIDLAND COUNTY, TEXAS

1. GENERAL INFORMATION
   - 1.1. APPLICANT/OWNER: CENTURION PIPELINE
   - 1.2. PIPELINE NAME: BANKHEAD TO ARRINGTON JUNCTION
   - 1.3. PRODUCT: OIL
   - 1.4. PROPOSED CONSTRUCTION ACTIVITIES SCHEDULED FOR AUGUST 1, 2021 THROUGH NOVEMBER 1, 2021
   - 1.5. READILY IDENTIFIABLE, DURABLE, AND WEATHERPROOF PIPELINE MARKERS WILL BE PLACED OVER THE PIPELINE CENTERLINE AT BOTH ROAD RIGHT-OF-WAY (R.O.W.) LINES WITH UTILITY NAME, PRODUCT, AND EMERGENCY NUMBER.
   - 1.6. SOUTH COUNTY ROAD (S. CR) 1200 CROSSING REQUIREMENTS: MINIMUM EIGHT (8) FEET UNDER THE LOWEST POINT OF THE SURFACE WITHIN R.O.W.

2. PIPELINE DESIGN DATA
   - 2.1. DESIGN CODES: THE DEPARTMENT OF TRANSPORTATION ("DOT") STANDARD CFR TITLE 49, PART 195, "TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE", ASME B31.4, API 5L.
   - 2.2. DESIGN PRESSURE: 740 PSIG
   - 2.3. HYDROSTATIC TEST PRESSURE: 925 PSIG MIN. 1050 PSIG MAX STRENGTH TEST
   - 2.4. CATHODIC PROTECTION WILL BE INSTALLED ON THE PIPELINE VIA IMPRESSED CURRENT.

3. CONSTRUCTION METHOD
   - 3.1. PIPELINE TO BE INSTALLED BY HORIZONTAL DIRECTIONAL DRILL METHODS, WITH 12" CASING.

4. BORE LINE PIPE
   - 4.1. OUTSIDE DIAMETER: 8.625"
   - 4.2. WALL THICKNESS: 0.322"
   - 4.3. PIPE SPECIFICATION: APL 5L
   - 4.4. GRADE: X52
   - 4.5. MATERIAL: CARBON STEEL

BARLOW EQUATION FOR STEEL PIPE: P = (2 x S x T x E x F)/D	
MOP	740
OUTSIDE DIAMETER (IN) = D	8.625
DESIGN FACTOR = F	0.72
LONGITUDINAL JOINT FACTOR = E	1 (ERW/HFW)
YIELD STRENGTH (PSI, LB/IN^2) = S	52000
WALL THICKNESS (IN) = T	0.322
PRESSURE (PSI, LB/IN^2) = P	2795
P > MOP	OK

7/21/2021

STATE OF TEXAS
CLINTON E. MCADAMS
121932
LICENSED
PROFESSIONAL ENGINEER

C E McAdams

LJA Surveying, Inc.
6 Desta Drive, Suite 1800 Phone 432.789.2880
Midland, Texas 79705 cmcadams@ljasurvey.com
TBPLS Firm Reg. No. 10194449 TBPE Firm Reg. No. F-19613

NO.	DATE	REVISION	DRWN	CHK'D	APP'D
D	07/21/2021	ISSUE FOR PERMITTING	JKB	CEM	CEM
C	07/12/2021	ISSUE FOR PERMITTING	JKB	CEM	CEM
B	07/06/2021	ISSUE FOR BID	JKB	CEM	CEM
A	06/25/2021	ISSUE FOR REVIEW	JKB	JCD	CEM

Centurion Pipeline L.P.

CLIENT AFE NO.	P00073
CLIENT PROJECT NO.	P00073
DRAWING NO.	CPL-075T-03-015

PACKET 20.16 August 24, 2021

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 5/10/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Bowen, Miclette & Britt Insurance Agency, LLC 1111 North Loop West, #400 Houston TX 77008	**CONTACT NAME:** Heather Cameron **PHONE (A/C, No, Ext):** 713-880-7100 **FAX (A/C, No):** 713-880-7166 **E-MAIL ADDRESS:** hcameron@bmbinc.com
INSURED LOTUSMIDST Centurion Pipeline L.P. 3600 W. Sam Houston Pkw. Houston TX 77042	**INSURER(S) AFFORDING COVERAGE** / **NAIC #** **INSURER A :** National Fire & Marine Ins Co — 20079 **INSURER B :** Liberty Mutual Fire Ins Co — 23035 **INSURER C :** Liberty Insurance Corp — 42404 **INSURER D :** **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** 1552637816 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	X **COMMERCIAL GENERAL LIABILITY** [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [ ] PRO-JECT [X] LOC [ ] OTHER:	Y	Y	TB2641445690030	9/28/2020	9/28/2021	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG 	$ 1,000,000 $ 300,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
B	**AUTOMOBILE LIABILITY** X ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY	Y	Y	AS2641445690020	9/28/2020	9/28/2021	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) 	$ 1,000,000 $ $ $ $
A	X **UMBRELLA LIAB** X OCCUR **EXCESS LIAB** [ ] CLAIMS-MADE [ ] DED X RETENTION $ 25,000	Y	Y	42UMO30620703	9/28/2020	9/28/2021	EACH OCCURRENCE AGGREGATE 	$ 10,000,000 $ 10,000,000 $
C	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		WC7641445690010	9/28/2020	9/28/2021	[ ] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The following policy provisions and/or endorsements form part of the policies of insurance represented by this certificate of insurance. The terms contained in the policies and/or endorsements supersede the representations made herein. Electronic copies of the policy provisions and/or endorsements listed below are available by emailing: certificates@bmbinc.com

General Liability:
Blanket additional insured Ongoing Operations per form # CG 20 10 04 13
Blanket additional insured Completed Operations per form # CG 20 37 04 13
Blanket waiver of subrogation per form # LC04101 04 18
See Attached...

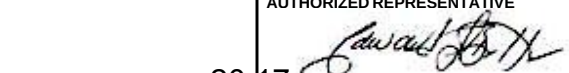
CERTIFICATE HOLDER

City of Midland
300 N. Loraine
Midland TX 78701

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



PACKET 20.17 August 24, 2021

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AGENCY CUSTOMER ID: LOTUSMIDST

LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY	NAMED INSURED
Bowen, Miclette & Britt	Centurion Pipeline L.P. 3600 W. Sam Houston Pkw. Houston TX 77042
POLICY NUMBER	
CARRIER / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Blanket primary/non-contributory per form # LC2420 11 18

Automobile:
Blanket additional insured per form # CA 20 48 10 13
Blanket waiver of subrogation per form # AC 84 07 11 17
Blanket primary/non-contributory per form # AC 84 23 08 11

Worker's Compensation:
Blanket waiver of subrogation per form # WC 00 03 13

Umbrella:
Blanket additional insured per form # ULP-UM-002-02/2014
Blanket waiver of subrogation per form # CL-UN-045-10/ 2016
Blanket primary/non-contributory per form # CLP-UN-065-10/2013

Certificate Holder Includes: City of Midland

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THE FACE OF THIS DOCUMENT CONTAINS MICROPRINTING

Wells Fargo Bank, N.A.

Centurion Pipeline, LP
P. O. Box 18589 Sugar Land, TX 77496

Land Account

Check No. 4100246

Date: July 16, 2021

PAY TO THE ORDER OF: City of Midland
P. O. Box 1152
Midland, TX 79702

$ 1,000.00

VOID AFTER 180 DAYS

One Thousand and No/100 **DOLLARS**

MEMO Application Fee - SCR 1200/Cotton Flats

Ratchaneewan Anderson MP
AUTHORIZED SIGNATURE

⑈4100246⑈ ⑆121000248⑆ 4978707946⑈

ORIGINAL DOCUMENT HAS A WATERMARK

THE FACE OF THIS DOCUMENT CONTAINS MICROPRINTING

Wells Fargo Bank, N.A.

Centurion Pipeline, LP
P. O. Box 18589 Sugar Land, TX 77496

Land Account

Check No. 4100256

Date: August 3, 2021

PAY TO THE ORDER OF: City of Midland
P. O. Box 1152
Midland, TX 79702

$ 400.00

VOID AFTER 180 DAYS

Four Hundred and No/100 **DOLLARS**

MEMO 2021 Annual License Fee - SCR 1200/Cotton Flats

Ratchaneewan Anderson MP
AUTHORIZED SIGNATURE

⑈4100256⑈ ⑆121000248⑆ 4978707946⑈

ORIGINAL DOCUMENT HAS A WATERMARK

City Council Meeting

Item Number: 21

Meeting Date: August 24, 2021

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: Motion authorizing the execution of a Right-of-Way License (21-329-030) with Centurion Pipeline L.P., regarding city-owned property described as Section 9, Block 39, Township 2 South, T&P RR Co. Survey, Midland County, Texas (DISTRICT 2) (UTILITIES)

Purpose:

This motion will provide a right of way to bore 60' in this location and place a common carrier crude oil pipeline under City of Midland owned Acapulco Lane / CR 1205. Both bore pits will be on private property and the pipeline will be cased.

This Right-of-Way License is proposed for a single five (5) year period with the option for a single five (5) year renewal. Terms are consistent with the City's standard license for pipeline facilities of this nature.

Recommended City Council Action:

Approve

Fiscal Impact:

Application fee (one time): $1,000

Annual Lease Rate,

Annual Lease Rate (3.75 rods x $20/rod): $75.00 / $400.00 minimum per year

Surface Damages: none

Total Collected: $1,400.00

Discussion:

This is a common carrier, carbon steel constructed 8.625” DR-11 crude oil pipeline running East – West, bored under the road and required to be cased for the duration of the crossing and buried at a minimum depth of eight (8) feet. Right of Way width will be 10’.

Certificates of Insurance are on file

City Secretary to record all documents

Robert Patrick

City Manager’s Office

RIGHT OF WAY LICENSE

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

Date: August 25, 2021

Licensor: CITY OF MIDLAND, TEXAS, a home-rule municipal corporation

Licensor's Representative: Robert Patrick, City Manager

Licensor's Mailing Address: P.O. Box 1152
Midland, Texas 79702

Licensee: Centurion Pipeline L.P.

Licensee's Representative: **Christopher Cantrell**

Licensee's Mailing Address: 3600 W. Sam Houston Parkway South, Suite 500
Houston, Texas 77042

Property: See **Exhibit A** attached hereto and incorporated herein for all purposes.

Licensee desires use of property owned by Licensor in Midland County, Texas (the "Property"), for purposes set forth below. Licensee acknowledges and agrees that it must obtain a license (the "License") in order to use the public lands of Licensor.

W I T N E S S E T H:

For and in consideration of the execution of this License and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

I. Term

A. Initial Term. This License shall be for a term of five (5) years (the "Initial Term"), commencing with the date of this License (the "Commencement Date") unless terminated earlier as provided hereafter.

B. Renewal Term. This License shall automatically renew at the end of the Initial Term for one (1) additional term of five (5) years, upon the written request of Licensee received by Licensor on or before one hundred twenty (120) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of Licensor.

C. Termination. Licensor may terminate this License if Licensee fails to pay, when due, any amount owing under this License and that failure continues for sixty (60) days or, if Licensee

commits any material breach or material default in performance of any obligation, prohibition, restriction, provision or covenant contained in this License, and the breach or default continues for a period of thirty (30) days after Licensor delivers notice to Licensee reasonably detailing the breach or default.

Additionally, Licensor may terminate this License at will for any or no reason upon giving at least three hundred sixty-five (365) days' written notice to Licensee. The parties to this License understand and agree that it is in Licensor's sole discretion to cancel the License during the term of the License without penalty to Licensor. Licensee has no expectation and has received no guarantees that this License will not be terminated before the end of the License term. The parties have bargained for the flexibility of terminating this License upon tender of the requisite notice at any time during the term of the License. All work and services under the License shall be suspended upon termination of the License becoming effective.

Upon termination of this License, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of Licensee to its original condition, as close thereto as may be practical, subject to the approval of Licensor upon inspection by Licensor's Representative, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this License.

II. Financial Consideration

A. License Fee. The first year's license fee in the amount of FOUR HUNDRED and No/100 Dollars ($400.00) shall be due and payable on or prior to the Commencement Date of this License ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay Licensor a late charge of five percent (5%).

B. Surface Damage Fee. Intentionally omitted.

C. Annual Fee. Licensee shall pay to Licensor an annual fee in the amount of FOUR HUNDRED and No/100 Dollars ($400.00), which shall be payable each year on or before the anniversary of the Commencement Date of this License.

D. Application Fee. At the same time the first year License Fee is due, Licensee shall pay a non-refundable one-time fee of ONE THOUSAND and No/100 Dollars ($1,000.00) to Licensor's Representative. Said fee shall revert to Licensor and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

E. Fee Adjustment. Prior to commencement of any renewal term, Licensor and Licensee shall negotiate in good faith to agree to an adjustment of the Annual Fee. If Licensor and Licensee are unable to reach an agreement regarding an adjustment to the Annual Fee, then the Annual Fee shall be determined by Licensor in its sole discretion, provided the new Annual Fee shall not exceed twenty-five percent (25%) of the Annual Fee paid for the last year of the Initial Term.

F. Delivery of Payment. The License Fee payment shall be made to Licensor at the office of

Licensor's Representative, Attn: Right of Way Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon the Property, being ten (10) feet in width of the pipeline location as shown on **Exhibit A** attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, a carbon steel pipeline, not to exceed eight and six hundred twenty-five thousandths (8.625) inches in diameter, for the transportation of crude oil, to have the right of ingress and egress at convenient points for such purpose. **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein. The parties agree Licensee's failure to provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein may result in the termination of this License. The decision to accept a complete as-built survey after the sixty-day deadline prescribed herein, or, conversely, to terminate this License shall be in the sole and absolute discretion of Licensor.**

B. Road Repair. Licensee covenants and agrees that it will repair any of Licensor's roads that Licensee damages on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

C. Utility Repair. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by Licensor that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of Licensor's Standard Specifications.

D. Depth. Licensee covenants and agrees that it will bury the pipeline(s) to be constructed hereunder no less than eight (8) feet in depth. All backfill used in burying such line shall be compacted to a density of ninety percent (90%), except where such pipeline(s) crosses under a paved or traveled portion of City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). Licensor shall be afforded the opportunity to test the density on all backfill. Notwithstanding any provision to the contrary contained herein, Licensee covenants and agrees that, at any point that Licensee's pipeline(s) intersects with a City of Midland utility line location, the pipeline(s) shall be bored at a depth of a least (i) nine (9) feet under all City of Midland water utility lines and (ii) two (2) feet under all City of Midland sewer utility lines. Licensee agrees that it shall comply with 30 Tex. Admin. Code § 290.44(e), as amended, to the extent applicable to this License.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by Licensor's Representative.

F. Reservation of Rights. Licensor expressly reserves the right to install, repair, or reconstruct streets or roads and all ancillary public uses usual and customary in connection with streets and

roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of Licensor, in, on, across, along, over, under, and through any property occupied by Licensee. In permitting such work to be done, Licensor shall not be liable to Licensee for any damage so caused to Licensee's system or property, **NOR SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY DAMAGES TO LICENSEE'S PIPELINE(S), CASING, OR COMPRESSOR STATION, ARISING OUT OF THE NEGLIGENCE BY LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS**. If Licensor requires Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

G. Non-exclusive. Licensor expressly reserves the full right to grant other easements or rights of way crossing or running parallel with the rights of way used by Licensee.

H. Abandonment. It is especially provided, however, that as an express condition of this License, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the Property ceases to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty (120) days' written notice, then and in that event, this License shall automatically revert to Licensor, its successors or assigns, free and clear of any right, title, or interest in Licensee, or any re-entry by Licensor.

I. Approval of Specifications. In the event Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to Licensor's Representative for his or her approval. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative before making any repairs if during a Licensor work day. If not on a work day, Licensee shall notify Licensor's Representative on the first work day after repairs have begun.

J. Gates and Fences. Licensee agrees to use existing gates and roadways where available, to enter, leave and cross the Property; provided that Licensee shall not use any road marked "Closed." Licensee and all persons entering or leaving the Property in connection with Licensee's operations hereunder shall keep all outside and interior gates securely closed except during operations related to this License. Licensee shall keep all outside gates, and all other gates designated by Licensor, securely locked except during operations related to this License. At any gate that is to be locked,

Licensor may install its own lock in addition to Licensee's lock.

Licensee agrees that Licensee shall not cut or go over any fence at any time or in connection with any operations on the Property without first obtaining Licensor's express consent thereto in writing. All gates or openings in fences shall be at mutually agreeable location(s) between Licensee and Licensor and shall be constructed as reasonably required by Licensor. Upon the termination of this License, at Licensor's election, gates in fences shall be left in place and shall thereafter be owned by Licensor or Licensee shall remove such gates and restore the fence to its original condition as nearly as reasonably practicable. The terms, provisions and requirements of this provision shall survive the termination or expiration of this License.

K. Trash. Licensee shall keep the Property free of trash and debris at all times. Under no circumstances, will Licensee be allowed to bury any trash, debris or foreign material of any kind on or under the Property. Licensor shall have the right to expel and permanently ban from the Property any person observed disposing of trash on the Property. Upon the completion of any operations, all ribbons, flags, stakes and similar items shall by promptly removed from the Property.

L. Hunting, Fishing and Alcohol Prohibited. No agent, employee, representative, contractor or subcontractor of Licensee or any other person allowed to enter the Property by Licensee shall be permitted to hunt, fish, trap, camp, picnic, ride motorcycles or four-wheelers or otherwise conduct any social gathering on the Property, nor shall any such persons be permitted to bring firearms, archery equipment, dogs, alcoholic beverages or illegal drugs on the Property at any time. Violations of this provision shall cause the violator to be regarded as a trespasser and subject to prosecution under trespass laws of the State of Texas. Licensor shall have the right to expel and permanently ban from the Property any person observed on the Property in violation of this provision.

M. Storage of Machinery and Equipment. Licensee shall use no part of the Property to store machinery, equipment, or other property of Licensee while it is not being used.

N. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace above the land covered by this License for any purpose allowed by law and deemed necessary by Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by Licensor in, on, across, along, over, under, and through said right of way occupied by Licensee. In the event of such work in connection with said purposes it shall be deemed necessary by Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline, property, or casing of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable federal or state laws with respect to relocation payments.

IV. Standard General Conditions

A. Insurance. Licensee shall at all times during the term of this License maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):	
■ Personal Injury:	$1,000,000.00 per person $1,000,000.00 per occurrence
■ Property Damage:	$100,000.00 per occurrence
Business Automobile Liability:	$1,000,000.00 combined single limit-- Personal Injury and Property Damage
Workers' Compensation:	Statutory limits
Employers' Liability:	$1,000,000.00 per accident or occurrence
Umbrella Liability:	$10,000,000.00 each occurrence $10,000,000.00 aggregate

The Commercial General Liability shall be on an occurrence basis. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The Workers' Compensation coverage provided by Licensee shall inure to the benefit of employees injured during the course and scope of their employment by Licensee pursuant to this License. The Workers' Compensation insurance shall waive all rights of subrogation against Licensor.

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this License. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The parties agree that, prior to the execution of the License, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

Licensor shall be provided the notice by Licensee's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Licensor shall not be required to provide any insurance whatsoever pursuant to this License.

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this License to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured. Licensee certifies that the one or more

certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Licensee shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Licensee.

B. Indemnity. LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S),CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE AGREES THAT LICENSEE SHALL INDEMNIFY AND SAVE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION DESCRIBED HEREIN.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSOR, LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY

CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S),CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, AND ALL COSTS AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF FAILURE OF LICENSEE, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER TO COMPLY WITH ALL APPLICABLE LOCAL, FEDERAL AND/OR STATE ENVIRONMENTAL LAWS, INCLUDING BUT NOT LIMITED TO THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) (AS THEY MAY BE REAUTHORIZED AND/OR AMENDED) AND ALL OTHER LOCAL, FEDERAL AND STATE LAWS, IN CONNECTION WITH OR RELATED TO ANY OF LICENSEE'S OPERATIONS OR ACTIVITIES ON THE PROPERTY, OR ANY OF LICENSEE'S HANDLING, STORING, RELEASING, TRANSPORTING OR DISPOSING OF ALL SUBSTANCES, INCLUDING, BUT NOT LIMITED TO HAZARDOUS SUBSTANCES AND HAZARDOUS WASTES, ON OR FROM THE PROPERTY OR ANY OTHER LANDS OF LICENSOR.

C. Assignment. The rights granted by this License inure to the benefit of Licensee. The rights and privileges shall not be assignable by Licensee without the express written consent of Licensor's City Manager. Any required consent is to be evidenced by a letter written by Licensor's City Manager that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor's City Manager.

D. Independent Contractor. It is expressly understood and agreed that Licensee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of Licensor; that Licensee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between Licensor and Licensee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Licensor and Licensee. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of Licensor. Further, it is specifically understood and agreed that nothing in this License is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Licensee shall be an independent contractor under this License and shall assume all of the rights, obligations and liabilities applicable to it as such

independent contractor hereunder. Licensor does not have the power to direct the order in which the work is done. Licensor shall not have the right to control the means, methods or details of Licensee's work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way.

E. Waiver of Attorney Fees. BY EXECUTING THIS LICENSE, LICENSEE AGREES TO WAIVE, AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE, ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST LICENSOR REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE LICENSE, THE CONSTRUCTION, OR INTERPRETATION, VALIDITY OR BREACH OF THE LICENSE. LICENSEE SPECIFICALLY AGREES THAT IF LICENSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS LICENSE, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS LICENSE, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, LICENSEE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LICENSEE MIGHT OTHERWISE BE ENTITLED.

LICENSEE AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING, KNOWN RIGHT. LICENSEE ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS LICENSE. LICENSEE FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN LICENSOR AND LICENSEE. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

LICENSEE AND LICENSOR ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS LICENSE WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

F. Governing Law & Venue. All performance and payment made pursuant to this License shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this License or the performance of this License shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this License shall be deemed to have been performed in Midland County, Texas. This License shall be construed, interpreted and enforced under the laws of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all other claims or disputes, arising from or relating in any way to the subject matter of this License, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

G. Release. NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS,

CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LICENSOR'S NEGLIGENCE.

H. Governmental Immunity. By executing this License, Licensor is not waiving its right of governmental immunity. Licensor is retaining its immunity from suit. Licensor is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY**.

I. Third Party Beneficiary. Licensor's approval of this License does not create a third party beneficiary. There is no third party beneficiary to this License. No person or entity who is not a party to this License shall have any third party beneficiary or other rights hereunder.

J. Notices. Any notice or communication required in the administration of this License shall be sent by certified mail, return receipt requested, to the parties' respective mailing addresses as set forth hereinabove.

K. Notice of Alleged Breach; Statutory Prerequisite. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this License, Licensee or its legal representative, shall give the City Manager, or any other reasonable official of Licensor, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this License) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except Licensor from any liability whatsoever. Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Licensee's failure to comply with the requirements herein shall perpetually bar Licensee's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if Licensor has actual or constructive notice or knowledge of said claim or alleged damages. Licensee agrees that the requirements of this entire License are reasonable.

L. Consideration. The terms of this License are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

M. Waiver of Governmental Immunity; Chapter 271, TEX. LOC. GOV'T CODE. The parties

agree that this License does not constitute a License or Contract for providing goods and/or services to Licensor as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and Licensor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Licensor expressly does not consent to be sued or be liable. To the greatest extent allowed by law, nothing in this License constitutes a waiver of Licensor's governmental immunity and the parties expressly agree that this License shall not constitute, nor be interpreted as a waiver of Licensor's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of Licensor's governmental immunity for the benefit of any third party lacking privity to the License.

This License does not obligate Licensee to use the Property to construct, repair, operate, replace, and maintain Licensor's facilities or structures described herein, it merely prohibits Licensee from using the Property for any other purpose. This License restricts the use of the Property to a specific purpose, but does not require the use of the Property for a specific purpose. This License does not require Licensee to construct, operate, repair, maintain, replace or remove any of Licensee's facilities or structures described herein. Licensee is not providing a service to Licensor but is providing a service to Licensee's customers. Licensee is paying Licensor for a temporary interest in real property not for a service. Any such provision shall be deemed to be a covenant against noncomplying use, not a covenant to use. Licensee's use of the Property in compliance with a restriction shall not constitute a service, and such complying use shall not operate to waive Licensor's governmental immunity.

N. Compliance. Licensee agrees that it shall comply with Texas Government Code Section 2252.908, as amended, to the extent that this statute applies to this License. Licensee agrees that it shall comply with Texas Local Government Code Section 176.006, as amended, to the extent that this statute applies to this License.

O. Texas Historical Commission Survey. Licensee agrees that it shall comply with Chapter 191 of the Texas Natural Resources Code. By executing this License, Licensee represents that it has contacted the Texas Historical Commission (the "Commission") for the purpose of determining whether the Commission will request that an archaeological survey be completed before Licensee commences operations on the Property, as contemplated herein. Licensee agrees that it shall complete or cause to be completed an archaeological survey before commencing any operations on the Property if the Commission so requests and deliver the same to Licensor. Notwithstanding any provision contained herein, in the event that any site, object, artifact, or other feature of archaeological, scientific, educational, cultural, or historical interest is encountered during the operations authorized by this License, Licensee will immediately notify Licensor and the Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Licensor or the Commission.

LICENSOR:
CITY OF MIDLAND, TEXAS

By:_____
Robert Patrick, City Manager

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

LICENSEE:
CENTURION PIPELINE L.P.

By: _____
Printed Name: Christopher Cantrell
Title: Manager of Right-of-Way

THE STATE OF Texas §
§
COUNTY OF Harris §

BEFORE ME, the undersigned authority, on this 29 day of July, 2021 personally appeared Christopher Cantrell an officer of Centurion Pipeline L.P. known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 29 day of July, 2021.

_____
Notary Public, State of Texas

LAUREN ANDREWS
Notary Public, State of Texas
Comm. Expires 01-13-2025
Notary ID 132867094

Reference No. 21-329-029

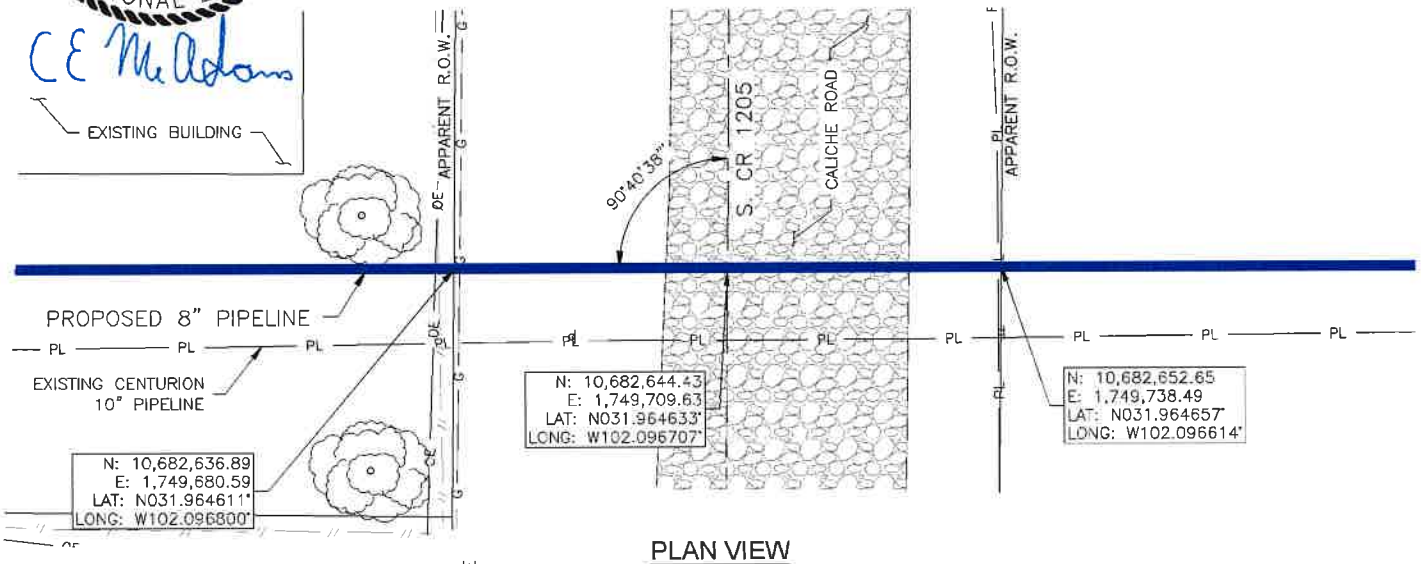
7/21/2021

STATE OF TEXAS
CLINTON E. MCADAMS
121932
LICENSED
PROFESSIONAL ENGINEER

PLAN & PROFILE

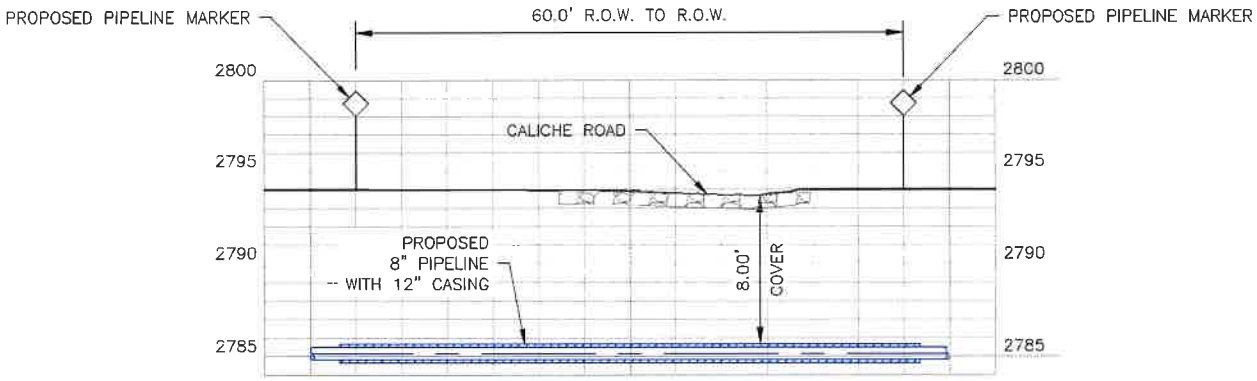
PROPOSED 8" PIPELINE
ACROSS S. CR 1205
LOCATED IN
SECTION 9, BLOCK 39, TOWNSHIP 2 SOUTH
T.& P. RY. CO. SURVEY, A-62
MIDLAND COUNTY, TEXAS

GRAPHIC SCALE
0 20' 40'



PLAN VIEW

49+69 OVERHEAD ELECTRIC
49+69 CHAIN-LINK FENCE
49+71 EDGE OF R.O.W.
49+72 ENERGAS PLASTIC GAS LINE
49+94 EDGE OF GRAVEL ROAD
50+01 ℄ OF S. CR 1205
50+21 EDGE OF GRAVEL ROAD
50+30 TARGA PIPELINE
50+31 EDGE OF R.O.W.



PROFILE VIEW

HORZ. 1:20
VERT. 1:10

LJA Surveying, Inc.
6 Desta Drive, Suite 1800 Phone 432.789.2880
Midland, Texas 79705 cmcadams@ljasurvey.com
TBPLS Firm Reg. No. 10194449 TBPE Firm Reg. No. F-19613

NO.	DATE	REVISION	DRWN	CHK'D	APP'D
D	07/21/2021	ISSUE FOR PERMITTING	JKB	CEM	CEM
C	07/12/2021	ISSUE FOR PERMITTING	JKB	CEM	CEM
B	07/06/2021	ISSUE FOR BID	JKB	CEM	CEM
A	06/25/2021	ISSUE FOR REVIEW	JKB	JCD	CEM

Centurion Pipeline L.P.

CLIENT AFE NO.	P00073
CLIENT PROJECT NO.	20073
DRAWING NO.	CPL-075T-03-011

DESIGN DATA

PROPOSED 8" PIPELINE
ACROSS S. CR 1205,
LOCATED IN
SECTION 9, BLOCK 39, TOWNSHIP 2 SOUTH,
T.& P. RY. CO. SURVEY, A-62,
MIDLAND COUNTY, TEXAS

1. GENERAL INFORMATION
   - 1.1. APPLICANT/OWNER: CENTURION PIPELINE
   - 1.2. PIPELINE NAME: BANKHEAD TO ARRINGTON JUNCTION
   - 1.3. PRODUCT: OIL
   - 1.4. PROPOSED CONSTRUCTION ACTIVITIES SCHEDULED FOR AUGUST 1, 2021 THROUGH NOVEMBER 1, 2021
   - 1.5. READILY IDENTIFIABLE, DURABLE, AND WEATHERPROOF PIPELINE MARKERS WILL BE PLACED OVER THE PIPELINE CENTERLINE AT BOTH ROAD RIGHT-OF-WAY (R.O.W.) LINES WITH UTILITY NAME, PRODUCT, AND EMERGENCY NUMBER.
   - 1.6. SOUTH COUNTY ROAD (S. CR) 1205 CROSSING REQUIREMENTS: MINIMUM EIGHT (8) FEET UNDER THE LOWEST POINT OF THE SURFACE WITHIN R.O.W.

2. PIPELINE DESIGN DATA
   - 2.1. DESIGN CODES: THE DEPARTMENT OF TRANSPORTATION ("DOT") STANDARD CFR TITLE 49, PART 195, "TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE", ASME B31.4, API 5L.
   - 2.2. DESIGN PRESSURE: 740 PSIG
   - 2.3. HYDROSTATIC TEST PRESSURE: 925 PSIG MIN. 1050 PSIG MAX STRENGTH TEST
   - 2.4. CATHODIC PROTECTION WILL BE INSTALLED ON THE PIPELINE VIA IMPRESSED CURRENT.

3. CONSTRUCTION METHOD
   - 3.1. PIPELINE TO BE INSTALLED BY HORIZONTAL DIRECTIONAL DRILL METHODS, WITH 12" CASING.

4. BORE LINE PIPE
   - 4.1. OUTSIDE DIAMETER: 8.625"
   - 4.2. WALL THICKNESS: 0.322"
   - 4.3. PIPE SPECIFICATION: APL 5L
   - 4.4. GRADE: X52
   - 4.5. MATERIAL: CARBON STEEL

BARLOW EQUATION FOR STEEL PIPE: P = (2 x S x T x E x F)/D	
MOP	740
OUTSIDE DIAMETER (IN) = D	8.625
DESIGN FACTOR = F	0.72
LONGITUDINAL JOINT FACTOR = E	1 (ERW/HFW)
YIELD STRENGTH (PSI, LB/IN^2) = S	52000
WALL THICKNESS (IN) = T	0.322
PRESSURE (PSI, LB/IN^2) = P	2795
P > MOP	OK

7/21/2021

STATE OF TEXAS
CLINTON E. MCADAMS
121932
LICENSED
PROFESSIONAL ENGINEER

C E McAdams

LJA Surveying, Inc.
6 Desta Drive, Suite 1800 Phone 432.789.2880
Midland, Texas 79705 cmcadams@ljasurvey.com
TBPLS Firm Reg. No 10194449 TBPE Firm Reg. No F-19613

NO.	DATE	REVISION	DRWN	CHK'D	APP'D
D	07/21/2021	ISSUE FOR PERMITTING	JKB	CEM	CEM
C	07/12/2021	ISSUE FOR PERMITTING	JKB	CEM	CEM
B	07/06/2021	ISSUE FOR BID	JKB	CEM	CEM
A	06/25/2021	ISSUE FOR REVIEW	JKB	JCD	CEM

Centurion Pipeline L.P.

CLIENT AFE NO.	P00073
CLIENT PROJECT NO.	P00073
DRAWING NO.	CPL-075T-03-012

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 5/10/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Bowen, Miclette & Britt Insurance Agency, LLC 1111 North Loop West, #400 Houston TX 77008	**CONTACT NAME:** Heather Cameron **PHONE (A/C, No, Ext):** 713-880-7100 **FAX (A/C, No):** 713-880-7166 **E-MAIL ADDRESS:** hcameron@bmbinc.com
INSURED LOTUSMIDST Centurion Pipeline L.P. 3600 W. Sam Houston Pkw. Houston TX 77042	**INSURER(S) AFFORDING COVERAGE** / **NAIC #** **INSURER A :** National Fire & Marine Ins Co — 20079 **INSURER B :** Liberty Mutual Fire Ins Co — 23035 **INSURER C :** Liberty Insurance Corp — 42404 **INSURER D :** **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** 1552637816 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	X **COMMERCIAL GENERAL LIABILITY** [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [ ] PRO-JECT [X] LOC [ ] OTHER:	Y	Y	TB2641445690030	9/28/2020	9/28/2021	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG 	$ 1,000,000 $ 300,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
B	**AUTOMOBILE LIABILITY** X ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY	Y	Y	AS2641445690020	9/28/2020	9/28/2021	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) 	$ 1,000,000 $ $ $ $
A	X **UMBRELLA LIAB** X OCCUR **EXCESS LIAB** [ ] CLAIMS-MADE [ ] DED X RETENTION $ 25,000	Y	Y	42UMO30620703	9/28/2020	9/28/2021	EACH OCCURRENCE AGGREGATE 	$ 10,000,000 $ 10,000,000 $
C	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		WC7641445690010	9/28/2020	9/28/2021	[ ] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The following policy provisions and/or endorsements form part of the policies of insurance represented by this certificate of insurance. The terms contained in the policies and/or endorsements supersede the representations made herein. Electronic copies of the policy provisions and/or endorsements listed below are available by emailing: certificates@bmbinc.com

General Liability:
Blanket additional insured Ongoing Operations per form # CG 20 10 04 13
Blanket additional insured Completed Operations per form # CG 20 37 04 13
Blanket waiver of subrogation per form # LC04101 04 18
See Attached...

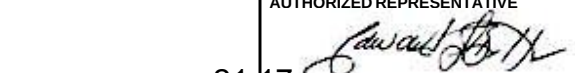
CERTIFICATE HOLDER

City of Midland
300 N. Loraine
Midland TX 78701

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



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ACORD 25 (2016/03) **The ACORD name and logo are registered marks of ACORD**

AGENCY CUSTOMER ID: LOTUSMIDST

LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY	NAMED INSURED
Bowen, Miclette & Britt	Centurion Pipeline L.P. 3600 W. Sam Houston Pkw. Houston TX 77042
POLICY NUMBER	
CARRIER / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Blanket primary/non-contributory per form # LC2420 11 18

Automobile:
Blanket additional insured per form # CA 20 48 10 13
Blanket waiver of subrogation per form # AC 84 07 11 17
Blanket primary/non-contributory per form # AC 84 23 08 11

Worker's Compensation:
Blanket waiver of subrogation per form # WC 00 03 13

Umbrella:
Blanket additional insured per form # ULP-UM-002-02/2014
Blanket waiver of subrogation per form # CL-UN-045-10/ 2016
Blanket primary/non-contributory per form # CLP-UN-065-10/2013

Certificate Holder Includes: City of Midland

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THE FACE OF THIS DOCUMENT CONTAINS MICROPRINTING

Centurion Pipeline, LP
P. O. Box 18589 Sugar Land, TX 77496

Wells Fargo Bank, N.A.
Land Account

Check No. 4100257
Date: August 3, 2021

PAY TO THE ORDER OF
City of Midland
P.O. Box 1152
Midland, TX 79702

$ 400.00
VOID AFTER 180 DAYS

Four Hundred and No/100 **DOLLARS**

MEMO 2021 Annual License Fee - SCR 1205 / Alcapulco

Ratchaneewan Anderson MP
AUTHORIZED SIGNATURE

⑈4100257⑈ ⑆121000248⑆ 4978707941⑈

ORIGINAL DOCUMENT HAS A WATERMARK

THE FACE OF THIS DOCUMENT CONTAINS MICROPRINTING

Centurion Pipeline, LP
P. O. Box 18589 Sugar Land, TX 77496

Wells Fargo Bank, N.A.
Land Account

Check No. 4100247
Date: July 16, 2021

PAY TO THE ORDER OF
City of Midland
P.O. Box 1152
Midland, TX 79702

$ 1,000.00
VOID AFTER 180 DAYS

One Thousand and No/100 **DOLLARS**

MEMO Application Fee - SCR 1205 / Alcapulco

Ratchaneewan Anderson MP
AUTHORIZED SIGNATURE

⑈4100247⑈ ⑆121000248⑆ 4978707941⑈

ORIGINAL DOCUMENT HAS A WATERMARK

City Council Meeting

Item Number: 22

Meeting Date: August 24, 2021

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: Motion authorizing the execution of a Right-of-Way License (21-329-032) with Centurion Pipeline L.P., regarding city-owned property described as Section 9, Block 39, Township 2 South, T&P RR Co. Survey, Midland County, Texas (DISTRICT 2) (UTILITIES)

Purpose:

This motion will provide a right of way to bore 60' in this location and place a common carrier crude oil pipeline under City of Midland owned Cactus Trails / South County Road 1207. Both bore pits will be on private property and the pipeline will be cased.

This Right-of-Way License is proposed for a single five (5) year period with the option for a single five (5) year renewal. Terms are consistent with the City's standard license for pipeline facilities of this nature.

Recommended City Council Action:

Approve

Fiscal Impact:

Application fee (one time): $1,000

Annual Lease Rate,

Annual Lease Rate (3.75 rods x $20/rod): $75.00 / $400.00 minimum per year

Surface Damages: none

Total Collected: $1,400.00

Discussion:

This is a common carrier, carbon steel constructed 8.625” DR-11 crude oil pipeline running East – West, bored under the road and required to be cased for the duration of the crossing and buried at a minimum depth of eight (8) feet. Right of Way width will be 10’.

Certificates of Insurance are on file

City Secretary to record all documents

Robert Patrick

City Manager’s Office

RIGHT OF WAY LICENSE

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

Date:	August 25, 2021
Licensor:	CITY OF MIDLAND, TEXAS, a home-rule municipal corporation
Licensor's Representative:	Robert Patrick, City Manager
Licensor's Mailing Address:	P.O. Box 1152 Midland, Texas 79702
Licensee:	Centurion Pipeline L.P.
Licensee's Representative:	**Christopher Cantrell**
Licensee's Mailing Address:	3600 W. Sam Houston Parkway South, Suite 500 Houston, Texas 77042
Property:	See **Exhibit A** attached hereto and incorporated herein for all purposes.

Licensee desires use of property owned by Licensor in Midland County, Texas (the "Property"), for purposes set forth below. Licensee acknowledges and agrees that it must obtain a license (the "License") in order to use the public lands of Licensor.

W I T N E S S E T H:

For and in consideration of the execution of this License and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

I. Term

A. Initial Term. This License shall be for a term of five (5) years (the "Initial Term"), commencing with the date of this License (the "Commencement Date") unless terminated earlier as provided hereafter.

B. Renewal Term. This License shall automatically renew at the end of the Initial Term for one (1) additional term of five (5) years, upon the written request of Licensee received by Licensor on or before one hundred twenty (120) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of Licensor.

C. Termination. Licensor may terminate this License if Licensee fails to pay, when due, any amount owing under this License and that failure continues for sixty (60) days or, if Licensee

commits any material breach or material default in performance of any obligation, prohibition, restriction, provision or covenant contained in this License, and the breach or default continues for a period of thirty (30) days after Licensor delivers notice to Licensee reasonably detailing the breach or default.

Additionally, Licensor may terminate this License at will for any or no reason upon giving at least three hundred sixty-five (365) days' written notice to Licensee. The parties to this License understand and agree that it is in Licensor's sole discretion to cancel the License during the term of the License without penalty to Licensor. Licensee has no expectation and has received no guarantees that this License will not be terminated before the end of the License term. The parties have bargained for the flexibility of terminating this License upon tender of the requisite notice at any time during the term of the License. All work and services under the License shall be suspended upon termination of the License becoming effective.

Upon termination of this License, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of Licensee to its original condition, as close thereto as may be practical, subject to the approval of Licensor upon inspection by Licensor's Representative, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this License.

II. Financial Consideration

A. License Fee. The first year's license fee in the amount of FOUR HUNDRED and No/100 Dollars ($400.00) shall be due and payable on or prior to the Commencement Date of this License ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay Licensor a late charge of five percent (5%).

B. Surface Damage Fee. Intentionally omitted.

C. Annual Fee. Licensee shall pay to Licensor an annual fee in the amount of FOUR HUNDRED and No/100 Dollars ($400.00), which shall be payable each year on or before the anniversary of the Commencement Date of this License.

D. Application Fee. At the same time the first year License Fee is due, Licensee shall pay a non-refundable one-time fee of ONE THOUSAND and No/100 Dollars ($1,000.00) to Licensor's Representative. Said fee shall revert to Licensor and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

E. Fee Adjustment. Prior to commencement of any renewal term, Licensor and Licensee shall negotiate in good faith to agree to an adjustment of the Annual Fee. If Licensor and Licensee are unable to reach an agreement regarding an adjustment to the Annual Fee, then the Annual Fee shall be determined by Licensor in its sole discretion, provided the new Annual Fee shall not exceed twenty-five percent (25%) of the Annual Fee paid for the last year of the Initial Term.

F. Delivery of Payment. The License Fee payment shall be made to Licensor at the office of

Licensor's Representative, Attn: Right of Way Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon the Property, being ten (10) feet in width of the pipeline location as shown on **Exhibit A** attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, a carbon steel pipeline, not to exceed eight and six hundred twenty-five thousandths (8.625) inches in diameter, for the transportation of crude oil, to have the right of ingress and egress at convenient points for such purpose. **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein. The parties agree Licensee's failure to provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein may result in the termination of this License. The decision to accept a complete as-built survey after the sixty-day deadline prescribed herein, or, conversely, to terminate this License shall be in the sole and absolute discretion of Licensor.**

B. Road Repair. Licensee covenants and agrees that it will repair any of Licensor's roads that Licensee damages on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

C. Utility Repair. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by Licensor that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of Licensor's Standard Specifications.

D. Depth. Licensee covenants and agrees that it will bury the pipeline(s) to be constructed hereunder no less than eight (8) feet in depth. All backfill used in burying such line shall be compacted to a density of ninety percent (90%), except where such pipeline(s) crosses under a paved or traveled portion of City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). Licensor shall be afforded the opportunity to test the density on all backfill. Notwithstanding any provision to the contrary contained herein, Licensee covenants and agrees that, at any point that Licensee's pipeline(s) intersects with a City of Midland utility line location, the pipeline(s) shall be bored at a depth of a least (i) nine (9) feet under all City of Midland water utility lines and (ii) two (2) feet under all City of Midland sewer utility lines. Licensee agrees that it shall comply with 30 Tex. Admin. Code § 290.44(e), as amended, to the extent applicable to this License.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by Licensor's Representative.

F. Reservation of Rights. Licensor expressly reserves the right to install, repair, or reconstruct streets or roads and all ancillary public uses usual and customary in connection with streets and

roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of Licensor, in, on, across, along, over, under, and through any property occupied by Licensee. In permitting such work to be done, Licensor shall not be liable to Licensee for any damage so caused to Licensee's system or property, **NOR SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY DAMAGES TO LICENSEE'S PIPELINE(S), CASING, OR COMPRESSOR STATION, ARISING OUT OF THE NEGLIGENCE BY LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS**. If Licensor requires Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

G. Non-exclusive. Licensor expressly reserves the full right to grant other easements or rights of way crossing or running parallel with the rights of way used by Licensee.

H. Abandonment. It is especially provided, however, that as an express condition of this License, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the Property ceases to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty (120) days' written notice, then and in that event, this License shall automatically revert to Licensor, its successors or assigns, free and clear of any right, title, or interest in Licensee, or any re-entry by Licensor.

I. Approval of Specifications. In the event Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to Licensor's Representative for his or her approval. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative before making any repairs if during a Licensor work day. If not on a work day, Licensee shall notify Licensor's Representative on the first work day after repairs have begun.

J. Gates and Fences. Licensee agrees to use existing gates and roadways where available, to enter, leave and cross the Property; provided that Licensee shall not use any road marked "Closed." Licensee and all persons entering or leaving the Property in connection with Licensee's operations hereunder shall keep all outside and interior gates securely closed except during operations related to this License. Licensee shall keep all outside gates, and all other gates designated by Licensor, securely locked except during operations related to this License. At any gate that is to be locked,

Licensor may install its own lock in addition to Licensee's lock.

Licensee agrees that Licensee shall not cut or go over any fence at any time or in connection with any operations on the Property without first obtaining Licensor's express consent thereto in writing. All gates or openings in fences shall be at mutually agreeable location(s) between Licensee and Licensor and shall be constructed as reasonably required by Licensor. Upon the termination of this License, at Licensor's election, gates in fences shall be left in place and shall thereafter be owned by Licensor or Licensee shall remove such gates and restore the fence to its original condition as nearly as reasonably practicable. The terms, provisions and requirements of this provision shall survive the termination or expiration of this License.

K. Trash. Licensee shall keep the Property free of trash and debris at all times. Under no circumstances, will Licensee be allowed to bury any trash, debris or foreign material of any kind on or under the Property. Licensor shall have the right to expel and permanently ban from the Property any person observed disposing of trash on the Property. Upon the completion of any operations, all ribbons, flags, stakes and similar items shall by promptly removed from the Property.

L. Hunting, Fishing and Alcohol Prohibited. No agent, employee, representative, contractor or subcontractor of Licensee or any other person allowed to enter the Property by Licensee shall be permitted to hunt, fish, trap, camp, picnic, ride motorcycles or four-wheelers or otherwise conduct any social gathering on the Property, nor shall any such persons be permitted to bring firearms, archery equipment, dogs, alcoholic beverages or illegal drugs on the Property at any time. Violations of this provision shall cause the violator to be regarded as a trespasser and subject to prosecution under trespass laws of the State of Texas. Licensor shall have the right to expel and permanently ban from the Property any person observed on the Property in violation of this provision.

M. Storage of Machinery and Equipment. Licensee shall use no part of the Property to store machinery, equipment, or other property of Licensee while it is not being used.

N. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace above the land covered by this License for any purpose allowed by law and deemed necessary by Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by Licensor in, on, across, along, over, under, and through said right of way occupied by Licensee. In the event of such work in connection with said purposes it shall be deemed necessary by Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline, property, or casing of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable federal or state laws with respect to relocation payments.

IV. Standard General Conditions

A. Insurance. Licensee shall at all times during the term of this License maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):	
■ Personal Injury:	$1,000,000.00 per person $1,000,000.00 per occurrence
■ Property Damage:	$100,000.00 per occurrence
Business Automobile Liability:	$1,000,000.00 combined single limit-- Personal Injury and Property Damage
Workers' Compensation:	Statutory limits
Employers' Liability:	$1,000,000.00 per accident or occurrence
Umbrella Liability:	$10,000,000.00 each occurrence $10,000,000.00 aggregate

The Commercial General Liability shall be on an occurrence basis. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The Workers' Compensation coverage provided by Licensee shall inure to the benefit of employees injured during the course and scope of their employment by Licensee pursuant to this License. The Workers' Compensation insurance shall waive all rights of subrogation against Licensor.

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this License. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The parties agree that, prior to the execution of the License, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

Licensor shall be provided the notice by Licensee's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Licensor shall not be required to provide any insurance whatsoever pursuant to this License.

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this License to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured. Licensee certifies that the one or more

certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Licensee shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Licensee.

B. Indemnity. LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S),CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE AGREES THAT LICENSEE SHALL INDEMNIFY AND SAVE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION DESCRIBED HEREIN.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSOR, LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY

CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S),CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, AND ALL COSTS AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF FAILURE OF LICENSEE, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER TO COMPLY WITH ALL APPLICABLE LOCAL, FEDERAL AND/OR STATE ENVIRONMENTAL LAWS, INCLUDING BUT NOT LIMITED TO THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) (AS THEY MAY BE REAUTHORIZED AND/OR AMENDED) AND ALL OTHER LOCAL, FEDERAL AND STATE LAWS, IN CONNECTION WITH OR RELATED TO ANY OF LICENSEE'S OPERATIONS OR ACTIVITIES ON THE PROPERTY, OR ANY OF LICENSEE'S HANDLING, STORING, RELEASING, TRANSPORTING OR DISPOSING OF ALL SUBSTANCES, INCLUDING, BUT NOT LIMITED TO HAZARDOUS SUBSTANCES AND HAZARDOUS WASTES, ON OR FROM THE PROPERTY OR ANY OTHER LANDS OF LICENSOR.

C. Assignment. The rights granted by this License inure to the benefit of Licensee. The rights and privileges shall not be assignable by Licensee without the express written consent of Licensor's City Manager. Any required consent is to be evidenced by a letter written by Licensor's City Manager that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor's City Manager.

D. Independent Contractor. It is expressly understood and agreed that Licensee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of Licensor; that Licensee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between Licensor and Licensee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Licensor and Licensee. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of Licensor. Further, it is specifically understood and agreed that nothing in this License is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Licensee shall be an independent contractor under this License and shall assume all of the rights, obligations and liabilities applicable to it as such

independent contractor hereunder. Licensor does not have the power to direct the order in which the work is done. Licensor shall not have the right to control the means, methods or details of Licensee's work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way.

E. Waiver of Attorney Fees. BY EXECUTING THIS LICENSE, LICENSEE AGREES TO WAIVE, AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE, ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST LICENSOR REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE LICENSE, THE CONSTRUCTION, OR INTERPRETATION, VALIDITY OR BREACH OF THE LICENSE. LICENSEE SPECIFICALLY AGREES THAT IF LICENSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS LICENSE, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS LICENSE, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, LICENSEE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LICENSEE MIGHT OTHERWISE BE ENTITLED.

LICENSEE AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING, KNOWN RIGHT. LICENSEE ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS LICENSE. LICENSEE FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN LICENSOR AND LICENSEE. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

LICENSEE AND LICENSOR ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS LICENSE WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

F. Governing Law & Venue. All performance and payment made pursuant to this License shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this License or the performance of this License shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this License shall be deemed to have been performed in Midland County, Texas. This License shall be construed, interpreted and enforced under the laws of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all other claims or disputes, arising from or relating in any way to the subject matter of this License, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

G. Release. NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS,

CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LICENSOR'S NEGLIGENCE.

H. Governmental Immunity. By executing this License, Licensor is not waiving its right of governmental immunity. Licensor is retaining its immunity from suit. Licensor is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY**.

I. Third Party Beneficiary. Licensor's approval of this License does not create a third party beneficiary. There is no third party beneficiary to this License. No person or entity who is not a party to this License shall have any third party beneficiary or other rights hereunder.

J. Notices. Any notice or communication required in the administration of this License shall be sent by certified mail, return receipt requested, to the parties' respective mailing addresses as set forth hereinabove.

K. Notice of Alleged Breach; Statutory Prerequisite. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this License, Licensee or its legal representative, shall give the City Manager, or any other reasonable official of Licensor, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this License) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except Licensor from any liability whatsoever. Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Licensee's failure to comply with the requirements herein shall perpetually bar Licensee's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if Licensor has actual or constructive notice or knowledge of said claim or alleged damages. Licensee agrees that the requirements of this entire License are reasonable.

L. Consideration. The terms of this License are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

M. Waiver of Governmental Immunity; Chapter 271, TEX. LOC. GOV'T CODE. The parties

agree that this License does not constitute a License or Contract for providing goods and/or services to Licensor as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and Licensor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Licensor expressly does not consent to be sued or be liable. To the greatest extent allowed by law, nothing in this License constitutes a waiver of Licensor's governmental immunity and the parties expressly agree that this License shall not constitute, nor be interpreted as a waiver of Licensor's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of Licensor's governmental immunity for the benefit of any third party lacking privity to the License.

This License does not obligate Licensee to use the Property to construct, repair, operate, replace, and maintain Licensor's facilities or structures described herein, it merely prohibits Licensee from using the Property for any other purpose. This License restricts the use of the Property to a specific purpose, but does not require the use of the Property for a specific purpose. This License does not require Licensee to construct, operate, repair, maintain, replace or remove any of Licensee's facilities or structures described herein. Licensee is not providing a service to Licensor but is providing a service to Licensee's customers. Licensee is paying Licensor for a temporary interest in real property not for a service. Any such provision shall be deemed to be a covenant against noncomplying use, not a covenant to use. Licensee's use of the Property in compliance with a restriction shall not constitute a service, and such complying use shall not operate to waive Licensor's governmental immunity.

N. Compliance. Licensee agrees that it shall comply with Texas Government Code Section 2252.908, as amended, to the extent that this statute applies to this License. Licensee agrees that it shall comply with Texas Local Government Code Section 176.006, as amended, to the extent that this statute applies to this License.

O. Texas Historical Commission Survey. Licensee agrees that it shall comply with Chapter 191 of the Texas Natural Resources Code. By executing this License, Licensee represents that it has contacted the Texas Historical Commission (the "Commission") for the purpose of determining whether the Commission will request that an archaeological survey be completed before Licensee commences operations on the Property, as contemplated herein. Licensee agrees that it shall complete or cause to be completed an archaeological survey before commencing any operations on the Property if the Commission so requests and deliver the same to Licensor. Notwithstanding any provision contained herein, in the event that any site, object, artifact, or other feature of archaeological, scientific, educational, cultural, or historical interest is encountered during the operations authorized by this License, Licensee will immediately notify Licensor and the Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Licensor or the Commission.

LICENSOR:
CITY OF MIDLAND, TEXAS

By:_____
Robert Patrick, City Manager

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

LICENSEE:
CENTURION PIPELINE L.P.

By: _____
Printed Name: Christopher Cantrell
Title: Manager of Right-of-Way

THE STATE OF Texas §
§
COUNTY OF Harris §

BEFORE ME, the undersigned authority, on this 29 day of July, 2021 personally appeared Christopher Cantrell an officer of Centurion Pipeline L.P. known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 29 day of July, 2021.

LAUREN ANDREWS
Notary Public, State of Texas
Comm. Expires 01-13-2025
Notary ID 132867094

_____
Notary Public, State of Texas

Reference No. 21-329-033

7/21/2021

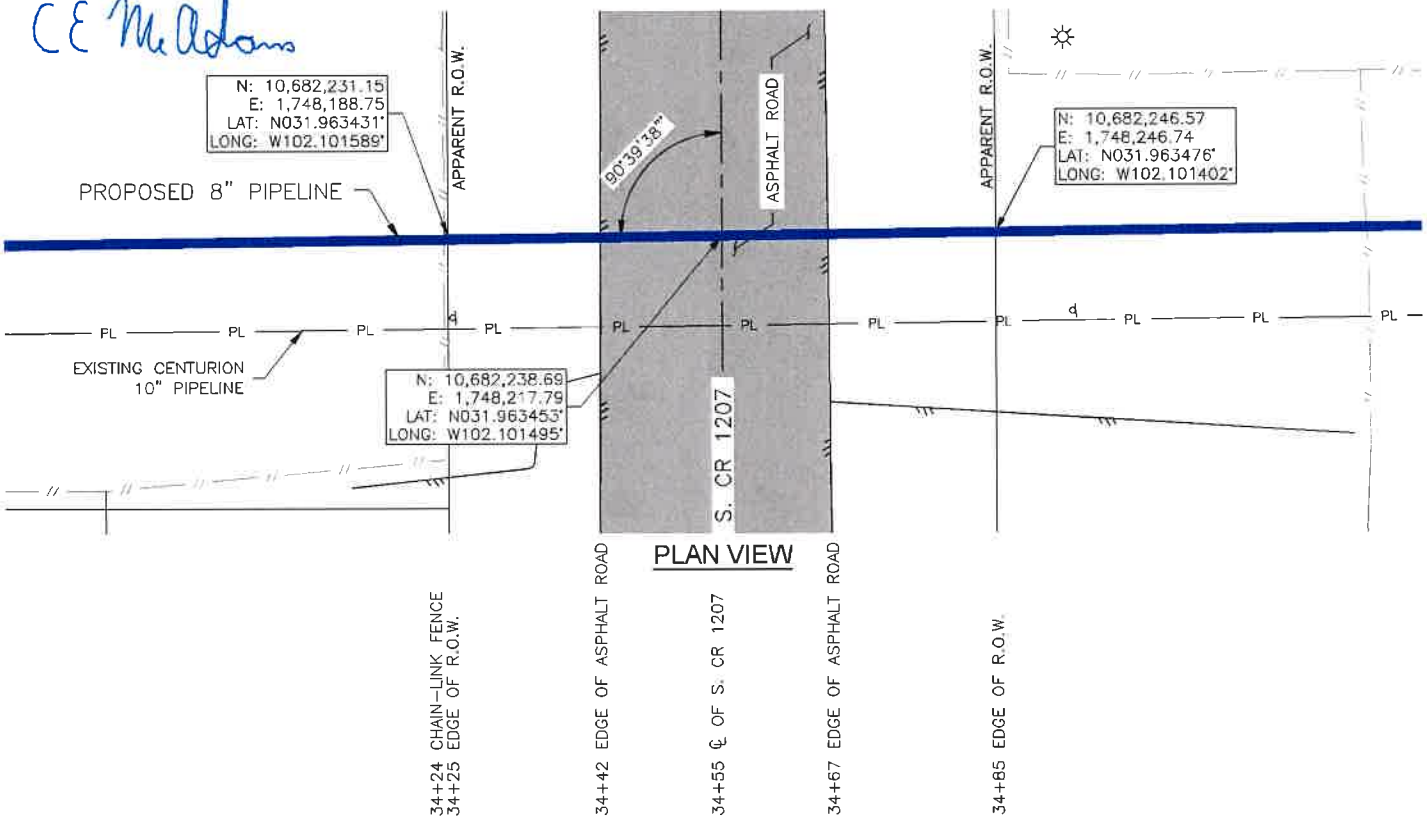
STATE OF TEXAS
CLINTON E. MCADAMS
121932
LICENSED
PROFESSIONAL ENGINEER

C E McAdams

PLAN & PROFILE

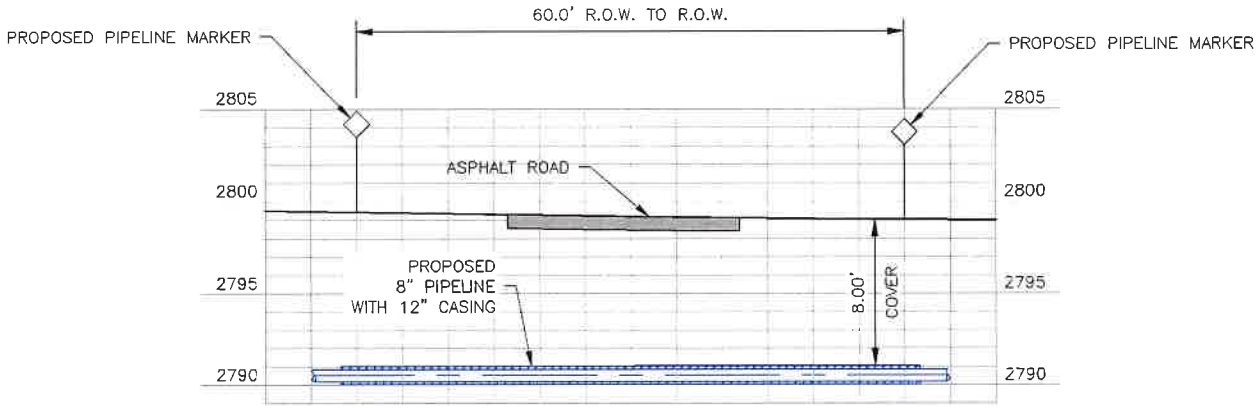
PROPOSED 8" PIPELINE
ACROSS S. CR 1207
LOCATED IN
SECTION 9, BLOCK 39, TOWNSHIP 2 SOUTH
T.& P. RY. CO. SURVEY, A-62
MIDLAND COUNTY, TEXAS

GRAPHIC SCALE
0 20' 40'



PLAN VIEW

34+24 CHAIN-LINK FENCE
34+25 EDGE OF R.O.W.
34+42 EDGE OF ASPHALT ROAD
34+55 ℄ OF S. CR 1207
34+67 EDGE OF ASPHALT ROAD
34+85 EDGE OF R.O.W.



PROFILE VIEW

HORZ. 1:20
VERT. 1:10

LJA Surveying, Inc.
6 Desta Drive, Suite 1800 Phone 432.789.2880
Midland, Texas 79705 cmcadams@ljasurvey.com
TBPLS Firm Reg. No. 10194449 TBPE Firm Reg. No. F-19613

NO.	DATE	REVISION	DRWN	CHK'D	APP'D
D	07/21/2021	ISSUE FOR PERMITTING	JKB	CEM	CEM
C	07/12/2021	ISSUE FOR PERMITTING	JKB	CEM	CEM
B	07/06/2021	ISSUE FOR BID	JKB	CEM	CEM
A	06/25/2021	ISSUE FOR REVIEW	JKB	JCD	CEM

Centurion Pipeline L.P.

CLIENT AFE NO.	P00073
CLIENT PROJECT NO.	P00073
DRAWING NO.	CPL-075T-03-005

DESIGN DATA

PROPOSED 8" PIPELINE
ACROSS S. CR 1207,
LOCATED IN
SECTION 9, BLOCK 39, TOWNSHIP 2 SOUTH,
T.& P. RY. CO. SURVEY, A-62,
MIDLAND COUNTY, TEXAS

1. GENERAL INFORMATION
   - 1.1. APPLICANT/OWNER: CENTURION PIPELINE
   - 1.2. PIPELINE NAME: BANKHEAD TO ARRINGTON JUNCTION
   - 1.3. PRODUCT: OIL
   - 1.4. PROPOSED CONSTRUCTION ACTIVITIES SCHEDULED FOR AUGUST 1, 2021 THROUGH NOVEMBER 1, 2021
   - 1.5. READILY IDENTIFIABLE, DURABLE, AND WEATHERPROOF PIPELINE MARKERS WILL BE PLACED OVER THE PIPELINE CENTERLINE AT BOTH ROAD RIGHT-OF-WAY (R.O.W.) LINES WITH UTILITY NAME, PRODUCT, AND EMERGENCY NUMBER.
   - 1.6. SOUTH COUNTY ROAD (S. CR) 1207 CROSSING REQUIREMENTS: MINIMUM EIGHT (8) FEET UNDER THE LOWEST POINT OF THE SURFACE WITHIN R.O.W.

2. PIPELINE DESIGN DATA
   - 2.1. DESIGN CODES: THE DEPARTMENT OF TRANSPORTATION ("DOT") STANDARD CFR TITLE 49, PART 195, "TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE", ASME B31.4, API 5L.
   - 2.2. DESIGN PRESSURE: 740 PSIG
   - 2.3. HYDROSTATIC TEST PRESSURE: 925 PSIG MIN. 1050 PSIG MAX STRENGTH TEST
   - 2.4. CATHODIC PROTECTION WILL BE INSTALLED ON THE PIPELINE VIA IMPRESSED CURRENT.

3. CONSTRUCTION METHOD
   - 3.1. PIPELINE TO BE INSTALLED BY HORIZONTAL DIRECTIONAL DRILL METHODS, WITH 12" CASING.

4. BORE LINE PIPE
   - 4.1. OUTSIDE DIAMETER: 8.625"
   - 4.2. WALL THICKNESS: 0.322"
   - 4.3. PIPE SPECIFICATION: APL 5L
   - 4.4. GRADE: X52
   - 4.5. MATERIAL: CARBON STEEL

BARLOW EQUATION FOR STEEL PIPE: $P = (2 \times S \times T \times E \times F)/D$	
MOP	740
OUTSIDE DIAMETER (IN) = D	8.625
DESIGN FACTOR = F	0.72
LONGITUDINAL JOINT FACTOR = E	1 (ERW/HFW)
YIELD STRENGTH (PSI, LB/IN^2) = S	52000
WALL THICKNESS (IN) = T	0.322
PRESSURE (PSI, LB/IN^2) = P	2795
P > MOP	OK

7/21/2021

STATE OF TEXAS
CLINTON E. MCADAMS
121932
LICENSED
PROFESSIONAL ENGINEER

C E McAdams

LJA Surveying, Inc.
6 Desta Drive, Suite 1800 Phone 432.789.2880
Midland, Texas 79705 cmcadams@ljasurvey.com
TBPLS Firm Reg. No. 10194449 TBPE Firm Reg. No. F-19613

NO.	DATE	REVISION	DRWN	CHK'D	APP'D
D	07/21/2021	ISSUE FOR PERMITTING	JKB	CEM	CEM
C	07/12/2021	ISSUE FOR PERMITTING	JKB	CEM	CEM
B	07/06/2021	ISSUE FOR BID	JKB	CEM	CEM
A	06/25/2021	ISSUE FOR REVIEW	JKB	JCD	CEM

Centurion Pipeline L.P.

CLIENT AFE NO.	P00073
CLIENT PROJECT NO.	P00073
DRAWING NO.	CPL-075T-03-006

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 5/10/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Bowen, Miclette & Britt Insurance Agency, LLC 1111 North Loop West, #400 Houston TX 77008	**CONTACT NAME:** Heather Cameron **PHONE (A/C, No, Ext):** 713-880-7100 **FAX (A/C, No):** 713-880-7166 **E-MAIL ADDRESS:** hcameron@bmbinc.com
INSURED LOTUSMIDST Centurion Pipeline L.P. 3600 W. Sam Houston Pkw. Houston TX 77042	**INSURER(S) AFFORDING COVERAGE** / **NAIC #** **INSURER A :** National Fire & Marine Ins Co — 20079 **INSURER B :** Liberty Mutual Fire Ins Co — 23035 **INSURER C :** Liberty Insurance Corp — 42404 **INSURER D :** **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** 1552637816 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	X **COMMERCIAL GENERAL LIABILITY** [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [ ] PRO-JECT [X] LOC [ ] OTHER:	Y	Y	TB2641445690030	9/28/2020	9/28/2021	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG 	$ 1,000,000 $ 300,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
B	**AUTOMOBILE LIABILITY** X ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY	Y	Y	AS2641445690020	9/28/2020	9/28/2021	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) 	$ 1,000,000 $ $ $ $
A	X **UMBRELLA LIAB** X OCCUR **EXCESS LIAB** [ ] CLAIMS-MADE [ ] DED X RETENTION $ 25,000	Y	Y	42UMO30620703	9/28/2020	9/28/2021	EACH OCCURRENCE AGGREGATE 	$ 10,000,000 $ 10,000,000 $
C	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		WC7641445690010	9/28/2020	9/28/2021	[ ] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The following policy provisions and/or endorsements form part of the policies of insurance represented by this certificate of insurance. The terms contained in the policies and/or endorsements supersede the representations made herein. Electronic copies of the policy provisions and/or endorsements listed below are available by emailing: certificates@bmbinc.com

General Liability:
Blanket additional insured Ongoing Operations per form # CG 20 10 04 13
Blanket additional insured Completed Operations per form # CG 20 37 04 13
Blanket waiver of subrogation per form # LC04101 04 18
See Attached...

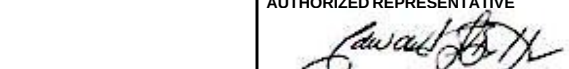
CERTIFICATE HOLDER

City of Midland
300 N. Loraine
Midland TX 78701

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



PACKET 22.17 August 24, 2021

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AGENCY CUSTOMER ID: LOTUSMIDST

LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY Bowen, Miclette & Britt	NAMED INSURED Centurion Pipeline L.P. 3600 W. Sam Houston Pkw. Houston TX 77042
POLICY NUMBER	
CARRIER / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Blanket primary/non-contributory per form # LC2420 11 18

Automobile:
Blanket additional insured per form # CA 20 48 10 13
Blanket waiver of subrogation per form # AC 84 07 11 17
Blanket primary/non-contributory per form # AC 84 23 08 11

Worker's Compensation:
Blanket waiver of subrogation per form # WC 00 03 13

Umbrella:
Blanket additional insured per form # ULP-UM-002-02/2014
Blanket waiver of subrogation per form # CL-UN-045-10/ 2016
Blanket primary/non-contributory per form # CLP-UN-065-10/2013

Certificate Holder Includes: City of Midland

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THE FACE OF THIS DOCUMENT CONTAINS MICROPRINTING

Wells Fargo Bank, N.A.

Centurion Pipeline, LP
P. O. Box 18589 Sugar Land, TX 77496

Land Account

Check No. 4100258
Date: August 3, 2021

PAY TO THE ORDER OF
City of Midland
P. O. Box 1152
Midland, TX 79702

$ 400.00
VOID AFTER 180 DAYS

Four Hundred and No/100 **DOLLARS**

MEMO 2021 Annual License Fee - SCR 1206/Kerry

Ratchaneewan Anderson MP
AUTHORIZED SIGNATURE

⑈4100258⑈ ⑆121000248⑆ 4978707941⑈

ORIGINAL DOCUMENT HAS A WATERMARK

THE FACE OF THIS DOCUMENT CONTAINS MICROPRINTING

Wells Fargo Bank, N.A.

Centurion Pipeline, LP
P. O. Box 18589 Sugar Land, TX 77496

Land Account

Check No. 4100248
Date: July 16, 2021

PAY TO THE ORDER OF
City of Midland
P. O. Box 1152
Midland, TX 79702

$ 1,000.00
VOID AFTER 180 DAYS

One Thousand and No/100 **DOLLARS**

MEMO Application Fee - SCR 1206/Kerry

Ratchaneewan Anderson MP
AUTHORIZED SIGNATURE

⑈4100248⑈ ⑆121000248⑆ 4978707941⑈

ORIGINAL DOCUMENT HAS A WATERMARK

City Council Meeting

Item Number: 23

Meeting Date: August 24, 2021

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: Motion authorizing the execution of a Right-of-Way License (21-329-033) with Centurion Pipeline L.P., regarding city-owned property described as Section 9, Block 39, Township 2 South, T&P RR Co. Survey, Midland County, Texas (DISTRICT 2) (UTILITIES)

Purpose:

This motion will provide a right of way to bore 60' in this location and place a common carrier crude oil pipeline under City of Midland owned Kevin Road / South County Road 1208. Both bore pits will be on private property and the pipeline will be cased.

This Right-of-Way License is proposed for a single five (5) year period with the option for a single five (5) year renewal. Terms are consistent with the City's standard license for pipeline facilities of this nature.

Recommended City Council Action:

Approve

Fiscal Impact:

Application fee (one time): $1,000

Annual Lease Rate,

Annual Lease Rate (3.75 rods x $20/rod): $75.00 / $400.00 minimum per year

Surface Damages: none

Total Collected: $1,400.00

Discussion:

This is a common carrier, carbon steel constructed 8.625” DR-11 crude oil pipeline running East – West, bored under the road and required to be cased for the duration of the crossing and buried at a minimum depth of eight (8) feet. Right of Way width will be 10’.

Certificates of Insurance are on file

City Secretary to record all documents



City Manager’s Office

RIGHT OF WAY LICENSE

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

Date:	August 25, 2021
Licensor:	CITY OF MIDLAND, TEXAS, a home-rule municipal corporation
Licensor's Representative:	Robert Patrick, City Manager
Licensor's Mailing Address:	P.O. Box 1152 Midland, Texas 79702
Licensee:	Centurion Pipeline L.P.
Licensee's Representative:	**Christopher Cantrell**
Licensee's Mailing Address:	3600 W. Sam Houston Parkway South, Suite 500 Houston, Texas 77042
Property:	See **Exhibit A** attached hereto and incorporated herein for all purposes.

Licensee desires use of property owned by Licensor in Midland County, Texas (the "Property"), for purposes set forth below. Licensee acknowledges and agrees that it must obtain a license (the "License") in order to use the public lands of Licensor.

W I T N E S S E T H:

For and in consideration of the execution of this License and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

I. Term

A. Initial Term. This License shall be for a term of five (5) years (the "Initial Term"), commencing with the date of this License (the "Commencement Date") unless terminated earlier as provided hereafter.

B. Renewal Term. This License shall automatically renew at the end of the Initial Term for one (1) additional term of five (5) years, upon the written request of Licensee received by Licensor on or before one hundred twenty (120) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of Licensor.

C. Termination. Licensor may terminate this License if Licensee fails to pay, when due, any amount owing under this License and that failure continues for sixty (60) days or, if Licensee

commits any material breach or material default in performance of any obligation, prohibition, restriction, provision or covenant contained in this License, and the breach or default continues for a period of thirty (30) days after Licensor delivers notice to Licensee reasonably detailing the breach or default.

Additionally, Licensor may terminate this License at will for any or no reason upon giving at least three hundred sixty-five (365) days' written notice to Licensee. The parties to this License understand and agree that it is in Licensor's sole discretion to cancel the License during the term of the License without penalty to Licensor. Licensee has no expectation and has received no guarantees that this License will not be terminated before the end of the License term. The parties have bargained for the flexibility of terminating this License upon tender of the requisite notice at any time during the term of the License. All work and services under the License shall be suspended upon termination of the License becoming effective.

Upon termination of this License, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of Licensee to its original condition, as close thereto as may be practical, subject to the approval of Licensor upon inspection by Licensor's Representative, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this License.

II. Financial Consideration

A. License Fee. The first year's license fee in the amount of FOUR HUNDRED and No/100 Dollars ($400.00) shall be due and payable on or prior to the Commencement Date of this License ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay Licensor a late charge of five percent (5%).

B. Surface Damage Fee. Intentionally omitted.

C. Annual Fee. Licensee shall pay to Licensor an annual fee in the amount of FOUR HUNDRED and No/100 Dollars ($400.00), which shall be payable each year on or before the anniversary of the Commencement Date of this License.

D. Application Fee. At the same time the first year License Fee is due, Licensee shall pay a non-refundable one-time fee of ONE THOUSAND and No/100 Dollars ($1,000.00) to Licensor's Representative. Said fee shall revert to Licensor and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

E. Fee Adjustment. Prior to commencement of any renewal term, Licensor and Licensee shall negotiate in good faith to agree to an adjustment of the Annual Fee. If Licensor and Licensee are unable to reach an agreement regarding an adjustment to the Annual Fee, then the Annual Fee shall be determined by Licensor in its sole discretion, provided the new Annual Fee shall not exceed twenty-five percent (25%) of the Annual Fee paid for the last year of the Initial Term.

F. Delivery of Payment. The License Fee payment shall be made to Licensor at the office of

Licensor's Representative, Attn: Right of Way Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon the Property, being ten (10) feet in width of the pipeline location as shown on **Exhibit A** attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, a carbon steel pipeline, not to exceed eight and six hundred twenty-five thousandths (8.625) inches in diameter, for the transportation of crude oil, to have the right of ingress and egress at convenient points for such purpose. **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein. The parties agree Licensee's failure to provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein may result in the termination of this License. The decision to accept a complete as-built survey after the sixty-day deadline prescribed herein, or, conversely, to terminate this License shall be in the sole and absolute discretion of Licensor.**

B. Road Repair. Licensee covenants and agrees that it will repair any of Licensor's roads that Licensee damages on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

C. Utility Repair. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by Licensor that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of Licensor's Standard Specifications.

D. Depth. Licensee covenants and agrees that it will bury the pipeline(s) to be constructed hereunder no less than eight (8) feet in depth. All backfill used in burying such line shall be compacted to a density of ninety percent (90%), except where such pipeline(s) crosses under a paved or traveled portion of City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). Licensor shall be afforded the opportunity to test the density on all backfill. Notwithstanding any provision to the contrary contained herein, Licensee covenants and agrees that, at any point that Licensee's pipeline(s) intersects with a City of Midland utility line location, the pipeline(s) shall be bored at a depth of a least (i) nine (9) feet under all City of Midland water utility lines and (ii) two (2) feet under all City of Midland sewer utility lines. Licensee agrees that it shall comply with 30 Tex. Admin. Code § 290.44(e), as amended, to the extent applicable to this License.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by Licensor's Representative.

F. Reservation of Rights. Licensor expressly reserves the right to install, repair, or reconstruct streets or roads and all ancillary public uses usual and customary in connection with streets and

roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of Licensor, in, on, across, along, over, under, and through any property occupied by Licensee. In permitting such work to be done, Licensor shall not be liable to Licensee for any damage so caused to Licensee's system or property, **NOR SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY DAMAGES TO LICENSEE'S PIPELINE(S), CASING, OR COMPRESSOR STATION, ARISING OUT OF THE NEGLIGENCE BY LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS**. If Licensor requires Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

G. Non-exclusive. Licensor expressly reserves the full right to grant other easements or rights of way crossing or running parallel with the rights of way used by Licensee.

H. Abandonment. It is especially provided, however, that as an express condition of this License, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the Property ceases to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty (120) days' written notice, then and in that event, this License shall automatically revert to Licensor, its successors or assigns, free and clear of any right, title, or interest in Licensee, or any re-entry by Licensor.

I. Approval of Specifications. In the event Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to Licensor's Representative for his or her approval. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative before making any repairs if during a Licensor work day. If not on a work day, Licensee shall notify Licensor's Representative on the first work day after repairs have begun.

J. Gates and Fences. Licensee agrees to use existing gates and roadways where available, to enter, leave and cross the Property; provided that Licensee shall not use any road marked "Closed." Licensee and all persons entering or leaving the Property in connection with Licensee's operations hereunder shall keep all outside and interior gates securely closed except during operations related to this License. Licensee shall keep all outside gates, and all other gates designated by Licensor, securely locked except during operations related to this License. At any gate that is to be locked,

Licensor may install its own lock in addition to Licensee's lock.

Licensee agrees that Licensee shall not cut or go over any fence at any time or in connection with any operations on the Property without first obtaining Licensor's express consent thereto in writing. All gates or openings in fences shall be at mutually agreeable location(s) between Licensee and Licensor and shall be constructed as reasonably required by Licensor. Upon the termination of this License, at Licensor's election, gates in fences shall be left in place and shall thereafter be owned by Licensor or Licensee shall remove such gates and restore the fence to its original condition as nearly as reasonably practicable. The terms, provisions and requirements of this provision shall survive the termination or expiration of this License.

K. Trash. Licensee shall keep the Property free of trash and debris at all times. Under no circumstances, will Licensee be allowed to bury any trash, debris or foreign material of any kind on or under the Property. Licensor shall have the right to expel and permanently ban from the Property any person observed disposing of trash on the Property. Upon the completion of any operations, all ribbons, flags, stakes and similar items shall by promptly removed from the Property.

L. Hunting, Fishing and Alcohol Prohibited. No agent, employee, representative, contractor or subcontractor of Licensee or any other person allowed to enter the Property by Licensee shall be permitted to hunt, fish, trap, camp, picnic, ride motorcycles or four-wheelers or otherwise conduct any social gathering on the Property, nor shall any such persons be permitted to bring firearms, archery equipment, dogs, alcoholic beverages or illegal drugs on the Property at any time. Violations of this provision shall cause the violator to be regarded as a trespasser and subject to prosecution under trespass laws of the State of Texas. Licensor shall have the right to expel and permanently ban from the Property any person observed on the Property in violation of this provision.

M. Storage of Machinery and Equipment. Licensee shall use no part of the Property to store machinery, equipment, or other property of Licensee while it is not being used.

N. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace above the land covered by this License for any purpose allowed by law and deemed necessary by Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by Licensor in, on, across, along, over, under, and through said right of way occupied by Licensee. In the event of such work in connection with said purposes it shall be deemed necessary by Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline, property, or casing of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable federal or state laws with respect to relocation payments.

IV. Standard General Conditions

A. Insurance. Licensee shall at all times during the term of this License maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):	
■ Personal Injury:	$1,000,000.00 per person $1,000,000.00 per occurrence
■ Property Damage:	$100,000.00 per occurrence
Business Automobile Liability:	$1,000,000.00 combined single limit-- Personal Injury and Property Damage
Workers' Compensation:	Statutory limits
Employers' Liability:	$1,000,000.00 per accident or occurrence
Umbrella Liability:	$10,000,000.00 each occurrence $10,000,000.00 aggregate

The Commercial General Liability shall be on an occurrence basis. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The Workers' Compensation coverage provided by Licensee shall inure to the benefit of employees injured during the course and scope of their employment by Licensee pursuant to this License. The Workers' Compensation insurance shall waive all rights of subrogation against Licensor.

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this License. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The parties agree that, prior to the execution of the License, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

Licensor shall be provided the notice by Licensee's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Licensor shall not be required to provide any insurance whatsoever pursuant to this License.

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this License to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured. Licensee certifies that the one or more

certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Licensee shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Licensee.

B. Indemnity. LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S),CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE AGREES THAT LICENSEE SHALL INDEMNIFY AND SAVE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION DESCRIBED HEREIN.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSOR, LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY

CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S),CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, AND ALL COSTS AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF FAILURE OF LICENSEE, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER TO COMPLY WITH ALL APPLICABLE LOCAL, FEDERAL AND/OR STATE ENVIRONMENTAL LAWS, INCLUDING BUT NOT LIMITED TO THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) (AS THEY MAY BE REAUTHORIZED AND/OR AMENDED) AND ALL OTHER LOCAL, FEDERAL AND STATE LAWS, IN CONNECTION WITH OR RELATED TO ANY OF LICENSEE'S OPERATIONS OR ACTIVITIES ON THE PROPERTY, OR ANY OF LICENSEE'S HANDLING, STORING, RELEASING, TRANSPORTING OR DISPOSING OF ALL SUBSTANCES, INCLUDING, BUT NOT LIMITED TO HAZARDOUS SUBSTANCES AND HAZARDOUS WASTES, ON OR FROM THE PROPERTY OR ANY OTHER LANDS OF LICENSOR.

C. Assignment. The rights granted by this License inure to the benefit of Licensee. The rights and privileges shall not be assignable by Licensee without the express written consent of Licensor's City Manager. Any required consent is to be evidenced by a letter written by Licensor's City Manager that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor's City Manager.

D. Independent Contractor. It is expressly understood and agreed that Licensee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of Licensor; that Licensee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between Licensor and Licensee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Licensor and Licensee. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of Licensor. Further, it is specifically understood and agreed that nothing in this License is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Licensee shall be an independent contractor under this License and shall assume all of the rights, obligations and liabilities applicable to it as such

independent contractor hereunder. Licensor does not have the power to direct the order in which the work is done. Licensor shall not have the right to control the means, methods or details of Licensee's work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way.

E. Waiver of Attorney Fees. BY EXECUTING THIS LICENSE, LICENSEE AGREES TO WAIVE, AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE, ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST LICENSOR REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE LICENSE, THE CONSTRUCTION, OR INTERPRETATION, VALIDITY OR BREACH OF THE LICENSE. LICENSEE SPECIFICALLY AGREES THAT IF LICENSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS LICENSE, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS LICENSE, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, LICENSEE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LICENSEE MIGHT OTHERWISE BE ENTITLED.

LICENSEE AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING, KNOWN RIGHT. LICENSEE ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS LICENSE. LICENSEE FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN LICENSOR AND LICENSEE. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

LICENSEE AND LICENSOR ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS LICENSE WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

F. Governing Law & Venue. All performance and payment made pursuant to this License shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this License or the performance of this License shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this License shall be deemed to have been performed in Midland County, Texas. This License shall be construed, interpreted and enforced under the laws of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all other claims or disputes, arising from or relating in any way to the subject matter of this License, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

G. Release. NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS,

CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LICENSOR'S NEGLIGENCE.

H. Governmental Immunity. By executing this License, Licensor is not waiving its right of governmental immunity. Licensor is retaining its immunity from suit. Licensor is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY**.

I. Third Party Beneficiary. Licensor's approval of this License does not create a third party beneficiary. There is no third party beneficiary to this License. No person or entity who is not a party to this License shall have any third party beneficiary or other rights hereunder.

J. Notices. Any notice or communication required in the administration of this License shall be sent by certified mail, return receipt requested, to the parties' respective mailing addresses as set forth hereinabove.

K. Notice of Alleged Breach; Statutory Prerequisite. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this License, Licensee or its legal representative, shall give the City Manager, or any other reasonable official of Licensor, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this License) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except Licensor from any liability whatsoever. Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Licensee's failure to comply with the requirements herein shall perpetually bar Licensee's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if Licensor has actual or constructive notice or knowledge of said claim or alleged damages. Licensee agrees that the requirements of this entire License are reasonable.

L. Consideration. The terms of this License are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

M. Waiver of Governmental Immunity; Chapter 271, TEX. LOC. GOV'T CODE. The parties

agree that this License does not constitute a License or Contract for providing goods and/or services to Licensor as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and Licensor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Licensor expressly does not consent to be sued or be liable. To the greatest extent allowed by law, nothing in this License constitutes a waiver of Licensor's governmental immunity and the parties expressly agree that this License shall not constitute, nor be interpreted as a waiver of Licensor's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of Licensor's governmental immunity for the benefit of any third party lacking privity to the License.

This License does not obligate Licensee to use the Property to construct, repair, operate, replace, and maintain Licensor's facilities or structures described herein, it merely prohibits Licensee from using the Property for any other purpose. This License restricts the use of the Property to a specific purpose, but does not require the use of the Property for a specific purpose. This License does not require Licensee to construct, operate, repair, maintain, replace or remove any of Licensee's facilities or structures described herein. Licensee is not providing a service to Licensor but is providing a service to Licensee's customers. Licensee is paying Licensor for a temporary interest in real property not for a service. Any such provision shall be deemed to be a covenant against noncomplying use, not a covenant to use. Licensee's use of the Property in compliance with a restriction shall not constitute a service, and such complying use shall not operate to waive Licensor's governmental immunity.

N. Compliance. Licensee agrees that it shall comply with Texas Government Code Section 2252.908, as amended, to the extent that this statute applies to this License. Licensee agrees that it shall comply with Texas Local Government Code Section 176.006, as amended, to the extent that this statute applies to this License.

O. Texas Historical Commission Survey. Licensee agrees that it shall comply with Chapter 191 of the Texas Natural Resources Code. By executing this License, Licensee represents that it has contacted the Texas Historical Commission (the "Commission") for the purpose of determining whether the Commission will request that an archaeological survey be completed before Licensee commences operations on the Property, as contemplated herein. Licensee agrees that it shall complete or cause to be completed an archaeological survey before commencing any operations on the Property if the Commission so requests and deliver the same to Licensor. Notwithstanding any provision contained herein, in the event that any site, object, artifact, or other feature of archaeological, scientific, educational, cultural, or historical interest is encountered during the operations authorized by this License, Licensee will immediately notify Licensor and the Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Licensor or the Commission.

LICENSOR:
CITY OF MIDLAND, TEXAS

By:_____
Robert Patrick, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

LICENSEE:
CENTURION PIPELINE L.P.

By: _____
Printed Name: Christopher Cantrell
Title: Manager of Right-of-Way

THE STATE OF Texas §
§
COUNTY OF Harris §

BEFORE ME, the undersigned authority, on this 29 day of July, 2021 personally appeared Christopher Cantrell an officer of Centurion Pipeline L.P. known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 29 day of July, 2021.

LAUREN ANDREWS
Notary Public, State of Texas
Comm. Expires 01-13-2025
Notary ID 132867094

Notary Public, State of Texas

Reference No. 21-329-031

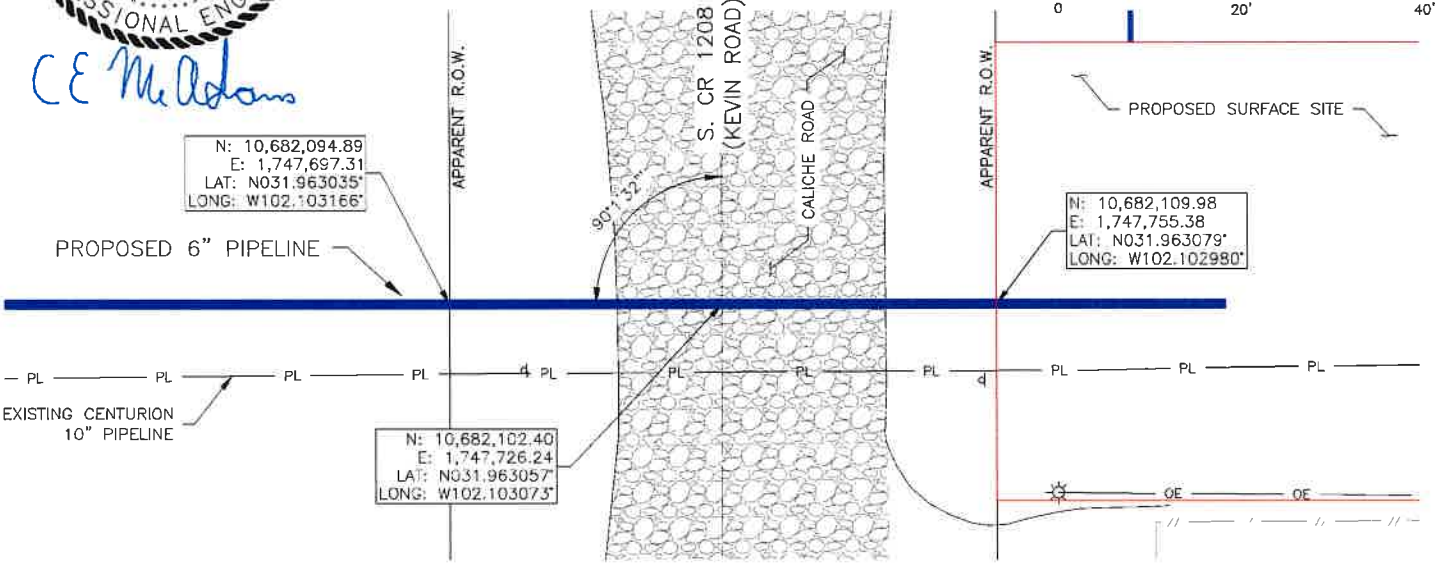
7/21/2021

STATE OF TEXAS
CLINTON E. MCADAMS
121932
LICENSED
PROFESSIONAL ENGINEER

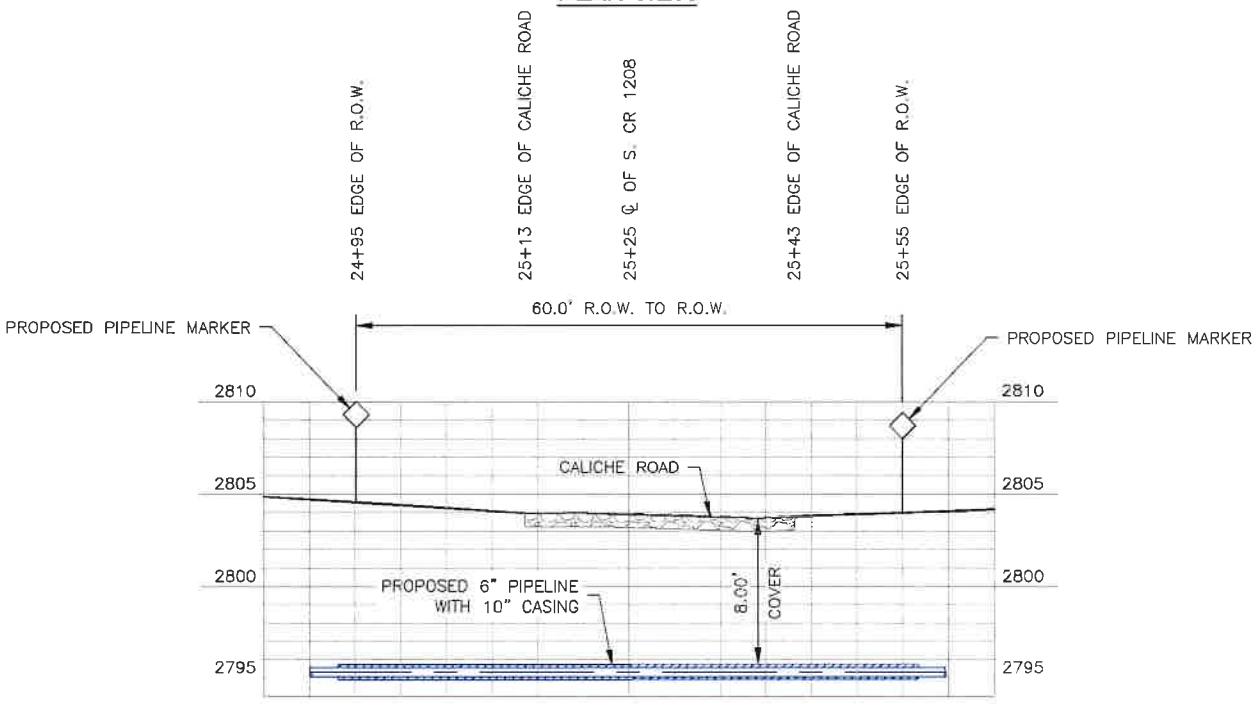
PLAN & PROFILE

PROPOSED 6" PIPELINE
ACROSS S. CR 1208
LOCATED IN
SECTION 9, BLOCK 39, TOWNSHIP 2 SOUTH
T.& P. RY. CO. SURVEY, A-62
MIDLAND COUNTY, TEXAS

GRAPHIC SCALE
0 20' 40'



PLAN VIEW



PROFILE VIEW

HORZ. 1:20
VERT. 1:10

D	07/21/2021	ISSUE FOR PERMITTING	JKB	CEM	CEM	
C	07/12/2021	ISSUE FOR PERMITTING	JKB	CEM	CEM	
B	07/06/2021	ISSUE FOR BID	JKB	CEM	CEM	CLIENT AFE NO. P00073
A	06/25/2021	ISSUE FOR REVIEW	JKB	JCD	CEM	CLIENT PROJECT NO. P00073
NO.	DATE	REVISION	DRWN	CHK'D	APP'D	DRAWING NO. CPL-074T-03-002

LJA Surveying, Inc.
6 Desta Drive, Suite 1800 Phone 432.789.2880
Midland, Texas 79705 cmcadams@ljasurvey.com
TBPLS Firm Reg. No. 10194449 TBPE Firm Reg. No. F-19613

Centurion Pipeline L.P.

DESIGN DATA

PROPOSED 6" PIPELINE
ACROSS S. CR 1208
LOCATED IN
SECTION 9, BLOCK 39, TOWNSHIP 2 SOUTH
T.& P. RY. CO. SURVEY, A-62
MIDLAND COUNTY, TEXAS

1. GENERAL INFORMATION
   - 1.1. APPLICANT/OWNER: CENTURION PIPELINE
   - 1.2. PIPELINE NAME: INTERSTATE TO BANKHEAD TIE-IN
   - 1.3. PRODUCT: OIL
   - 1.4. PROPOSED CONSTRUCTION ACTIVITIES SCHEDULED FOR AUGUST 1, 2021 THROUGH NOVEMBER 1, 2021
   - 1.5. READILY IDENTIFIABLE, DURABLE, AND WEATHERPROOF PIPELINE MARKERS WILL BE PLACED OVER THE PIPELINE CENTERLINE AT BOTH ROAD RIGHT-OF-WAY (R.O.W.) LINES WITH UTILITY NAME, PRODUCT, AND EMERGENCY NUMBER.
   - 1.6. SOUTH COUNTY ROAD 1208 CROSSING REQUIREMENTS: MINIMUM EIGHT (8) FEET UNDER THE LOWEST POINT OF THE SURFACE WITHIN R.O.W.

2. PIPELINE DESIGN DATA
   - 2.1. DESIGN CODES: THE DEPARTMENT OF TRANSPORTATION ("DOT") STANDARD CFR TITLE 49, PART 195, "TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE", ASME B31.4, API 5L.
   - 2.2. DESIGN PRESSURE: 740 PSIG
   - 2.3. HYDROSTATIC TEST PRESSURE: 925 PSIG MIN. 1050 PSIG MAX STRENGTH TEST
   - 2.4. CATHODIC PROTECTION WILL BE INSTALLED ON THE PIPELINE VIA IMPRESSED CURRENT.

3. CONSTRUCTION METHOD
   - 3.1. PIPELINE TO BE INSTALLED BY OPEN CUT TRENCH OR HORIZONTAL DIRECTIONAL DRILL METHODS, WITH 10" CASING.

4. BORE LINE PIPE
   - 4.1. OUTSIDE DIAMETER: 6.625"
   - 4.2. WALL THICKNESS: 0.280"
   - 4.3. PIPE SPECIFICATION: APL 5L
   - 4.4. GRADE: X52
   - 4.5. MATERIAL: CARBON STEEL

BARLOW EQUATION FOR STEEL PIPE: P = (2 x S x T x E x F)/D	
MOP	740
OUTSIDE DIAMETER (IN) = D	6.625
DESIGN FACTOR = F	0.72
LONGITUDINAL JOINT FACTOR = E	1 (ERW/HFW)
YIELD STRENGTH (PSI, LB/IN^2) = S	52000
WALL THICKNESS (IN) = T	0.280
PRESSURE (PSI, LB/IN^2) = P	3164
P > MOP	OK

7/21/2021

STATE OF TEXAS
CLINTON E. MCADAMS
121932
LICENSED
PROFESSIONAL ENGINEER

C E McAdams

LJA Surveying, Inc.
6 Desta Drive, Suite 1800 Phone 432.789.2880
Midland, Texas 79705 cmcadams@ljasurvey.com
TBPLS Firm Reg. No. 10194449 TBPE Firm Reg. No. F-19613

NO.	DATE	REVISION	DRWN	CHK'D	APP'D
D	07/21/2021	ISSUE FOR PERMITTING	JKB	CEM	CEM
C	07/12/2021	ISSUE FOR PERMITTING	JKB	CEM	CEM
B	07/06/2021	ISSUE FOR BID	JKB	CEM	CEM
A	06/25/2021	ISSUE FOR REVIEW	JKB	JCD	CEM

Centurion Pipeline L.P.

CLIENT AFE NO.	P00073
CLIENT PROJECT NO.	P00073
DRAWING NO.	CPL-074T-03-003

PACKET 23.16 August 24, 2021

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 5/10/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Bowen, Miclette & Britt Insurance Agency, LLC 1111 North Loop West, #400 Houston TX 77008	**CONTACT NAME:** Heather Cameron **PHONE (A/C, No, Ext):** 713-880-7100 **FAX (A/C, No):** 713-880-7166 **E-MAIL ADDRESS:** hcameron@bmbinc.com
INSURED LOTUSMIDST Centurion Pipeline L.P. 3600 W. Sam Houston Pkw. Houston TX 77042	**INSURER(S) AFFORDING COVERAGE** / **NAIC #** **INSURER A :** National Fire & Marine Ins Co — 20079 **INSURER B :** Liberty Mutual Fire Ins Co — 23035 **INSURER C :** Liberty Insurance Corp — 42404 **INSURER D :** **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** 1552637816 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	X **COMMERCIAL GENERAL LIABILITY** [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [ ] PRO-JECT [X] LOC [ ] OTHER:	Y	Y	TB2641445690030	9/28/2020	9/28/2021	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG 	$ 1,000,000 $ 300,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
B	**AUTOMOBILE LIABILITY** X ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY	Y	Y	AS2641445690020	9/28/2020	9/28/2021	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) 	$ 1,000,000 $ $ $ $
A	X **UMBRELLA LIAB** X OCCUR **EXCESS LIAB** [ ] CLAIMS-MADE [ ] DED X RETENTION $ 25,000	Y	Y	42UMO30620703	9/28/2020	9/28/2021	EACH OCCURRENCE AGGREGATE 	$ 10,000,000 $ 10,000,000 $
C	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		WC7641445690010	9/28/2020	9/28/2021	[ ] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The following policy provisions and/or endorsements form part of the policies of insurance represented by this certificate of insurance. The terms contained in the policies and/or endorsements supersede the representations made herein. Electronic copies of the policy provisions and/or endorsements listed below are available by emailing: certificates@bmbinc.com

General Liability:
Blanket additional insured Ongoing Operations per form # CG 20 10 04 13
Blanket additional insured Completed Operations per form # CG 20 37 04 13
Blanket waiver of subrogation per form # LC04101 04 18
See Attached...

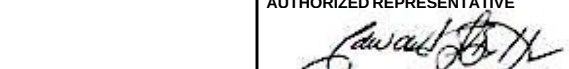
CERTIFICATE HOLDER

City of Midland
300 N. Loraine
Midland TX 78701

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



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ACORD 25 (2016/03) **The ACORD name and logo are registered marks of ACORD**

AGENCY CUSTOMER ID: LOTUSMIDST

LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY	NAMED INSURED
Bowen, Miclette & Britt	Centurion Pipeline L.P. 3600 W. Sam Houston Pkw. Houston TX 77042
POLICY NUMBER	
CARRIER / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Blanket primary/non-contributory per form # LC2420 11 18

Automobile:
Blanket additional insured per form # CA 20 48 10 13
Blanket waiver of subrogation per form # AC 84 07 11 17
Blanket primary/non-contributory per form # AC 84 23 08 11

Worker's Compensation:
Blanket waiver of subrogation per form # WC 00 03 13

Umbrella:
Blanket additional insured per form # ULP-UM-002-02/2014
Blanket waiver of subrogation per form # CL-UN-045-10/ 2016
Blanket primary/non-contributory per form # CLP-UN-065-10/2013

Certificate Holder Includes: City of Midland

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THE FACE OF THIS DOCUMENT CONTAINS MICROPRINTING

Centurion Pipeline, LP
P. O. Box 18589 Sugar Land, TX 77496

Wells Fargo Bank, N.A.
Land Account

Check No. 4100260
Date: August 3, 2021

PAY TO THE ORDER OF
City of Midland
P. O. Box 1152
Midland, TX 79702

$ 400.00
VOID AFTER 180 DAYS

Four Hundred and No/100 **DOLLARS**

MEMO 2021 Annual License Fee - SCR 1208 / Kevin

Ratchaneewan Andera MP
AUTHORIZED SIGNATURE

⑈4100260⑈ ⑆121000248⑆ 4978707941⑈

ORIGINAL DOCUMENT HAS A WATERMARK

THE FACE OF THIS DOCUMENT CONTAINS MICROPRINTING

Centurion Pipeline, LP
P. O. Box 18589 Sugar Land, TX 77496

Wells Fargo Bank, N.A.
Land Account

Check No. 4100250
Date: July 16, 2021

PAY TO THE ORDER OF
City of Midland
P. O. Box 1152
Midland, TX 79702

$ 1,000.00
VOID AFTER 180 DAYS

One Thousand and No/100 **DOLLARS**

MEMO Application Fee - SCR 1208 / Kevin

Ratchaneewan Andera MP
AUTHORIZED SIGNATURE

⑈4100250⑈ ⑆121000248⑆ 4978707941⑈

ORIGINAL DOCUMENT HAS A WATERMARK

City Council Meeting

Item Number: 24

Meeting Date: August 24, 2021

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: Motion authorizing and executing a Right-of-Way License (21-217-035) between the City of Midland and OXY USA INC, Regarding City-owned property described as Section 36, Block 39, Township 1 North, T&P RR Co. Survey, Martin County, Texas (DISTRICT: NONE) (UTILITIES)

Purpose:

This motion will provide a 30' wide right of way a for a 6", Steel construction high pressure natural gas pipeline. This right of way will allow applicant to move natural gas from their adjacent wells on their property to the natural gas compressor station on COM owned property. This Right of Way runs east from Highway 349 for 3,649.6' and is within the existing "Pipeline Corridor" on this parcel.

This Right-of-Way License is proposed for a single five (5) year period with the option for a single five (5) year renewal. Terms are consistent with the City's standard license for pipeline facilities of this nature.

Recommended City Council Action:

Approve

Fiscal Impact:

Application fee (one time): $1,000

Annual Lease Rate,

Pipeline: ($20/rod * 221.19): $ 4,423.80*5 year initial term = $22,119.00
Surface Damage Fee: ($10/rod * 221.19): $2,211.90

Total Collected: $25,330.00

Discussion:

OXY USA INC. needs this pipeline to support mineral recovery operations on their property East of Highway 349. Current gas carrier doesn't have the capacity to move all of their natural gas production, requiring a new pipeline to the existing gas compression station located on COM property. This right of way will include an additional 50' wide temporary construction area. Pipeline will be buried a minimum 48" deep.

Current Certificate of Insurance is on file.

City Secretary will record all documents.

Robert Patrick

City Manager's Office

RIGHT OF WAY LICENSE

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

Date:	August 25, 2021
Licensor:	CITY OF MIDLAND, TEXAS, a home-rule municipal corporation
Licensor's Representative:	Robert Patrick, Assistant City Manager
Licensor's Mailing Address:	P.O. Box 1152 Midland, Texas 79702
Licensee:	Oxy USA Inc
Licensee's Representative:	**Rhett D. LaFleur**
Licensee's Mailing Address:	5 Greenway Plaza, Suite 110 Houston, Texas 77046
Property:	See **Exhibit A** attached hereto and incorporated herein for all purposes.

Licensee desires use of property owned by Licensor in Martin County, Texas (the "Property"), for purposes set forth below. Licensee acknowledges and agrees that it must obtain a license (the "License") in order to use the public lands of Licensor.

W I T N E S S E T H:

For and in consideration of the execution of this License and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

I. Term

A. Initial Term. This License shall be for a term of five (5) years (the "Initial Term") unless terminated earlier as provided hereafter. The Initial Term shall commence on the date of this License (the "Commencement Date").

B. Renewal Term. This License shall automatically renew at the end of the Initial Term for one (1) additional term of five (5) years, upon the written request of Licensee received by Licensor on or before one hundred twenty (120) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of Licensor.

C. Termination. Licensor may terminate this License if Licensee fails to pay, when due, any amount owing under this License and that failure continues for sixty (60) days or, if Licensee

commits any material breach or material default in performance of any obligation, prohibition, restriction, provision or covenant contained in this License, and the breach or default continues for a period of thirty (30) days after Licensor delivers notice to Licensee reasonably detailing the breach or default.

Additionally, Licensor may terminate this License at will for any or no reason upon giving at least three hundred sixty-five (365) days' written notice to Licensee. The parties to this License understand and agree that it is in Licensor's sole discretion to cancel the License during the term of the License without penalty to Licensor. Licensee has no expectation and has received no guarantees that this License will not be terminated before the end of the License term. The parties have bargained for the flexibility of terminating this License upon tender of the requisite notice at any time during the term of the License. All work and services under the License shall be suspended upon termination of the License becoming effective.

Upon termination of this License, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of Licensee to its original condition, as close thereto as may be practical, subject to the approval of Licensor upon inspection by Licensor's Representative, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this License.

II. Financial Consideration

A. License Fee. The license fee in the amount of TWENTY-TWO THOUSAND ONE HUNDRED NINETEEN and No/100 Dollars ($22,119.00) shall be due and payable on or prior to the Commencement Date of this License ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay Licensor a late charge of five percent (5%).

In the event Licensor terminates this License pursuant to the provisions of Section I.C., Licensor agrees to refund to Licensee a pro rata share of the License Fee actually paid by Licensee to Licensor for that portion of the remaining term that is being terminated. For the avoidance of doubt, the amount of any refund payable to Licensee pursuant to this Section shall be determined net of any costs or expenses incurred by Licensor in connection with Licensee's unfulfilled obligations under this License (if any).

B. Surface Damage Fee. Licensee shall pay a one-time surface damage fee to Licensor in the amount of TWO THOUSAND TWO HUNDRED ELEVEN and 90/100 Dollars ($2,211.90), payable on or prior to the Commencement Date.

C. Application Fee. At the same time the first year License Fee is due, Licensee shall pay a non-refundable one-time fee of ONE THOUSAND and No/100 Dollars ($1,000.00) to Licensor's Representative. Said fee shall revert to Licensor and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

D. Fee Adjustment. Prior to commencement of any renewal term, Licensor and Licensee shall negotiate in good faith to agree to an adjustment of the License Fee. If Licensor and Licensee are

unable to reach an agreement regarding an adjustment to the License Fee, then the License Fee shall be determined by Licensor in its sole discretion, provided the new License Fee shall not exceed twenty-five percent (25%) of the License Fee paid for the Initial Term.

E. Delivery of Payment. The License Fee payment shall be made to Licensor at the office of Licensor's Representative, Attn: Right of Way Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon the Property, being fifty (50) feet in width of the pipeline location as shown on **Exhibit A** attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, a steel pipeline, not to exceed six (6) inches in diameter, for the transportation of natural gas, to have the right of ingress and egress at convenient points for such purpose, and said construction width shall revert to thirty (30) feet after the pipeline is laid. **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein. The parties agree Licensee's failure to provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein may result in the termination of this License. The decision to accept a complete as-built survey after the sixty-day deadline prescribed herein, or, conversely, to terminate this License shall be in the sole and absolute discretion of Licensor.**

B. Road Repair. Licensee covenants and agrees that it will repair any of Licensor's roads that Licensee damages on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

C. Utility Repair. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by Licensor that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of Licensor's Standard Specifications.

D. Depth. Licensee covenants and agrees that it will bury the pipeline(s) to be constructed hereunder no less than forty-eight (48) inches in depth. All backfill used in burying such line shall be compacted to a density of ninety percent (90%), except where such pipeline(s) crosses under a paved or traveled portion of City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). Licensor shall be afforded the opportunity to test the density on all backfill. Notwithstanding any provision to the contrary contained herein, Licensee covenants and agrees that, at any point that Licensee's pipeline(s) intersects with a City of Midland utility line location, the pipeline(s) shall be bored at a depth of a least (i) nine (9) feet under all City of Midland water utility lines and (ii) two (2) feet under all City of Midland sewer utility lines. Licensee agrees that it shall comply with 30 Tex. Admin. Code § 290.44(e), as amended, to the extent applicable to this License.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets,

alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by Licensor's Representative.

F. Reservation of Rights. Licensor expressly reserves the right to install, repair, or reconstruct streets or roads and all ancillary public uses usual and customary in connection with streets and roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of Licensor, in, on, across, along, over, under, and through any property occupied by Licensee. In permitting such work to be done, Licensor shall not be liable to Licensee for any damage so caused to Licensee's system or property, **NOR SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY DAMAGES TO LICENSEE'S PIPELINE(S), CASING, OR COMPRESSOR STATION, ARISING OUT OF THE NEGLIGENCE BY LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS**. If Licensor requires Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

G. Non-exclusive. Licensor expressly reserves the full right to grant other easements or rights of way crossing or running parallel with the rights of way used by Licensee.

H. Abandonment. It is especially provided, however, that as an express condition of this License, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the Property ceases to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty (120) days' written notice, then and in that event, this License shall automatically revert to Licensor, its successors or assigns, free and clear of any right, title, or interest in Licensee, or any re-entry by Licensor.

I. Approval of Specifications. In the event Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to Licensor's Representative for his or her approval. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative before making any repairs if during a Licensor work day. If not on a work day, Licensee shall notify Licensor's Representative on the first work day after repairs have begun.

J. Gates and Fences. Licensee agrees to use existing gates and roadways where available, to

enter, leave and cross the Property; provided that Licensee shall not use any road marked "Closed." Licensee and all persons entering or leaving the Property in connection with Licensee's operations hereunder shall keep all outside and interior gates securely closed except during operations related to this License. Licensee shall keep all outside gates, and all other gates designated by Licensor, securely locked except during operations related to this License. At any gate that is to be locked, Licensor may install its own lock in addition to Licensee's lock.

Licensee agrees that Licensee shall not cut or go over any fence at any time or in connection with any operations on the Property without first obtaining Licensor's express consent thereto in writing. All gates or openings in fences shall be at mutually agreeable location(s) between Licensee and Licensor and shall be constructed as reasonably required by Licensor. Upon the termination of this License, at Licensor's election, gates in fences shall be left in place and shall thereafter be owned by Licensor or Licensee shall remove such gates and restore the fence to its original condition as nearly as reasonably practicable. The terms, provisions and requirements of this provision shall survive the termination or expiration of this License.

K. Trash. Licensee shall keep the Property free of trash and debris at all times. Under no circumstances, will Licensee be allowed to bury any trash, debris or foreign material of any kind on or under the Property. Licensor shall have the right to expel and permanently ban from the Property any person observed disposing of trash on the Property. Upon the completion of any operations, all ribbons, flags, stakes and similar items shall by promptly removed from the Property.

L. Hunting, Fishing and Alcohol Prohibited. No agent, employee, representative, contractor or subcontractor of Licensee or any other person allowed to enter the Property by Licensee shall be permitted to hunt, fish, trap, camp, picnic, ride motorcycles or four-wheelers or otherwise conduct any social gathering on the Property, nor shall any such persons be permitted to bring firearms, archery equipment, dogs, alcoholic beverages or illegal drugs on the Property at any time. Violations of this provision shall cause the violator to be regarded as a trespasser and subject to prosecution under trespass laws of the State of Texas. Licensor shall have the right to expel and permanently ban from the Property any person observed on the Property in violation of this provision.

M. Storage of Machinery and Equipment. Licensee shall use no part of the Property to store machinery, equipment, or other property of Licensee while it is not being used.

N. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace above the land covered by this License for any purpose allowed by law and deemed necessary by Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by Licensor in, on, across, along, over, under, and through said right of way occupied by Licensee. In the event of such work in connection with said purposes it shall be deemed necessary by Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline, property, or casing of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding Licensor, payment

for alteration or relocation of its system to which it may be lawfully entitled to under applicable federal or state laws with respect to relocation payments.

IV. Standard General Conditions

A. Insurance. Licensee shall at all times during the term of this License maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):	
■ Personal Injury:	$1,000,000.00 per person $1,000,000.00 per occurrence
■ Property Damage:	$100,000.00 per occurrence
Business Automobile Liability:	$1,000,000.00 combined single limit-- Personal Injury and Property Damage
Workers' Compensation:	Statutory limits
Employers' Liability:	$1,000,000.00 per accident or occurrence
Umbrella Liability:	$10,000,000.00 each occurrence $10,000,000.00 aggregate

The Commercial General Liability shall be on an occurrence basis. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The Workers' Compensation coverage provided by Licensee shall inure to the benefit of employees injured during the course and scope of their employment by Licensee pursuant to this License. The Workers' Compensation insurance shall waive all rights of subrogation against Licensor.

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this License. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The parties agree that, prior to the execution of the License, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

Licensor shall be provided the notice by Licensee's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Licensor shall not be required to provide any insurance whatsoever pursuant to this License.

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that

work on any portion of the work that is the subject of this License to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured. Licensee certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Licensee shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Licensee.

B. Indemnity. LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S),CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE AGREES THAT LICENSEE SHALL INDEMNIFY AND SAVE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION DESCRIBED HEREIN.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSOR, LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS'

NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S),CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, AND ALL COSTS AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF FAILURE OF LICENSEE, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER TO COMPLY WITH ALL APPLICABLE LOCAL, FEDERAL AND/OR STATE ENVIRONMENTAL LAWS, INCLUDING BUT NOT LIMITED TO THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) (AS THEY MAY BE REAUTHORIZED AND/OR AMENDED) AND ALL OTHER LOCAL, FEDERAL AND STATE LAWS, IN CONNECTION WITH OR RELATED TO ANY OF LICENSEE'S OPERATIONS OR ACTIVITIES ON THE PROPERTY, OR ANY OF LICENSEE'S HANDLING, STORING, RELEASING, TRANSPORTING OR DISPOSING OF ALL SUBSTANCES, INCLUDING, BUT NOT LIMITED TO HAZARDOUS SUBSTANCES AND HAZARDOUS WASTES, ON OR FROM THE PROPERTY OR ANY OTHER LANDS OF LICENSOR.

C. Assignment. The rights granted by this License inure to the benefit of Licensee. The rights and privileges shall not be assignable by Licensee without the express written consent of Licensor's City Manager. Any required consent is to be evidenced by a letter written by Licensor's City Manager that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor's City Manager.

D. Independent Contractor. It is expressly understood and agreed that Licensee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of Licensor; that Licensee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between Licensor and Licensee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Licensor and Licensee. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of Licensor. Further, it is specifically understood and agreed that nothing in this License is intended or shall be

construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Licensee shall be an independent contractor under this License and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder. Licensor does not have the power to direct the order in which the work is done. Licensor shall not have the right to control the means, methods or details of Licensee's work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way.

E. Waiver of Attorney Fees. BY EXECUTING THIS LICENSE, LICENSEE AGREES TO WAIVE, AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE, ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST LICENSOR REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE LICENSE, THE CONSTRUCTION, OR INTERPRETATION, VALIDITY OR BREACH OF THE LICENSE. LICENSEE SPECIFICALLY AGREES THAT IF LICENSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS LICENSE, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS LICENSE, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, LICENSEE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LICENSEE MIGHT OTHERWISE BE ENTITLED.

LICENSEE AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING, KNOWN RIGHT. LICENSEE ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS LICENSE. LICENSEE FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN LICENSOR AND LICENSEE. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

LICENSEE AND LICENSOR ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS LICENSE WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

F. Governing Law & Venue. All performance and payment made pursuant to this License shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this License or the performance of this License shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this License shall be deemed to have been performed in Midland County, Texas. This License shall be construed, interpreted and enforced under the laws of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all other claims or disputes, arising from or relating in any way to the subject matter of this License, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

G. Release. NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LICENSOR'S NEGLIGENCE.

H. Governmental Immunity. By executing this License, Licensor is not waiving its right of governmental immunity. Licensor is retaining its immunity from suit. Licensor is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.**

I. Third Party Beneficiary. Licensor's approval of this License does not create a third party beneficiary. There is no third party beneficiary to this License. No person or entity who is not a party to this License shall have any third party beneficiary or other rights hereunder.

J. Notices. Any notice or communication required in the administration of this License shall be sent by certified mail, return receipt requested, to the parties' respective mailing addresses as set forth hereinabove.

K. Notice of Alleged Breach; Statutory Prerequisite. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this License, Licensee or its legal representative, shall give the City Manager, or any other reasonable official of Licensor, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this License) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except Licensor from any liability whatsoever. Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Licensee's failure to comply with the requirements herein shall perpetually bar Licensee's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if Licensor has actual or constructive notice or knowledge of said claim or alleged damages. Licensee agrees that the requirements of this entire License are reasonable.

L. Consideration. The terms of this License are supported by good and valuable consideration,

the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

M. Waiver of Governmental Immunity; Chapter 271, TEX. LOC. GOV'T CODE. The parties agree that this License does not constitute a License or Contract for providing goods and/or services to Licensor as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and Licensor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Licensor expressly does not consent to be sued or be liable. To the greatest extent allowed by law, nothing in this License constitutes a waiver of Licensor's governmental immunity and the parties expressly agree that this License shall not constitute, nor be interpreted as a waiver of Licensor's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of Licensor's governmental immunity for the benefit of any third party lacking privity to the License.

This License does not obligate Licensee to use the Property to construct, repair, operate, replace, and maintain Licensor's facilities or structures described herein, it merely prohibits Licensee from using the Property for any other purpose. This License restricts the use of the Property to a specific purpose, but does not require the use of the Property for a specific purpose. This License does not require Licensee to construct, operate, repair, maintain, replace or remove any of Licensee's facilities or structures described herein. Licensee is not providing a service to Licensor but is providing a service to Licensee's customers. Licensee is paying Licensor for a temporary interest in real property not for a service. Any such provision shall be deemed to be a covenant against noncomplying use, not a covenant to use. Licensee's use of the Property in compliance with a restriction shall not constitute a service, and such complying use shall not operate to waive Licensor's governmental immunity.

N. Compliance. Licensee agrees that it shall comply with Texas Government Code Section 2252.908, as amended, to the extent that this statute applies to this License. Licensee agrees that it shall comply with Texas Local Government Code Section 176.006, as amended, to the extent that this statute applies to this License.

O. Texas Historical Commission Survey. Licensee agrees that it shall comply with Chapter 191 of the Texas Natural Resources Code. By executing this License, Licensee represents that it has contacted the Texas Historical Commission (the "Commission") for the purpose of determining whether the Commission will request that an archaeological survey be completed before Licensee commences operations on the Property, as contemplated herein. Licensee agrees that it shall complete or cause to be completed an archaeological survey before commencing any operations on the Property if the Commission so requests and deliver the same to Licensor. Notwithstanding any provision contained herein, in the event that any site, object, artifact, or other feature of archaeological, scientific, educational, cultural, or historical interest is encountered during the operations authorized by this License, Licensee will immediately notify Licensor and the Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Licensor or the Commission.

LICENSOR:
CITY OF MIDLAND, TEXAS

By:_____
Robert Patrick, City Manager

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Carl Craigo, Director of Utilities

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

LICENSEE:
Oxy USA Inc

By: _____ MK
Printed Name: Rhett D. LaFleur
Title: Attorney-in-Fact

THE STATE OF Texas §
§
COUNTY OF Harris §

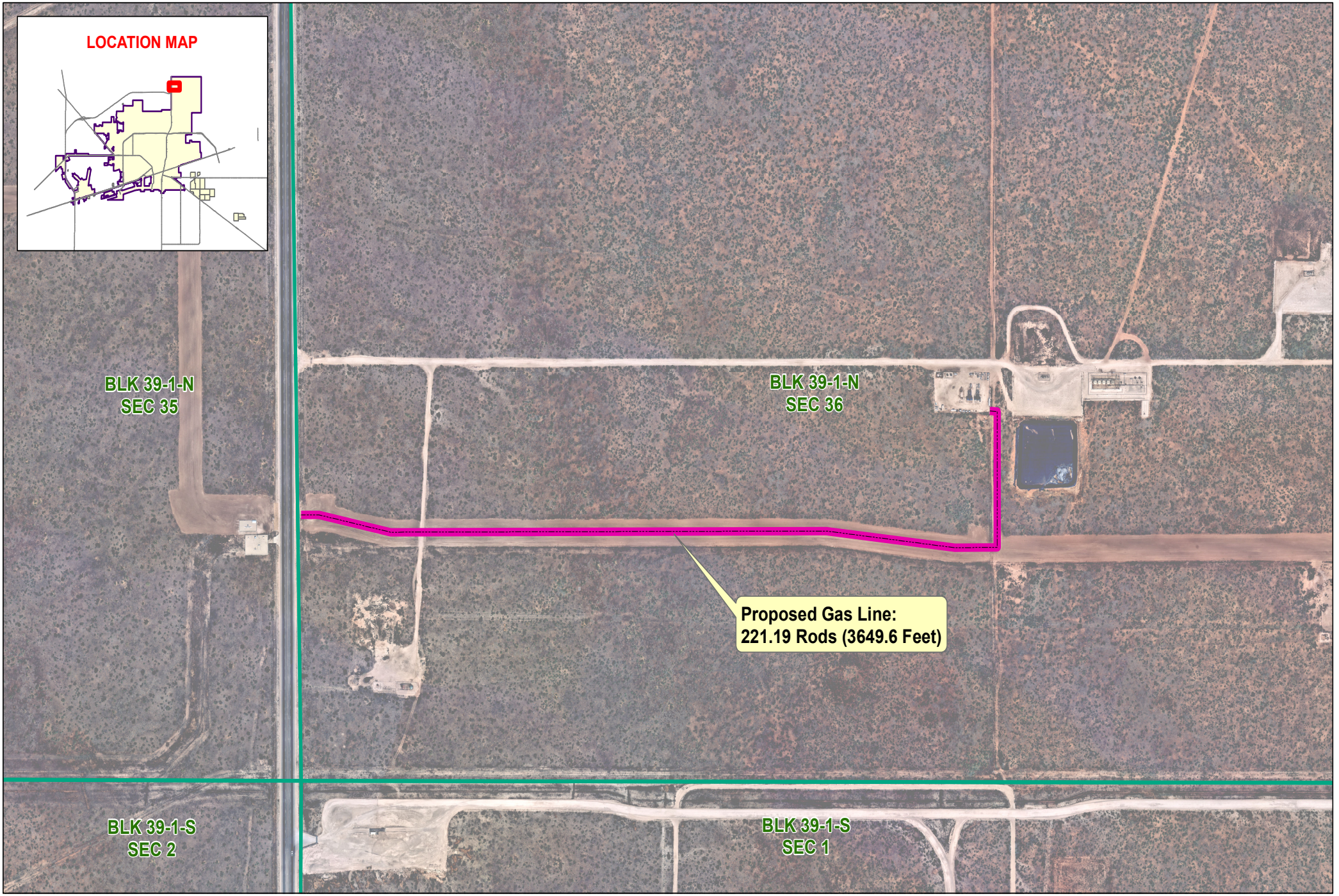
BEFORE ME, the undersigned authority, on this 5th day of August, 2021 personally appeared Rhett D. LaFleur an officer of Oxy USA Inc known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 5th day of August, 2021.

WILLIAM RYAN VAN WINKLE
Notary Public, State of Texas
Comm. Expires 05-15-2023
Notary ID 132014425

_____
Notary Public, State of Texas

Reference No. 21-217-035



Date: 8/5/2021

PACKET 24.16 August 24, 2021

Occidental Permian Ltd. Proposed Gas Line

Proposed Gas Line
Survey Section

0 150 300 Feet

©THE CITY OF MIDLAND - 2021
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

GAS LINE

POB to the Southwest corner of Section 36 bears
S75°30'48"W - 3124.71 ft. and thence S14°29'12"E - 1415.86 ft.

POB to a ½" iron rod with yellow cap Marked 1974 bears
S50°38'40"W - 3366.61 ft.

EOL to the Southwest corner of Section 36 bears
S75°30'48"W - 69.29 ft. and thence S14°29'12"E - 1018.24 ft.

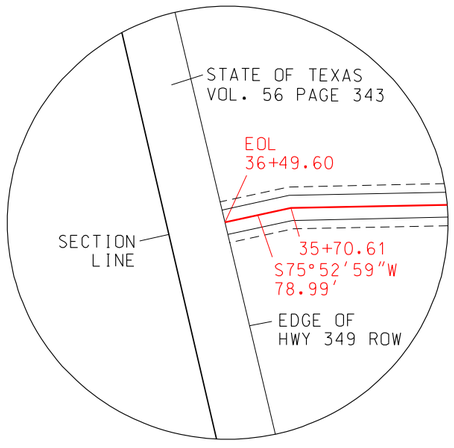
EOL to a ½" iron rod with yellow cap Marked 1974 bears
S14°32'32"E - 1018.18 ft.

TOTAL LENGTH

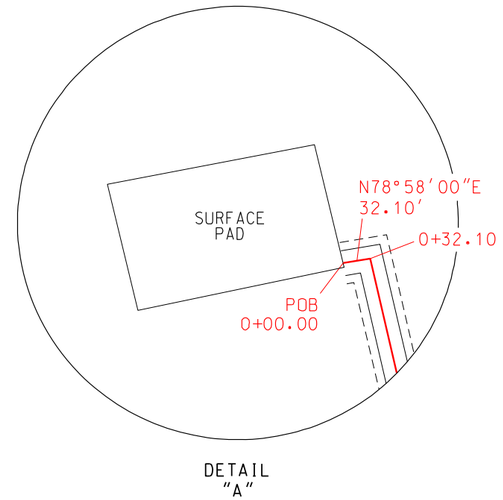
3649.60 FEET
221.19 RODS

NAD83 COORDINATES

	NORTHING	EASTING	LAT	LONG
POB	10734575.30	1752787.98	32.10748702	-102.08942544
EOL	10733425.99	1749929.17	32.10420416	-102.09859702



DETAIL
"B"



DETAIL
"A"

GLO#
020109

25 (A-309)

35 (A-313)

36 (A-694)

T. & P. R.R. SURVEY
Block 39
T-1-N

SURFACE OWNER:
CITY OF MIDLAND, TEXAS
VOL. 239 PAGE 34
DEED RECORDS OF
MARTIN COUNTY

STATE OF TEXAS
VOL. 56 PAGE 343

EDGE OF
HWY 349 ROW

SEE DETAIL
"A"

S81°54'41"W
573.34'

S14°30'38"E
519.47'

13+12.62

5+51.57

S75°21'55"W
1933.13'

S75°00'08"W
187.71'

7+39.28

SEE DETAIL
"B"

MAX ANTICIPATED
OPERATING PRESSURE:
1480 PSI

32+45.75
S87°14'35"W
324.86'

FOUND ½" IRON ROD
WITH YELLOW CAP
MARKED "1974"

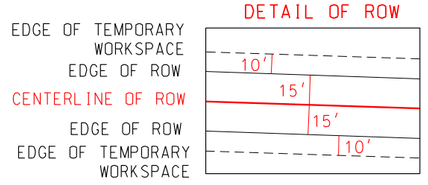
2 (A-711)

1 (A-314)

T. & P. R.R. SURVEY
Block 39
T-1-S

NOTE:
All Bearings are Grid Bearings and Distances are True Distances
Based on the Texas Plane Coordinate System of
1983 for the Central Zone.

DETAIL OF ROW



STATE OF TEXAS
REGISTERED
DENNIS W. HUGHES
4262
PROFESSIONAL
LAND SURVEYOR

1000 500 0 500 1000
SCALE IN FEET
SCALE: 1" = 1000'

N

GRID
NAD83 TCZ
USFT

Dennis W. Hughes RPLS No. 4262 Date: 8/4/2021

Date of Survey: August 4, 2021

Horizon Survey, Inc., Firm #10041700, 20315 Enchanted Rose Lane,
Cypress, Texas 77433 — 281.855.6200

Occidental Permian Ltd.

BURIED 6" STEEL HIGH PRESSURE GAS LINE

Martin County, Texas

Scale: 1"= 1000' 08/04/2021 359_scr_facilities.dgn
Plat prepared by BEB
for Horizon Survey, Inc.

CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
07/27/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

Holder Identifier :

PRODUCER	CONTACT NAME:	
Aon Risk Services Southwest, Inc. Aon Risk Services Southwest, Inc Houston TX Office CA License # 0559715 5555 San Felipe, Suite 1500 Houston TX 77056 USA	PHONE (A/C. No. Ext): (832) 476-6000	FAX (A/C. No.): (800) 953-4542
	E-MAIL ADDRESS:	

INSURED	INSURER(S) AFFORDING COVERAGE	NAIC #
OXY USA Inc. Attn:Risk Management 5 Greenway Plaza, Suite 110 Houston TX 77046-0521 USA	INSURER A: AIU Insurance Company	19399
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ LOC ☐ PRO-JECT ☐ POLICY ☐ OTHER:						EACH OCCURRENCE	
							DAMAGE TO RENTED PREMISES (Ea occurrence)	
							MED EXP (Any one person)	
							PERSONAL & ADV INJURY	
							GENERAL AGGREGATE	
							PRODUCTS - COMP/OP AGG	
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident)	
							BODILY INJURY (Per person)	
							BODILY INJURY (Per accident)	
							PROPERTY DAMAGE (Per accident)	
	☐ **UMBRELLA LIAB** ☐ OCCUR ☐ **EXCESS LIAB** ☐ CLAIMS-MADE ☐ DED ☐ RETENTION						EACH OCCURRENCE	
							AGGREGATE	
A	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N: N **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		WC063850899	11/01/2020	11/01/2021	X PER STATUTE ☐ OTH-ER	
							E.L. EACH ACCIDENT	$1,000,000
							E.L. DISEASE-EA EMPLOYEE	$1,000,000
							E.L. DISEASE-POLICY LIMIT	$1,000,000

Certificate No :

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Right of Way License.
Waiver of Subrogation is granted in favor of Certificate Holder for the Workers' Compensation policy.

CERTIFICATE HOLDER

City of Midland
300 N. Loraine
Midland, TX 79701 USA

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Aon Risk Services Southwest, Inc.

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City Council Meeting

Item Number: 25

Meeting Date: August 24, 2021

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: Motion authorizing the execution of a Right-of-Way License (21-329-034) with Centurion Pipeline L.P., regarding city-owned property described as Sections 4 and 9, Block 39, Township 2 South, T&P RR Co. Survey, Midland County, Texas (DISTRICT 2) (UTILITIES)

Purpose:

Motion authorizing the execution of a Right-of-Way License (21-329-034) with Centurion Pipeline LP., regarding city-owned property described as Sections 4 and 9, Block 39, Township 2 South, T&P RR Co. Survey, Midland County, Texas.

Recommended City Council Action:

Approve

Fiscal Impact:

Application fee (one time): $1,000

Annual Lease Rate,

Annual Lease Rate (3.75 rods x $20/rod): $75.00 / $400.00 minimum per year

Surface Damages: none

Total Collected: $1,400.00

Discussion:

This is a common carrier, carbon steel constructed 8.625” DR-11 crude oil pipeline running

East – West, bored under the road and buried at a minimum depth of 2’ below existing COM Wastewater pipeline. Right of Way width will be 10’.

Certificates of Insurance are on file

City Secretary to record all documents

Robert Patrick

City Manager’s Office

RIGHT OF WAY LICENSE

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

Date:	August 25, 2021
Licensor:	CITY OF MIDLAND, TEXAS, a home-rule municipal corporation
Licensor's Representative:	Robert Patrick, City Manager
Licensor's Mailing Address:	P.O. Box 1152 Midland, Texas 79702
Licensee:	Centurion Pipeline L.P.
Licensee's Representative:	**Christopher Cantrell**
Licensee's Mailing Address:	3600 W. Sam Houston Parkway South, Suite 500 Houston, Texas 77042
Property:	See **Exhibit A** attached hereto and incorporated herein for all purposes.

Licensee desires use of property owned by Licensor in Midland County, Texas (the "Property"), for purposes set forth below. Licensee acknowledges and agrees that it must obtain a license (the "License") in order to use the public lands of Licensor.

W I T N E S S E T H:

For and in consideration of the execution of this License and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

I. Term

A. Initial Term. This License shall be for a term of five (5) years (the "Initial Term"), commencing with the date of this License (the "Commencement Date") unless terminated earlier as provided hereafter.

B. Renewal Term. This License shall automatically renew at the end of the Initial Term for one (1) additional term of five (5) years, upon the written request of Licensee received by Licensor on or before one hundred twenty (120) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of Licensor.

C. Termination. Licensor may terminate this License if Licensee fails to pay, when due, any amount owing under this License and that failure continues for sixty (60) days or, if Licensee

commits any material breach or material default in performance of any obligation, prohibition, restriction, provision or covenant contained in this License, and the breach or default continues for a period of thirty (30) days after Licensor delivers notice to Licensee reasonably detailing the breach or default.

Additionally, Licensor may terminate this License at will for any or no reason upon giving at least three hundred sixty-five (365) days' written notice to Licensee. The parties to this License understand and agree that it is in Licensor's sole discretion to cancel the License during the term of the License without penalty to Licensor. Licensee has no expectation and has received no guarantees that this License will not be terminated before the end of the License term. The parties have bargained for the flexibility of terminating this License upon tender of the requisite notice at any time during the term of the License. All work and services under the License shall be suspended upon termination of the License becoming effective.

Upon termination of this License, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of Licensee to its original condition, as close thereto as may be practical, subject to the approval of Licensor upon inspection by Licensor's Representative, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this License.

II. Financial Consideration

A. License Fee. The first year's license fee in the amount of FOUR HUNDRED and No/100 Dollars ($400.00) shall be due and payable on or prior to the Commencement Date of this License ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay Licensor a late charge of five percent (5%).

B. Surface Damage Fee. Intentionally omitted.

C. Annual Fee. Licensee shall pay to Licensor an annual fee in the amount of FOUR HUNDRED and No/100 Dollars ($400.00), which shall be payable each year on or before the anniversary of the Commencement Date of this License.

D. Application Fee. At the same time the first year License Fee is due, Licensee shall pay a non-refundable one-time fee of ONE THOUSAND and No/100 Dollars ($1,000.00) to Licensor's Representative. Said fee shall revert to Licensor and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

E. Fee Adjustment. Prior to commencement of any renewal term, Licensor and Licensee shall negotiate in good faith to agree to an adjustment of the Annual Fee. If Licensor and Licensee are unable to reach an agreement regarding an adjustment to the Annual Fee, then the Annual Fee shall be determined by Licensor in its sole discretion, provided the new Annual Fee shall not exceed twenty-five percent (25%) of the Annual Fee paid for the last year of the Initial Term.

F. Delivery of Payment. The License Fee payment shall be made to Licensor at the office of

Licensor's Representative, Attn: Right of Way Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon the Property, being ten (10) feet in width of the pipeline location as shown on **Exhibit A** attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the herein described pipeline locations, a carbon steel pipeline, not to exceed eight and six hundred twenty-five thousandths (8.625) inches in diameter, for the transportation of crude oil, to have the right of ingress and egress at convenient points for such purpose. **Licensee shall provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein. The parties agree Licensee's failure to provide Licensor with a complete as-built survey within sixty (60) days of completion of the pipeline(s) and facilities described herein may result in the termination of this License. The decision to accept a complete as-built survey after the sixty-day deadline prescribed herein, or, conversely, to terminate this License shall be in the sole and absolute discretion of Licensor.**

B. Road Repair. Licensee covenants and agrees that it will repair any of Licensor's roads that Licensee damages on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

C. Utility Repair. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by Licensor that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of Licensor's Standard Specifications.

D. Depth. Licensee covenants and agrees that it will bury the pipeline(s) to be constructed hereunder no less than five (5) feet one (1) inch below City's wastewater line and twenty (20) feet below Sunglo Road as shown in **Exhibit A**. All backfill used in burying such line shall be compacted to a density of ninety percent (90%), except where such pipeline(s) crosses under a paved or traveled portion of City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). Licensor shall be afforded the opportunity to test the density on all backfill. Notwithstanding any provision to the contrary contained herein, Licensee covenants and agrees that, at any point that Licensee's pipeline(s) intersects with a City of Midland utility line location, the pipeline(s) shall be bored at a depth of a least (i) nine (9) feet under all City of Midland water utility lines and (ii) two (2) feet under all City of Midland sewer utility lines. Licensee agrees that it shall comply with 30 Tex. Admin. Code § 290.44(e), as amended, to the extent applicable to this License.

E. Approval of Bids. Before Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by Licensor's Representative.

F. Reservation of Rights. Licensor expressly reserves the right to install, repair, or reconstruct

streets or roads and all ancillary public uses usual and customary in connection with streets and roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of Licensor, in, on, across, along, over, under, and through any property occupied by Licensee. In permitting such work to be done, Licensor shall not be liable to Licensee for any damage so caused to Licensee's system or property, **NOR SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY DAMAGES TO LICENSEE'S PIPELINE(S), CASING, OR COMPRESSOR STATION, ARISING OUT OF THE NEGLIGENCE BY LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS**. If Licensor requires Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade or construction of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by Licensor, Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by Licensor, without claim for reimbursement for the cost of the relocation or for damages against Licensor. If these requirements impose a financial hardship upon Licensee, Licensee shall have the right to present alternative proposals for Licensor's consideration.

G. Non-exclusive. Licensor expressly reserves the full right to grant other easements or rights of way crossing or running parallel with the rights of way used by Licensee.

H. Abandonment. It is especially provided, however, that as an express condition of this License, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the Property ceases to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty (120) days' written notice, then and in that event, this License shall automatically revert to Licensor, its successors or assigns, free and clear of any right, title, or interest in Licensee, or any re-entry by Licensor.

I. Approval of Specifications. In the event Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to Licensor's Representative for his or her approval. In the event of emergency repairs necessary to restore service, Licensee shall notify Licensor's Representative before making any repairs if during a Licensor work day. If not on a work day, Licensee shall notify Licensor's Representative on the first work day after repairs have begun.

J. Gates and Fences. Licensee agrees to use existing gates and roadways where available, to enter, leave and cross the Property; provided that Licensee shall not use any road marked "Closed." Licensee and all persons entering or leaving the Property in connection with Licensee's operations hereunder shall keep all outside and interior gates securely closed except during operations related to this License. Licensee shall keep all outside gates, and all other gates designated by Licensor,

securely locked except during operations related to this License. At any gate that is to be locked, Licensor may install its own lock in addition to Licensee's lock.

Licensee agrees that Licensee shall not cut or go over any fence at any time or in connection with any operations on the Property without first obtaining Licensor's express consent thereto in writing. All gates or openings in fences shall be at mutually agreeable location(s) between Licensee and Licensor and shall be constructed as reasonably required by Licensor. Upon the termination of this License, at Licensor's election, gates in fences shall be left in place and shall thereafter be owned by Licensor or Licensee shall remove such gates and restore the fence to its original condition as nearly as reasonably practicable. The terms, provisions and requirements of this provision shall survive the termination or expiration of this License.

K. Trash. Licensee shall keep the Property free of trash and debris at all times. Under no circumstances, will Licensee be allowed to bury any trash, debris or foreign material of any kind on or under the Property. Licensor shall have the right to expel and permanently ban from the Property any person observed disposing of trash on the Property. Upon the completion of any operations, all ribbons, flags, stakes and similar items shall by promptly removed from the Property.

L. Hunting, Fishing and Alcohol Prohibited. No agent, employee, representative, contractor or subcontractor of Licensee or any other person allowed to enter the Property by Licensee shall be permitted to hunt, fish, trap, camp, picnic, ride motorcycles or four-wheelers or otherwise conduct any social gathering on the Property, nor shall any such persons be permitted to bring firearms, archery equipment, dogs, alcoholic beverages or illegal drugs on the Property at any time. Violations of this provision shall cause the violator to be regarded as a trespasser and subject to prosecution under trespass laws of the State of Texas. Licensor shall have the right to expel and permanently ban from the Property any person observed on the Property in violation of this provision.

M. Storage of Machinery and Equipment. Licensee shall use no part of the Property to store machinery, equipment, or other property of Licensee while it is not being used.

N. Additional Reservations. Licensor reserves the right to use the surface, subsurface or airspace above the land covered by this License for any purpose allowed by law and deemed necessary by Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by Licensor in, on, across, along, over, under, and through said right of way occupied by Licensee. In the event of such work in connection with said purposes it shall be deemed necessary by Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline, property, or casing of Licensee, such alteration or change or relocation shall be commenced and completed by Licensee within one hundred eighty (180) days after being ordered in writing by Licensor pursuant to directions from Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable federal or state laws with respect to relocation payments.

IV. Standard General Conditions

A. Insurance. Licensee shall at all times during the term of this License maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):	
■ Personal Injury:	$1,000,000.00 per person $1,000,000.00 per occurrence
■ Property Damage:	$100,000.00 per occurrence
Business Automobile Liability:	$1,000,000.00 combined single limit-- Personal Injury and Property Damage
Workers' Compensation:	Statutory limits
Employers' Liability:	$1,000,000.00 per accident or occurrence
Umbrella Liability:	$10,000,000.00 each occurrence $10,000,000.00 aggregate

The Commercial General Liability shall be on an occurrence basis. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The Workers' Compensation coverage provided by Licensee shall inure to the benefit of employees injured during the course and scope of their employment by Licensee pursuant to this License. The Workers' Compensation insurance shall waive all rights of subrogation against Licensor.

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this License. This insurance shall name Licensor as an additional insured and all insurance shall waive subrogation in favor of Licensor.

The parties agree that, prior to the execution of the License, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

Licensor shall be provided the notice by Licensee's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Licensor shall not be required to provide any insurance whatsoever pursuant to this License.

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this License to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured. Licensee certifies that the one or more

certificates of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Licensee shall not use an unapproved certificate of insurance or insert inappropriate language on a certificate. Compliance with state law is the sole responsibility of Licensee.

B. Indemnity. LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S),CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE AGREES THAT LICENSEE SHALL INDEMNIFY AND SAVE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE(S), CASING SYSTEM, OR COMPRESSOR STATION DESCRIBED HEREIN.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSOR, LICENSOR'S OFFICERS, AGENTS OR EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES', AGENTS' OR SUBCONTRACTORS' NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS LICENSE INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY

CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF LICENSEE'S PIPELINE(S),CASING SYSTEM, OR COMPRESSOR STATION IN LICENSOR'S RIGHT OF WAY. LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, LIENS, FINES, PENALTIES, CAUSES OF ACTION, SUITS, CHARGES, JUDGMENTS, ADMINISTRATIVE ORDERS, REMEDIATION REQUIREMENTS, ENFORCEMENT ACTIONS OF ANY KIND, AND ALL COSTS AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF FAILURE OF LICENSEE, ANY CONTRACTOR, SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER TO COMPLY WITH ALL APPLICABLE LOCAL, FEDERAL AND/OR STATE ENVIRONMENTAL LAWS, INCLUDING BUT NOT LIMITED TO THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AND THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) (AS THEY MAY BE REAUTHORIZED AND/OR AMENDED) AND ALL OTHER LOCAL, FEDERAL AND STATE LAWS, IN CONNECTION WITH OR RELATED TO ANY OF LICENSEE'S OPERATIONS OR ACTIVITIES ON THE PROPERTY, OR ANY OF LICENSEE'S HANDLING, STORING, RELEASING, TRANSPORTING OR DISPOSING OF ALL SUBSTANCES, INCLUDING, BUT NOT LIMITED TO HAZARDOUS SUBSTANCES AND HAZARDOUS WASTES, ON OR FROM THE PROPERTY OR ANY OTHER LANDS OF LICENSOR.

C. Assignment. The rights granted by this License inure to the benefit of Licensee. The rights and privileges shall not be assignable by Licensee without the express written consent of Licensor's City Manager. Any required consent is to be evidenced by a letter written by Licensor's City Manager that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor's City Manager.

D. Independent Contractor. It is expressly understood and agreed that Licensee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of Licensor; that Licensee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between Licensor and Licensee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Licensor and Licensee. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of Licensor. Further, it is specifically understood and agreed that nothing in this License is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Licensee shall be an independent contractor under this License and shall assume all of the rights, obligations and liabilities applicable to it as such

independent contractor hereunder. Licensor does not have the power to direct the order in which the work is done. Licensor shall not have the right to control the means, methods or details of Licensee's work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way.

E. Waiver of Attorney Fees. BY EXECUTING THIS LICENSE, LICENSEE AGREES TO WAIVE, AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE, ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST LICENSOR REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE LICENSE, THE CONSTRUCTION, OR INTERPRETATION, VALIDITY OR BREACH OF THE LICENSE. LICENSEE SPECIFICALLY AGREES THAT IF LICENSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS LICENSE, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS LICENSE, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, LICENSEE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LICENSEE MIGHT OTHERWISE BE ENTITLED.

LICENSEE AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING, KNOWN RIGHT. LICENSEE ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS LICENSE. LICENSEE FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN LICENSOR AND LICENSEE. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

LICENSEE AND LICENSOR ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS LICENSE WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

F. Governing Law & Venue. All performance and payment made pursuant to this License shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this License or the performance of this License shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this License shall be deemed to have been performed in Midland County, Texas. This License shall be construed, interpreted and enforced under the laws of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all other claims or disputes, arising from or relating in any way to the subject matter of this License, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

G. Release. NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS FROM ANY AND ALL DEMANDS,

CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LICENSOR'S NEGLIGENCE.

H. Governmental Immunity. By executing this License, Licensor is not waiving its right of governmental immunity. Licensor is retaining its immunity from suit. Licensor is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.**

I. Third Party Beneficiary. Licensor's approval of this License does not create a third party beneficiary. There is no third party beneficiary to this License. No person or entity who is not a party to this License shall have any third party beneficiary or other rights hereunder.

J. Notices. Any notice or communication required in the administration of this License shall be sent by certified mail, return receipt requested, to the parties' respective mailing addresses as set forth hereinabove.

K. Notice of Alleged Breach; Statutory Prerequisite. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this License, Licensee or its legal representative, shall give the City Manager, or any other reasonable official of Licensor, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this License) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except Licensor from any liability whatsoever. Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Licensee's failure to comply with the requirements herein shall perpetually bar Licensee's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if Licensor has actual or constructive notice or knowledge of said claim or alleged damages. Licensee agrees that the requirements of this entire License are reasonable.

L. Consideration. The terms of this License are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

M. Waiver of Governmental Immunity; Chapter 271, TEX. LOC. GOV'T CODE. The parties

agree that this License does not constitute a License or Contract for providing goods and/or services to Licensor as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and Licensor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Licensor expressly does not consent to be sued or be liable. To the greatest extent allowed by law, nothing in this License constitutes a waiver of Licensor's governmental immunity and the parties expressly agree that this License shall not constitute, nor be interpreted as a waiver of Licensor's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of Licensor's governmental immunity for the benefit of any third party lacking privity to the License.

This License does not obligate Licensee to use the Property to construct, repair, operate, replace, and maintain Licensor's facilities or structures described herein, it merely prohibits Licensee from using the Property for any other purpose. This License restricts the use of the Property to a specific purpose, but does not require the use of the Property for a specific purpose. This License does not require Licensee to construct, operate, repair, maintain, replace or remove any of Licensee's facilities or structures described herein. Licensee is not providing a service to Licensor but is providing a service to Licensee's customers. Licensee is paying Licensor for a temporary interest in real property not for a service. Any such provision shall be deemed to be a covenant against noncomplying use, not a covenant to use. Licensee's use of the Property in compliance with a restriction shall not constitute a service, and such complying use shall not operate to waive Licensor's governmental immunity.

N. Compliance. Licensee agrees that it shall comply with Texas Government Code Section 2252.908, as amended, to the extent that this statute applies to this License. Licensee agrees that it shall comply with Texas Local Government Code Section 176.006, as amended, to the extent that this statute applies to this License.

O. Texas Historical Commission Survey. Licensee agrees that it shall comply with Chapter 191 of the Texas Natural Resources Code. By executing this License, Licensee represents that it has contacted the Texas Historical Commission (the "Commission") for the purpose of determining whether the Commission will request that an archaeological survey be completed before Licensee commences operations on the Property, as contemplated herein. Licensee agrees that it shall complete or cause to be completed an archaeological survey before commencing any operations on the Property if the Commission so requests and deliver the same to Licensor. Notwithstanding any provision contained herein, in the event that any site, object, artifact, or other feature of archaeological, scientific, educational, cultural, or historical interest is encountered during the operations authorized by this License, Licensee will immediately notify Licensor and the Commission so that adequate measures may be undertaken to protect or recover such discoveries or findings, as deemed appropriate by Licensor or the Commission.

LICENSOR:
CITY OF MIDLAND, TEXAS

By:_____
Robert Patrick, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

LICENSEE:
CENTURION PIPELINE L.P.

By:
Printed Name: Christopher Cantrell
Title: Manager of Right-of-Way

THE STATE OF Texas §
§
COUNTY OF Harris §

BEFORE ME, the undersigned authority, on this 9 day of August, 2021 personally appeared Christopher Cantrell an officer of Centurion Pipeline L.P. known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 9th day of August, 2021.

Notary Public, State of Texas

KALYN NICOLE SCHROEDER
Notary Public, State of Texas
Comm. Expires 09-13-2022
Notary ID 131721494

Reference No. 21-329-034

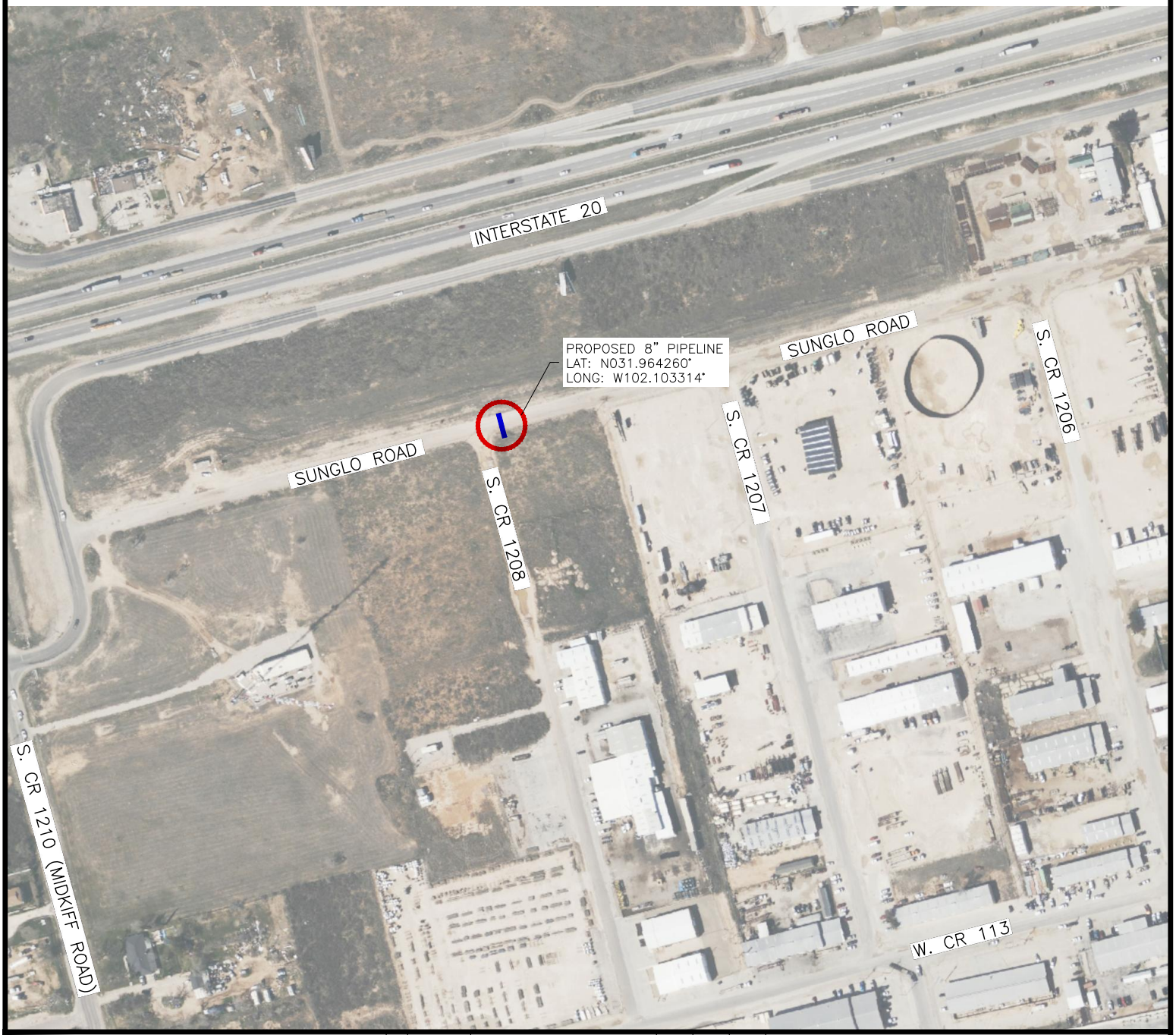
STATE OF TEXAS
JEFFREY W. BROWN
109739
LICENSED
PROFESSIONAL ENGINEER
8/03/21

VICINITY MAP

PROPOSED 8" PIPELINE
ACROSS SUNGLO ROAD
LOCATED IN
SECTION 4 & 9, BLOCK 39, TOWNSHIP 2 SOUTH
T.& P. RY. CO. SURVEY, A-1187 & A-62
MIDLAND COUNTY, TEXAS

N
W
E
S

GRAPHIC SCALE
0 300' 600'



LJA Engineering, Inc.
3600 W Sam Houston Pkwy S.
Suite 600
Houston, Texas 77042
Phone 713.953.5200
Fax 713.953.5026
FRN - F-1386

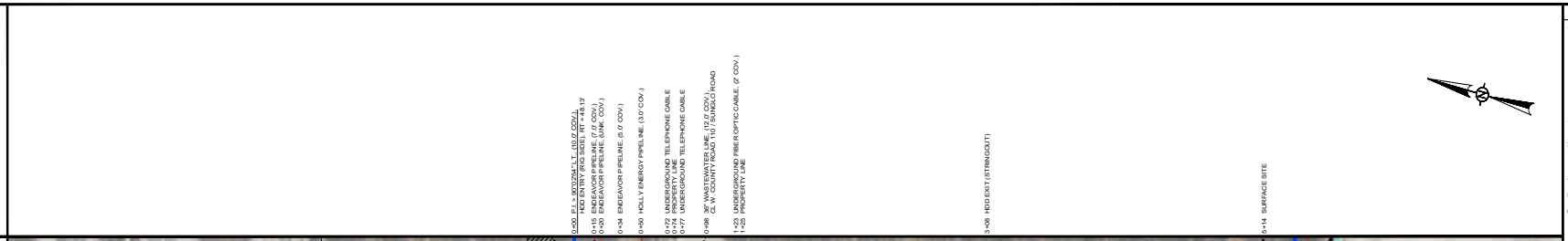
PACKET 25.15

NO.	DATE	REVISION	DRWN	CHK'D	APP'D
0	08/03/2021	ISSUE FOR CONSTRUCTION	JKB	JCD	JWB

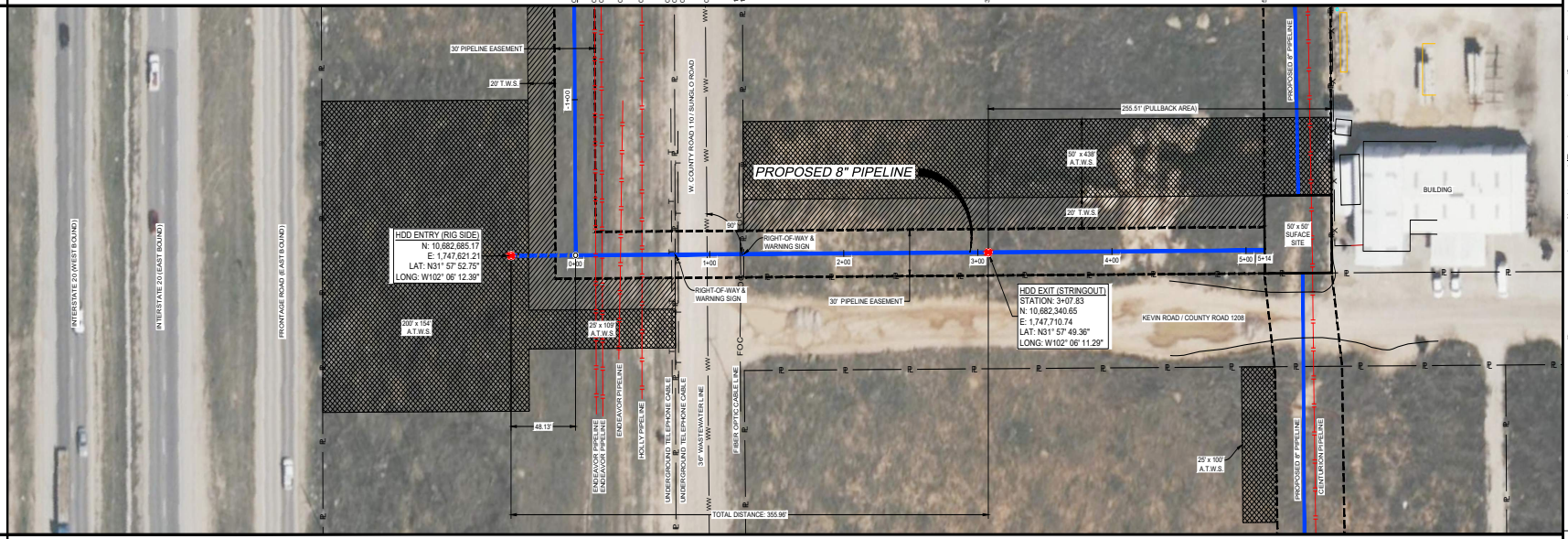
Centurion Pipeline L.P.
August 24, 2021

CLIENT AFE NO.	P00073
CLIENT PROJECT NO.	P00073
DRAWING NO.	CPL-075T-03-001

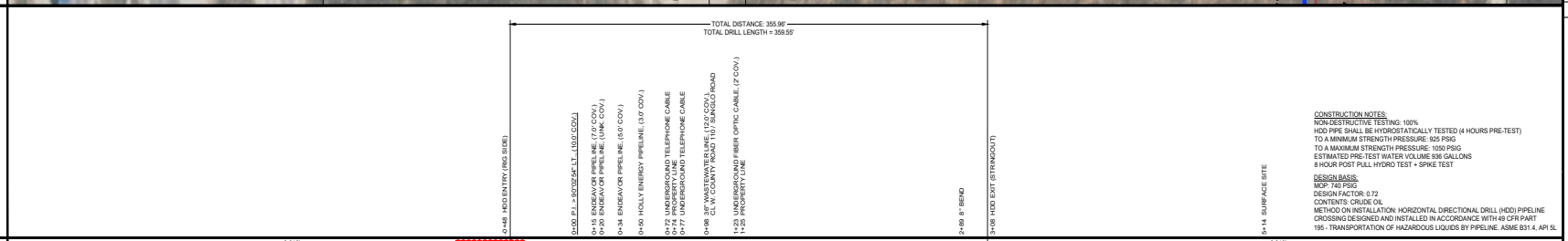
PIPELINE STATIONING (PLAN)



PLAN

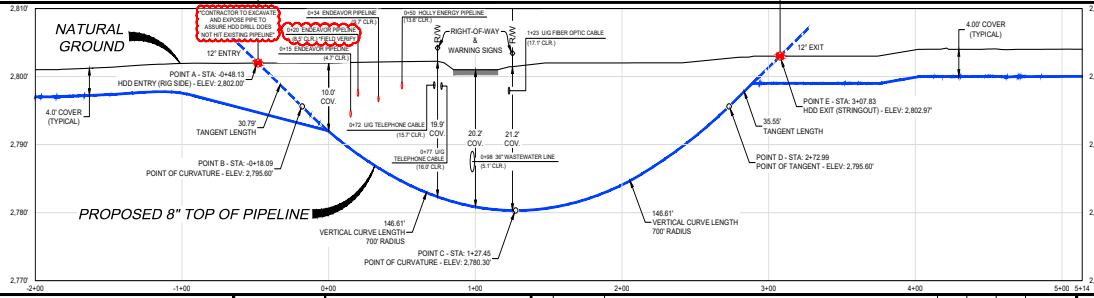


PIPELINE STATIONING (PROFILE)



PROFILE

ELEVATION



CONSTRUCTION NOTES:
NON-DESTRUCTIVE TESTING: 100%
HDD PIPE SHALL BE HYDROSTATICALLY TESTED (4 HOURS PRE-TEST)
TO A MINIMUM STRENGTH PRESSURE: 925 PSIG
TO A MAXIMUM STRENGTH PRESSURE: 1050 PSIG
ESTIMATED PRE-TEST WATER VOLUME 936 GALLONS
8 HOUR POST PULL HYDRO TEST + SPIKE TEST

DESIGN BASIS:
MOP: 740 PSIG
DESIGN FACTOR: 0.72
CONTENTS: CRUDE OIL
METHOD ON INSTALLATION: HORIZONTAL DIRECTIONAL DRILL (HDD) PIPELINE CROSSING DESIGNED AND INSTALLED IN ACCORDANCE WITH 49 CFR PART 195 - TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE. ASME B31.4, API 5L

GENERAL NOTES

1. LJA SURVEYING, INC. AND ITS CLIENTS MAKE NO REPRESENTATIONS OR WARRANTIES WITH REGARD TO THE LOCATION OR EXISTENCE OF UNDERGROUND UTILITIES, PIPELINES OR OBSTRUCTIONS. IT SHALL BE THE SOLE AND EXCLUSIVE RESPONSIBILITY OF CONTRACTORS TO IDENTIFY, LOCATE, AND COORDINATE WITH OWNERS DURING THE CROSSING OF ANY SUCH UNDERGROUND UTILITIES, PIPELINES OR OBSTRUCTIONS AND PROTECT SUCH UTILITIES, PIPELINES AND OBSTRUCTIONS FROM DAMAGE DURING CONSTRUCTION. CONTRACTOR SHALL COMPLY WITH THE STATE OF TEXAS ONE-CALL REQUIREMENTS.
2. COORDINATES SHOWN ARE BASED UPON THE TEXAS STATE PLAIN 1983, CENTRAL ZONE 4203 (US SURVEY FOOT).
3. ANY QUESTIONS CONCERNING THE PERMANENT EASEMENT, TEMP. WORKSPACE OR ADDITIONAL TEMP. WORKSPACE SHOULD BE REPRESENTATIVE.
4. ANY P.I. < 15° WILL BE FIELD BEND.
5. DATE OF AERIAL PHOTOGRAPHY: 2021
6. HDD CONTRACTOR SHALL INDEPENDENTLY EVALUATE THE FEASIBILITY OF THE PROPOSED HDD WITH THEIR EQUIPMENT, CONSTRUCTION PROCEDURES AND EXPERIENCE.
7. PRIOR TO STARTING HDD DRILLING OPERATIONS, CONTRACTOR SHALL SUBMIT A DRILLING EXECUTION PLAN FOR COMPANY REVIEW.
8. HDD CONTRACTOR SHALL VERIFY TOPOGRAPHICAL INFORMATION PRIOR TO COMMENCING DRILL. AERIAL IMAGERY IS DATED 05/2021 AND MAY NOT DEPICT CURRENT CONDITIONS.
9. HDD CONTRACTOR SHALL SUPPLY AND USE AN APPROVED ANNULAR PRESSURE TOOL WITH AN APPROPRIATE PRESSURE MODEL.
10. HDD CONTRACTOR SHALL HYDRO-VACUUM AND EXPOSE THE EXISTING PIPELINES/UTILITIES IN CLOSE PROXIMITY AND INSPECT DURING TO ENTIRE CONSTRUCTION OPERATION. ALSO TO ENSURE THE PIPELINE IS MINIMUM 2' AWAY FROM THE EXISTING PIPELINES.
11. THE CALCULATED PULL FORCE FOR THE HDD IS 8,802 LBS. WITHOUT BUOYANCY.

ENVIRONMENTAL NOTES:
1. EMERGENCY RESPONSE SPILL KITS MUST BE ON-SITE AND AVAILABLE FOR USE FOR THE DURATION OF THE PROJECT.
2. "FRAC WALKS" SHALL BE EVERY 4 HOURS OR IMMEDIATELY WHEN LOSS OF MUD PRESSURE IS DETECTED.
3. CONTRACTOR'S PROPOSED DRILLING FLUID COMPOSITE, INCLUDING ALL EXPECTED ADDITIVES, SHALL BE SUBMITTED FOR OWNER'S ENVIRONMENTAL REPRESENTATIVE.
4. IF A "FRAC OUT" OCCURS:
   a. DRILLING TO CEASE IMMEDIATELY.
   b. CONTRACTOR TO REMOVE AS MUCH DRILLING FLUID AS PRACTICAL.
   c. CONTRACTOR TO USE BARRIERS TO CONTAIN THE SPILL.
   d. CONTRACTOR MAY ATTEMPT TO CONTINUE DRILLING BY ADJUSTING THE MUD VISCOSITY AND/OR REDUCTION OF MUD PRESSURE.
5. HDD CONTRACTOR SHALL ENSURE THAT THE FOLLOWING DOCUMENTATION IS ALWAYS ON-SITE AND READILY AVAILABLE.
   a. EMERGENCY RESPONSE PLAN
   b. ENVIRONMENTAL PROTECTION PLAN
   c. MSDS OF ALL ON-SITE MATERIAL
   d. COPIES OF TEMPORARY FIELD AUTHORIZATION AND/OR LAND USE AGREEMENTS.

LJA Engineering, Inc.
3600 W Sam Houston Pkwy S
Suite 600
Houston, Texas 77042
Phone: 713.953.5200
Fax: 713.953.5026
FRN-F-1386

LEGEND

- PROPOSED PIPELINE
- PROPOSED PIPELINE EASEMENTS
- TEMPORARY WORKSPACE (T.W.S.)
- ADDITIONAL TEMPORARY WORKSPACE (A.T.W.S.)
- PROPERTY LINE
- EXISTING PIPELINE
- CENTERLINE OF ROAD
- EDGE OF ROAD
- R/W — ROAD RIGHT-OF-WAY
- T — UNDERGROUND TELEPHONE CABLE
- FOC — UNDERGROUND FIBER OPTIC CABLE
- X — FENCE
- WW — WASTEWATER LINE
- HDD ENTRY/EXIT
- POINT OF INTERSECTION (P.I.)

SCALE, PROJECTION & IMAGERY

40 20 0 40 80

SCALE: 1" = 40' HORIZONTAL
1" = 10' VERTICAL

PROJECTION: NAD 83 - CENTRAL ZONE

IMAGERY DATE: 2021

ENVIRONMENTAL NOTES

MATERIAL SUMMARY

A	8.625" O.D. x 0.322" W.T., API 5L, PSL2, GRADE X52, FBE 15-18 MILS, WITH ARO 30-40 MILS	360'

DWG. NO.	REFERENCE DRAWINGS
CPL-075-087-002	ALIGNMENT SHEET (STA 18+29 TO STA 30+25)

NO.	DATE	REVISIONS	BY	CK'D.	APP.	DATE
E	08/03/2021	ISSUED FOR PERMITTING	TDB	JAU	JD	08/03/2021

ENGINEERING RECORD		
DRN:	TDB	08/02/2021
CHK:	JAU	
APP:	JD	
APP:		
CLIENT APP:		

CLIENT PROJECT NO.: P00073

CENTURION AFE NO.:

STATE OF TEXAS — JEFFREY W. BROWN — 132407 — LICENSED PROFESSIONAL ENGINEER

Centurion Pipeline L.P.

HORIZONTAL DIRECTIONAL DRILL
WEST COUNTY ROAD 110 / SUNGLO ROAD
8" PROPOSED PIPELINE
ENDEAVOR CONNECTION PROJECT
MIDLAND COUNTY, TEXAS

DWG. NO.: CPL-075T-03-002

DEPT.:

SCALE: AS NOTED

REV.: E

PACKET 25.16 August 24, 2021

L:\Projects\1138 (Centurion)\B1138-1012 (Endeavor Connection Eng)\CAD\MAPPING_GIS\02 MASTER\01 BASE MAPS\1138-1012 Endeavor Connect - Baseflle.dwg

DESIGN DATA

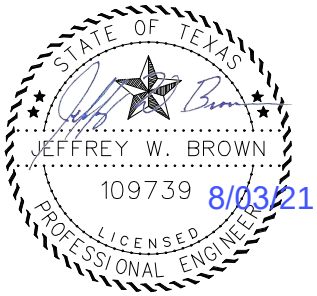
PROPOSED 8" PIPELINE
ACROSS SUNGLO ROAD,
LOCATED IN
SECTION 4 & 9, BLOCK 39, TOWNSHIP 2 SOUTH
T.& P. RY. CO. SURVEY, A-1187 & A-62,
MIDLAND COUNTY, TEXAS

1. GENERAL INFORMATION
   - 1.1. APPLICANT/OWNER: CENTURION PIPELINE
   - 1.2. PIPELINE NAME: BANKHEAD TO ARRINGTON JUNCTION
   - 1.3. PRODUCT: OIL
   - 1.4. PROPOSED CONSTRUCTION ACTIVITIES SCHEDULED FOR AUGUST 1, 2021 THROUGH NOVEMBER 1, 2021
   - 1.5. READILY IDENTIFIABLE, DURABLE, AND WEATHERPROOF PIPELINE MARKERS WILL BE PLACED OVER THE PIPELINE CENTERLINE AT BOTH ROAD RIGHT-OF-WAY (R.O.W.) LINES WITH UTILITY NAME, PRODUCT, AND EMERGENCY NUMBER.
   - 1.6. SUNGLO ROAD CROSSING REQUIREMENTS: MINIMUM EIGHT (8) FEET UNDER THE LOWEST POINT OF THE SURFACE WITHIN R.O.W.

2. PIPELINE DESIGN DATA
   - 2.1. DESIGN CODES: THE DEPARTMENT OF TRANSPORTATION ("DOT") STANDARD CFR TITLE 49, PART 195, "TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE", ASME B31.4, API 5L.
   - 2.2. DESIGN PRESSURE: 740 PSIG
   - 2.3. HYDROSTATIC TEST PRESSURE: 925 PSIG MIN. 1050 PSIG MAX STRENGTH TEST
   - 2.4. CATHODIC PROTECTION WILL BE INSTALLED ON THE PIPELINE VIA IMPRESSED CURRENT.

3. CONSTRUCTION METHOD
   - 3.1. PIPELINE TO BE INSTALLED BY HORIZONTAL DIRECTIONAL DRILL METHODS.

4. BORE LINE PIPE
   - 4.1. OUTSIDE DIAMETER: 8.625"
   - 4.2. WALL THICKNESS: 0.322"
   - 4.3. PIPE SPECIFICATION: APL 5L
   - 4.4. GRADE: X52
   - 4.5. MATERIAL: CARBON STEEL



BARLOW EQUATION FOR STEEL PIPE: P = (2 x S x T x E x F)/D	
MOP	740
OUTSIDE DIAMETER (IN) = D	8.625
DESIGN FACTOR = F	0.72
LONGITUDINAL JOINT FACTOR = E	1 (ERW/HFW)
YIELD STRENGTH (PSI, LB/IN^2) = S	52000
WALL THICKNESS (IN) = T	0.322
PRESSURE (PSI, LB/IN^2) = P	2795
P > MOP	OK

LJA Engineering, Inc.
3600 W Sam Houston Pkwy S
Suite 600
Houston, Texas 77042
Phone 713.953.5200
Fax 713.953.5026
FRN - F-1386

PACKET 25.17

NO.	DATE	REVISION	DRWN	CHK'D	APP'D
0	08/03/2021	ISSUE FOR CONSTRUCTION	JKB	JCD	JWB

Centurion Pipeline L.P.
August 24, 2021

CLIENT AFE NO.	P00073
CLIENT PROJECT NO.	P00073
DRAWING NO.	CPL-075T-03-003

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 5/10/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Bowen, Miclette & Britt Insurance Agency, LLC 1111 North Loop West, #400 Houston TX 77008	**CONTACT NAME:** Heather Cameron **PHONE (A/C, No, Ext):** 713-880-7100 **FAX (A/C, No):** 713-880-7166 **E-MAIL ADDRESS:** hcameron@bmbinc.com
INSURED LOTUSMIDST Centurion Pipeline L.P. 3600 W. Sam Houston Pkw. Houston TX 77042	**INSURER(S) AFFORDING COVERAGE** / **NAIC #** **INSURER A :** National Fire & Marine Ins Co — 20079 **INSURER B :** Liberty Mutual Fire Ins Co — 23035 **INSURER C :** Liberty Insurance Corp — 42404 **INSURER D :** **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** 1552637816 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	X **COMMERCIAL GENERAL LIABILITY** [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [ ] PRO-JECT [X] LOC [ ] OTHER:	Y	Y	TB2641445690030	9/28/2020	9/28/2021	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG 	$ 1,000,000 $ 300,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
B	**AUTOMOBILE LIABILITY** X ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY	Y	Y	AS2641445690020	9/28/2020	9/28/2021	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) 	$ 1,000,000 $ $ $ $
A	X **UMBRELLA LIAB** X OCCUR **EXCESS LIAB** [ ] CLAIMS-MADE [ ] DED X RETENTION $ 25,000	Y	Y	42UMO30620703	9/28/2020	9/28/2021	EACH OCCURRENCE AGGREGATE 	$ 10,000,000 $ 10,000,000 $
C	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		WC7641445690010	9/28/2020	9/28/2021	[ ] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The following policy provisions and/or endorsements form part of the policies of insurance represented by this certificate of insurance. The terms contained in the policies and/or endorsements supersede the representations made herein. Electronic copies of the policy provisions and/or endorsements listed below are available by emailing: certificates@bmbinc.com

General Liability:
Blanket additional insured Ongoing Operations per form # CG 20 10 04 13
Blanket additional insured Completed Operations per form # CG 20 37 04 13
Blanket waiver of subrogation per form # LC04101 04 18
See Attached...

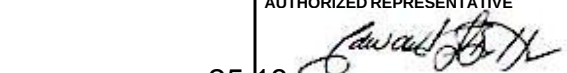
CERTIFICATE HOLDER

City of Midland
300 N. Loraine
Midland TX 78701

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



PACKET 25.18 August 24, 2021

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AGENCY CUSTOMER ID: LOTUSMIDST

LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY	NAMED INSURED
Bowen, Miclette & Britt	Centurion Pipeline L.P. 3600 W. Sam Houston Pkw. Houston TX 77042
POLICY NUMBER	
CARRIER / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Blanket primary/non-contributory per form # LC2420 11 18

Automobile:
Blanket additional insured per form # CA 20 48 10 13
Blanket waiver of subrogation per form # AC 84 07 11 17
Blanket primary/non-contributory per form # AC 84 23 08 11

Worker's Compensation:
Blanket waiver of subrogation per form # WC 00 03 13

Umbrella:
Blanket additional insured per form # ULP-UM-002-02/2014
Blanket waiver of subrogation per form # CL-UN-045-10/ 2016
Blanket primary/non-contributory per form # CLP-UN-065-10/2013

Certificate Holder Includes: City of Midland

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City Council Meeting

Item Number: **26**

Meeting Date: **August 24, 2021**

To: **City Council / City Manager**

From: **Carl Craigo, Director**

Subject: **Motion authorizing the execution of a lease agreement with American Towers LLC, A Delaware Limited Liability Company regarding City-Owned property described as Section 5, Block X, H.P. Hilliard Survey, Midland County, Texas. (DISTRICT 1) (UTILITIES)**

Purpose:

Motion authorizing the execution of a lease agreement with American Towers LLC, A Delaware Limited Liability Company regarding City-Owned property described as Section 5, Block X, H.P. Hilliard Survey, Midland County, Texas.

Recommended City Council Action:

Approve

Fiscal Impact:

Monthly lease payment of $2500.

Discussion:

This is an existing tower located at the water purification plant. This will replace an outdated lease from 2013.

Robert Patrick

City Manager's Office

LEASE AGREEMENT

THIS LEASE AGREEMENT ("*Agreement*") is made and effective this 28th day of January 2020, by and between the CITY OF MIDLAND, TEXAS ("*Lessor*") and AMERICAN TOWERS LLC, A DELAWARE LIMITED LIABILITY COMPANY ("*Lessee*").

I. RECITALS

WHEREAS, Lessor owns certain property described herein that is utilized for a communications tower and other municipal purposes; and

WHEREAS, Lessee desires to use said property for the purposes of maintaining and operating a communications transmitting and receiving site and control building.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties agree as follows:

II. DEFINITIONS

A. ***"Access Facility"*** means fencing and an access gate, which Lessee constructs or has constructed, at Lessee's sole cost and expense. If Lessee constructs the Access Facility during the term of this Agreement, Lessee's construction shall be subject to the approval of Lessor, and prior to the construction of the Access Facility, Lessee shall submit the plans and specifications to the Utilities Director (as defined below) for approval. The Access Facility shall be constructed and maintained completely at Lessee's sole cost and expense.

B. ***"City"*** means the City of Midland, Texas.

C. ***"City Property"*** means the City-owned property known as the Water Purification Plant as shown on **Exhibit A** attached hereto and incorporated herein for all legal purposes, and within which is the Leased Premises (as defined below).

D. ***"Leased Premises"*** means the area (including the Access Facility) within City Property as shown on **Exhibit A** and to which Lessee is granted access pursuant to this Agreement for the purpose of accomplishing Lessee's Telecommunications Activities (as defined below).

E. ***"Telecommunications Activities"*** means the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, and replacement of communications equipment, cables, and accessories.

F. ***"Permitted Equipment"*** means Lessee's equipment located on the Leased Premises and listed on **Exhibit B**, attached hereto and incorporated herein. For the avoidance of doubt

and notwithstanding anything to the contrary contained herein or on **Exhibit B**, Lessee shall have the right to collocate wireless communications equipment on Lessee's tower without review or approval by Lessor.

G. ***"Utilities Director"*** means Carl Craigo, P.E., Utilities Director, City of Midland, Texas, or his successor as appointed by the City Manager.

H. ***"Authorized Personnel"*** means a City of Midland employee, or any other person or entity appointed by the City of Midland, who performs specified job duties as associated with the Agreement.

III. USE

A. Lease & Use. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the Leased Premises. This Agreement does not confer any ownership rights whatsoever to Lessee, and the City Property (inclusive of the Leased Premises) is and shall remain the sole property of the City.

Lessee shall only be granted access to the Leased Premises for the purpose of accomplishing Lessee's Telecommunications Activities. Lessee has the right but not the obligation to modify or replace its communications equipment, cables and accessories, at Lessee's sole cost and expense, as may be necessary to comply with applicable governmental rules, regulations or laws, including, but not limited to, those related to emergency 911 communication services. Lessee is prohibited from constructing, installing, or placing any other equipment on the Leased Premises other than the Permitted Equipment.

B. Access. Lessor and Lessee agree that Lessee shall at all times during the term of this Agreement have the rights of ingress and egress to and from the Leased Premises via Lessee's Access Facility for the purpose of accomplishing Lessee's Telecommunications Activities. Lessee shall enter the Leased Premises through the established gates.

In the event that Lessee requires access to City Property, outside of the Leased Premises, the Lessee shall (i) notify the Utilities Director in writing at least two (2) business days in advance, and (ii) pay to Lessor an access fee of $100.00 for any requested access to City Property outside of the Leased Premises and normal business hours or on holidays. Lessee shall not access City Property, outside of the Leased Premises, unless escorted and accompanied by Authorized Personnel.

C. Interference. Lessee shall not use the City Property or the Leased Premises in any way which interferes with the use of Lessor's use of the City Property. Such interference by Lessee shall be deemed a material breach by Lessee, who shall, upon notice from Lessor, terminate said interference immediately. In the event said interference does not cease promptly, as determined by Lessor, Lessor shall have the right to terminate this Agreement immediately upon written notice to Lessee. **LESSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LESSOR IN RELATION TO ANY PROBLEMS OR LIABILITY ARISING FROM INTERFERENCE FROM LESSEE'S USE OF THE LEASED**

PREMISES OR ANY OF ITS OPERATIONS WITHIN LESSOR'S CITY PROPERTY.

D. Costs. All associated construction costs, along with any costs associated with Lessee's operations on the Leased Premises including supply of related utilities, shall be the responsibility of Lessee.

E. Fixtures. No building, poles, antenna systems, tower, equipment or other improvements erected or installed in or upon the Leased Premises or the City Property by Lessee shall be deemed to be a fixture, and Lessee shall have the right at any time prior to sixty (60) days after the termination of this Agreement for any cause, to remove from the Leased Premises or the City Property, at Lessee's sole cost and expense, any and all buildings, poles, antenna systems, towers, equipment or other improvements belonging to Lessee which may have been placed thereon by Lessee. If Lessee does not remove its equipment or improvements by the end of the sixty (60) day period, Lessor may remove such at Lessee's sole cost and expense.

F. "AS IS". LESSEE AGREES AND ACKNOWLEDGES LESSEE IS LEASING THE LEASED PREMISES "AS IS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED, BEING MADE BY LESSOR THAT THE LEASED PREMISES ARE FIT FOR A PARTICULAR PURPOSE. LESSEE ACKNOWLEDGES THAT LESSEE IS NOT RELYING UPON ANY REPRESENTATION MADE BY LESSOR WITH RESPECT TO THE CONDITION OF THE LEASED PREMISES BUT IS RELYING UPON LESSEE'S EXAMINATION OF THE LEASED PREMISES. LESSEE ALSO RECOGNIZES THAT LESSEE IS AGREEING TO LEASE THE LEASED PREMISES "AS IS"; THAT LESSEE AGREES TO MAKE LESSEE'S OWN APPRAISAL OF THE LEASED PREMISES, AND TO ACCEPT THE RISK THAT LESSEE MAY BE WRONG. LESSOR GIVES NO ASSURANCES, EXPRESS OR IMPLIED, CONCERNING THE VALUE OR CONDITION OF THE LEASED PREMISES. IN NO EVENT SHALL LESSEE HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, LESSEE WILL TAKE THE LEASED PREMISES UNDER THE EXPRESS UNDERSTANDING THE LEASED PREMISES ARE ACCEPTED "AS IS" AND WITH ALL FAULTS.

G. Subleases. Lessor and Lessee acknowledge that Lessee has subleased space on Lessee's communication facilities on the Leased Premises to the parties identified on **Exhibit C** with Lessor's knowledge and consent. Lessee shall not sublease the Leased Premises to any other unaffiliated third party, persons or entities except with prior written notice to the Lessor.

H. Use by Lessee. Lessee is permitted to maintain, operate, repair, replace and upgrade the Permitted Equipment. Lessee shall not be permitted to use generators or any additional devices in order to produce power for longer than thirty (30) days at one time.

Prior to any modification to the Permitted Equipment, Lessee shall submit its construction and installation plans to Lessor in writing for Lessor's review and approval, which shall not be unreasonably withheld, delayed, or conditioned. Lessee shall not alter any plans approved by

Lessor without Lessor's prior written consent. Lessee shall be responsible for grounding all external and internal wiring and cabling installed by Lessee.

City Property will be inspected by Lessor prior to and after Lessee performs any modifications, repairs, replacements or upgrades to determine if damage occurred to City Property as a result of Lessee's work. In an emergency, and upon approval by Lessor, repairs to any such damage may be made by Lessee. Following such repairs, Lessor will inspect City Property as soon as practical. Any damage to City Property shall be immediately repaired to Lessor's satisfaction by a contractor approved by Lessor, at the sole expense of Lessee.

Lessee, at Lessee's sole expense, will obtain power and telco directly billed from the local providers.

Lessee shall not use its Permitted Equipment in any way that interferes with the operation, maintenance or repair by Lessor or third parties of equipment and systems as installed and operating at the Leased Premises as of the date the Permitted Equipment is installed.

Lessee shall be entitled to unlimited access to the Leased Premises to maintain its Permitted Equipment, subject to the security requirements and reasonable rules and regulations for the telecommunications equipment located on the Leased Premises.

Lessee shall, at Lessee's sole expense, keep and maintain its ground space, if any, as provided for hereunder and its Permitted Equipment in reasonable condition and repair.

Lessee's operations in connection with the Permitted Equipment and ground space, if any, must be in compliance with all federal, state, and local laws, codes and regulations, including but not limited to local zoning requirements, and will adhere to reasonable technical standards, if any, developed for telecommunications equipment and the Leased Premises as amended from time to time. Lessor assumes no responsibility for the licensing, operation or maintenance of the Permitted Equipment.

IV. TERM & TERMINATION

A. Term. This Agreement shall be for a term of five (5) years commencing on January 28, 2020, and ending on January 27, 2025, unless terminated sooner as provided herein.

B. For Cause. This Agreement may be terminated, without any penalty or further liability, upon at least thirty (30) days' written notice by either party upon default of any covenant or term hereof by the other party which is not cured within thirty (30) days of receipt of written notice of such default.

C. For Interference. This Agreement may be terminated, without any penalty or further liability, immediately after delivery of written notice to Lessee, upon Lessee's failure to promptly remedy an event deemed by the Lessor as interference as described herein.

D. By Act of Law. If during the term of this Agreement, Lessee shall be prevented by federal, municipal, county, state or other legal authority from maintaining or operating a communications site on the Leased Premises, Lessee shall have the sole option to terminate the Agreement by giving at least thirty (30) days' written notice to Lessor of its termination of the Agreement. Upon termination, all parties hereto shall be relieved of any further obligation hereunder, and Lessor shall not be required to refund any rent which may have been paid in advance by Lessee.

E. Termination at Will. Notwithstanding any other provision of this Agreement, either party to this Agreement may terminate this Agreement at will for no or any reason upon giving at least three hundred sixty-five (365) days' written notice to the other party, without penalty to the terminating party. Neither party has any expectation nor has received any guarantee that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective. The parties to this Agreement understand and agree that it is in either party's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the cancelling party.

V. RENT

Lessee agrees to pay Lessor as rent for the use and occupancy of the Leased Premises, and for rights and privileges appurtenant thereto during the term of this Agreement the amount of Two Thousand Five Hundred and No/100 Dollars ($2,500.00) per month. Payment shall be due on or before the 15th day of each month during the term of this Agreement. Notwithstanding the foregoing, within thirty (30) days of Lessee's receipt of: (i) this Agreement, fully executed by the parties, (ii) evidence of proper signing authority for Lessor, and (iii) an Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification) completed by Lessor, Lessee shall pay to Lessor a one-time, lump-sum payment equal to the rent specified herein for the period commencing on July 29, 2019 and ending on the 1st day of the next calendar month following the latter signature date hereof to the extent the same has not already been paid by Lessee and cashed, deposited or otherwise accepted or realized by Lessor, and Lessor agrees to accept the same as timely.

VI. STANDARD TERMS & CONDITIONS

A. Attorney Fees. BY EXECUTING THIS AGREEMENT, LESSEE AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST LESSOR REGARDING THE AWARD OF ATTORNEY FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. LESSEE SPECIFICALLY AGREES THAT IF LESSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT

TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, LESSEE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY FEES TO WHICH LESSEE MIGHT OTHERWISE BE ENTITLED.

LESSEE AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. LESSEE ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN LESSOR AND LESSEE. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

LESSEE AND LESSOR ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

B. Third Party Beneficiary. Lessor's approval of this Agreement does not create a third party beneficiary. There is no third party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third party beneficiary or other rights hereunder.

C. Governmental Immunity. By executing this Agreement Lessor is not waiving its right of governmental immunity. Lessor is retaining its immunity from suit. Lessor is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY**.

D. Indemnity. LESSEE WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND LESSOR AND ALL OF LESSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF LESSEE, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM, LESSEE'S USE OF, OR ACTIVITIES ON, THE LEASED PREMISES, AND LESSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LESSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES WITH RESPECT TO SUCH INDEMNIFIED CLAIMS, INCLUDING REASONABLE ATTORNEY'S FEES.

LESSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND

LESSOR AND ALL OF LESSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF LESSOR, LESSOR'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LESSEE OR LESSEE'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND LESSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LESSOR OR ANY OF LESSOR'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES; PROVIDED, IN ALL EVENTS, THE AFOREMENTIONED INDEMNIFICATION SHALL NOT APPLY IF AND TO THE EXTENT THE SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, OR EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES ARISE AS THE RESULT OF THE WILLFUL MISCONDUCT OF LESSOR OR ANY OF LESSOR'S OFFICERS, AGENTS OR EMPLOYEES.

E. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Lessee or its legal representative, shall give the City Manager notice in writing (consisting of one (1) original and seven (7) copies of the notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Lessee will settle, the physical and mailing addresses of Lessee at the time and date the claim was presented and the physical and mailing addresses of Lessee for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Lessee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except Lessor from any liability whatsoever. Lessor is under no obligation to provide notice to Lessee that Lessee's notice is insufficient. Lessor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Lessee's failure to comply with the requirements herein shall perpetually bar Lessee's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government

Code, regardless if Lessor has actual or constructive notice or knowledge of said claim or alleged damages. Lessee agrees that the requirements of this entire Agreement are reasonable.

F. Independent Contractor. It is expressly understood and agreed that Lessee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of Lessor; that Lessee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between Lessor and Lessee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Lessor and Lessee. No person performing any of the work and services described hereunder by Lessee shall be considered an officer, agent, servant or employee of the Lessor. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Lessee shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. Lessor does not have the power to direct the order in which the work is done. Lessor shall not have the right to control the means, methods or details of Lessee's work. Lessee shall assume exclusive responsibility for the work. Lessee is entirely free to do the work in its own way.

G. Governing Law & Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this agreement shall be deemed to have occurred in Midland County, Texas.

H. Release. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, LESSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LESSOR, LESSOR'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LESSEE HAS OR MIGHT HAVE IN THE FUTURE INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LESSOR'S NEGLIGENCE.

I. Assignment. Lessee shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein, without the prior written consent of Lessor. The issue of whether or not to grant consent to an assignment is in the sole discretion of Lessor.

J. Insurance. Lessee shall at all times during the term of this Agreement maintain and keep in full force and effect insurance in the following types and minimum amounts with

companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):

-Personal Injury:	$1,000,000.00 per person $1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
-General Aggregate:	$2,000,000.00
-Products – COMP/OP AGG:	$2,000,000.00

Business Automobile Liability:	$1,000,000.00 combined single limit – Personal Injury and Property Damage
Umbrella Liability:	$3,000,000.00 per occurrence, aggregate
Workers' Compensation:	Statutory limits
Employers' Liability:	$1,000,000.00 per accident or occurrence

The Commercial General Liability insurance shall be on a per project aggregate, including completed operations, and shall be on an occurrence basis. The Commercial General Liability insurance shall name Lessor as an additional insured and waive all rights of subrogation against Lessor.

The Business Automobile Liability insurance provided by Lessee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and the amount of such policy shall be a minimum of $1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement. The Business Automobile Liability insurance shall name Lessor as an additional insured and waive all rights of subrogation against Lessor.

The Workers' Compensation coverage provided by Lessee shall inure to the benefit of employees injured during the course and scope of their employment by Lessee pursuant to this Agreement. The Workers' Compensation insurance shall waive all rights of subrogation against Lessor.

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of Lessor. All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name Lessor as an additional insured on a claims occurred basis. Lessor shall be provided the notice by Lessee's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

Lessee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to

obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of Lessor and policies that name Lessor as an additional insured on a claims occurred basis (except workers' compensation).

The parties agree that, prior to the execution of the Agreement, Lessee shall provide one or more certificates of insurance specifically stating that these requirements have been met and subject to the approval of Lessor, and Lessor's signature on this Agreement is and shall be considered approval of Lessor. Lessor shall not be required to provide any insurance whatsoever pursuant to this Agreement.

K. Notice. All notices must be given in writing by certified mail return receipt requested addressed as shown:

If to Lessor:

Utilities Director
City of Midland, Texas
P.O. Box 1152
Midland, TX
79702

If to Lessee:

American Towers LLC
Attn: Land Management
10 Presidential Way
Woburn, MA 01801

With copy to:

American Towers LLC
Attn: Legal Department
116 Huntington Avenue
Boston, MA 02116

L. Entire Agreement. This Agreement constitutes the entire agreement between the parties governing the matters addressed herein. This Agreement shall supersede and replace all prior agreements or representations, whether verbal or written, between the parties concerning the subject matter hereof. The invalidity of any provision of this Agreement shall not affect the validity or enforceability of any other provision of the Agreement. The waiver of any breach of any term or condition of this Agreement does not waive any other breach of that term or condition or of any other term or condition. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. The terms and conditions of this Agreement are supported by good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties named herein.

VII. TOWER SPACE CONSIDERATION

Lessor shall have the right to collocate wireless communications equipment at Lessee's communication facilities on the Leased Premises solely for Lessor's own use if space is available and subject to the provisions of this Section. Lessor's written request to collocate

shall be submitted to Lessee along with any additional items/information usually required by Lessee for collocation (the "***Collocation Request***"). Lessee, in its sole discretion, shall determine the availability of space at the communication facilities and send Lessor written notice regarding such availability. If Lessor exercises its right to collocate pursuant to this Section, Lessor shall execute and deliver to Lessee the Tower License Agreement template in use by Lessee at that time. Lessor and Lessee agree to expeditiously execute said Tower License Agreement in the form presented. Lessee agrees that Lessor shall be entitled to utilize the facility without paying a basic monthly consideration. Lessor shall pay all costs and expenses associated with the Lessor's collocation, which includes, but is not limited to, the installation, operation, maintenance, and removal associated with its wireless communications equipment at Lessee's communication facilities, and any necessary modifications to Lessee's tower to accommodate Lessor's equipment.

VIII. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by persons duly authorized on the day and year written above.

LESSOR: CITY OF MIDLAND

_____
Robert Patrick, City Manager

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Carl A. Craigo, P.E., Utility Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

LESSEE: AMERICAN TOWERS LLC, A DELAWARE LIMITED LIABILITY COMPANY

By: Carol Maxime

Name: Carol Maxime

Title: Senior Counsel, US Tower

5/26/2021

STATE OF MASSACHUSETTS §
§
COUNTY OF MIDDLESEX §

BEFORE ME, the undersigned authority, on this 26th day of May personally appeared Carol Maxime, Senior counsel of American Towers LLC, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same as the act of such company for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 26th day of May, A.D., 2021.

BichNgoc Gina Thi Nguyen
MY COMM. EXPIRES APRIL 25, 2025
NOTARY PUBLIC COMMONWEALTH OF MASSACHUSETTS

Notary Public, State of Massachusetts

Exhibit A
City Property

Being a tract of land out of the SW/4 of Section 5, Block X, H. P. Hilliard Survey, Midland County, Texas, more fully described by metes and bounds:

BEGINNING at an iron pin set for the NW corner of this tract from which the SW corner of said Section 5 bears S 15° 17' 34" E a distance of 2634.6 feet and S 74° 49' 54" W a distance of 45 feet;

THENCE N 48° 12' 28" E a distance of 21.4 feet to an iron pin set for a corner of this tract;

THENCE N 74° 52' 28" E a distance of 2664.4 feet to an iron pin set for a corner of this tract;

THENCE S 15° 22' 04" E a distance of 1296 feet to an iron pin set for a corner of this tract;

A287-2

THENCE S 74° 49' 54" W a distance of 2686 feet to an iron pin set for a corner of this tract;

THENCE N 15° 17' 34" W a distance of 1286.5 feet to the place of beginning and containing 80 acres of land, more or less.

Midland County, Texas APN: R000000-350

Leased Premises

THAT CERTAIN PARCEL OF LAND OUT OF THE SW 1/4 OF SECTION 5, BLOCK X, H. P. HILLIARD SURVEY, MIDLAND COUNTY, TEXAS, BEING A PORTION OF THE TRACT DESCRIBED IN DEED VOLUME 479, PAGE 265, MIDLAND COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE NORTHWEST CORNER OF THE PARCEL OF LAND HEREIN DESCRIBED BEING A POINT ON THE SOUTHERLY LINE OF BLUEBIRD LANE, WHENCE THE NORTHWEST CORNER OF THE PARCEL DESCRIBED IN DEED VOLUME 479, PAGE 265, A POINT ON THE EASTERLY LINE OF NORTH MIDLAND DRIVE BEARS S 74°52'28" W, 791.63 FEET DISTANCE AND N 15°17'34" W, 20.40 FEET DISTANCE; THENCE,

N 74°52'28" E, 75.00 FEET DISTANCE TO THE NORTHEAST CORNER OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE,

S 15°07'32" E, 50.00 FEET DISTANCE TO THE SOUTHEAST CORNER OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE,

S 74°52'28" W, 75.00 FEET DISTANCE TO THE SOUTHWEST CORNER OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE,

N 15°07'32" W, 50.00 FEET DISTANCE TO THE NORTHWEST CORNER AND POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED AND CONTAINING 3,750 SQUARE FEET (0.0861 ACRE), MORE OR LESS.

Exhibit B
Permitted Equipment

12' x 30' shelter

10' x 18' platform

159' monopole

8' x 16' shelter

Exhibit C
Subleases

SPRINT d/b/a SPRINT NEXTEL

WWC TEXAS RSA LIMITED PARTNERSHIP d/b/a ALLTEL COMMUNICATIONS, LLC

CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY): 07/19/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

Holder Identifier : 75659

PRODUCER
Aon Risk Services Northeast, Inc.
Boston MA Office
53 State Street
Suite 2201
Boston MA 02109 USA

CONTACT NAME:
PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): (800) 363-0105
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A:	XL Specialty Insurance Co	37885
INSURER B:	Greenwich Insurance Company	22322
INSURER C:	Great American Insurance Company of NY	22136
INSURER D:		
INSURER E:		
INSURER F:		

INSURED
American Towers LLC
f/k/a American Towers, Inc.
116 Huntington Ave
Boston MA 02116 USA

COVERAGES **CERTIFICATE NUMBER:** 570088481045 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS,

Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	X COMMERCIAL GENERAL LIABILITY			RGD943761408	12/01/2020	12/01/2021	EACH OCCURRENCE	$2,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						MED EXP (Any one person)	$10,000
	X POLICY PRO-JECT LOC						PERSONAL & ADV INJURY	$2,000,000
	OTHER:						GENERAL AGGREGATE	$20,000,000
							PRODUCTS - COMP/OP AGG	$2,000,000
B	AUTOMOBILE LIABILITY			RAD943761508	12/01/2020	12/01/2021	COMBINED SINGLE LIMIT (Ea accident)	$2,000,000
	X ANY AUTO						BODILY INJURY (Per person)	
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	
C	X UMBRELLA LIAB X OCCUR			UMB3414874	12/01/2020	12/01/2021	EACH OCCURRENCE	$10,000,000
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$10,000,000
	DED X RETENTION $25,000							
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			RWD943538608 Workers Comp (AOS)	12/01/2020	12/01/2021	X PER STATUTE OTH-ER	
A	ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER (Mandatory in NH) Y/N: N N/A			RWR943547008 Workers Comp (Retro Ded.)	12/01/2020	12/01/2021	E.L. EACH ACCIDENT	$1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE-EA EMPLOYEE	$1,000,000
							E.L. DISEASE-POLICY LIMIT	$1,000,000

Certificate No : 570088481045

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Site# 75659, Site Name: Water Treatment, Site Address: 4301 Bluebird Lane, Midland, TX 79707-2762. City of Midland TX is included as Additional Insured in accordance with the policy provisions of the General Liability policy. A Waiver of Subrogation is granted in favor of Lessor in accordance with the policy provisions of the General Liability, Automobile Liability, Umbrella Liability and Workers' Compensation policies.

CERTIFICATE HOLDER

City of Midland TX
300 N. Loraine
Midland TX 79702 USA

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Aon Risk Services Northeast, Inc.

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City Council Meeting

Item Number: 27

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Elizabeth Shaughnessy, Planning Division Manger

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 9.70-ACRE TRACT OF LAND OUT OF SECTION 7, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM AE, AGRICULTURAL ESTATE DISTRICT TO TH, TOWNHOUSE (ATTACHED) DWELLING DISTRICT (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF OCCIDENTAL PARKWAY AND FAIRGROUNDS ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 1) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Betenbough Homes is requesting approval of a zone change to allow for the development of smaller, more affordable homes.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the city.

Surrounding Zoning and Land Use:

The properties to the north, east, and west are zoned AE, Agricultural Estate District and the locations of vacant land. The property to the south is zoned SF-3, Single Family Dwelling District, and the location of residences.

Discussion:

The applicant, Betenbough Homes is requesting approval of a zone change for the development of smaller, more affordable homes. The requested zoning for this property is TH, Townhouse Dwelling District, which requires a minimum lot area of 2,500 square feet per Dwelling unit. This proposed subdivision will have forty (40) residential lots and three (3) common area.

The appropriate setbacks and maximum height of future development must meet the regulations as described in Section 5.04 Residential Zoning District Dimensional Regulations chart.

This proposed zone change has been circulated to and reviewed by respective City departments and their comments, conditions, and requirements are as follows:

Engineering: (Approved)

No objection to zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Fire: (Approved)

No objections.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Code Compliance: (Approved)

No Oil and Gas issues.- For Zone Change.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Planning:

The Tall City Tomorrow Comprehensive Plan future land use map calls for Urban-Low uses at this location. The Urban-Low classification calls for diverse complementary uses such as mostly single-family, with some attached, townhome and small multi-family projects, schools, small parks and churches, and neighborhood retail or mixed use. This promotes compatibility to be achieved through gradual increases of intensity transitioning from one land use to another.

The Planning and Zoning Commission recommended approval of this request at the July 19, 2021 meeting.

Staff recommends approval of the zone change from AE, Agricultural Estate District to TH, Townhouse Dwelling District, subject to condition A.

Conditions:

A. **That the use and development of this property shall conform to the regulations of the TH, Townhouse Dwelling District.**

Letters of Objection:

As of August 4, 2021, staff has not received any letters of objection.

Attachments:

Application
Exhibit A
Maps

Robert Patrick

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 9.70-ACRE TRACT OF LAND OUT OF SECTION 7, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM AE, AGRICULTURAL ESTATE DISTRICT TO TH, TOWNHOUSE (ATTACHED) DWELLING DISTRICT (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF OCCIDENTAL PARKWAY AND FAIRGROUNDS ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning a 9.70-acre tract of land out of Section 7, Block 38, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "A", which is attached hereto and incorporated herein (the "Property"), to TH, Townhouse (Attached) Dwelling District, as set out hereinafter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from AE, Agricultural Estate District to TH, Townhouse (Attached) Dwelling District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council

member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

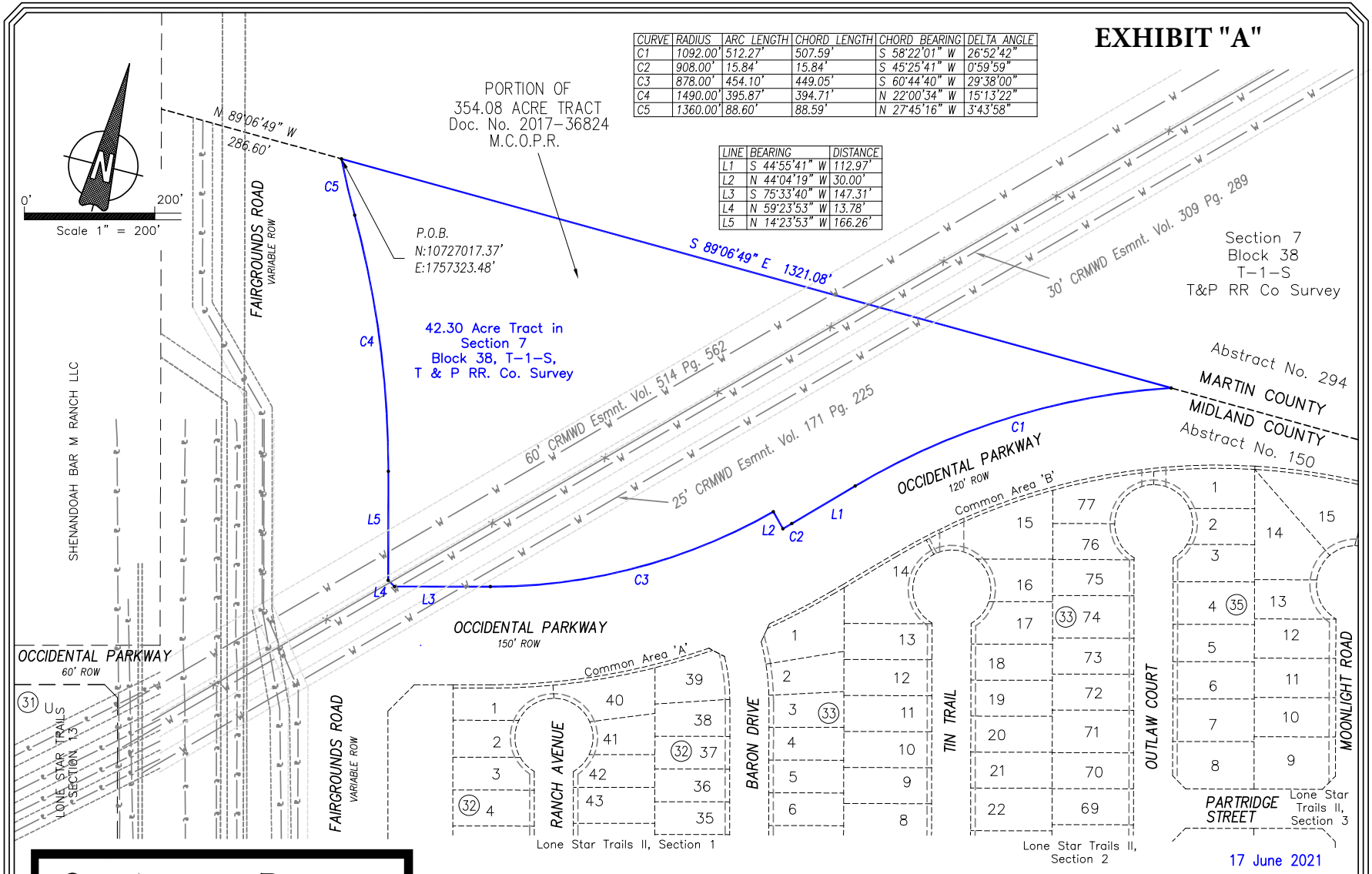
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"



CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	1092.00'	512.27'	507.59'	S 58°22'01" W	26°52'42"
C2	908.00'	15.84'	15.84'	S 45°25'41" W	0°59'59"
C3	878.00'	454.10'	449.05'	S 60°44'40" W	29°38'00"
C4	1490.00'	395.87'	394.71'	N 22°00'34" W	15°13'22"
C5	1360.00'	88.60'	88.59'	N 27°45'16" W	3°43'58"

LINE	BEARING	DISTANCE
L1	S 44°55'41" W	112.97'
L2	N 44°04'19" W	30.00'
L3	S 75°33'40" W	147.31'
L4	N 59°23'53" W	13.78'
L5	N 14°23'53" W	166.26'

17 June 2021

ZONING EXHIBIT

9.70 ACRE TRACT IN SECTION 7, BLOCK 38, T-1-S, T&P RR Co SURVEY, CITY & COUNTY OF MIDLAND, TEXAS.

AARON BURRELL LAND SURVEYORS, LLC.

Professional Land Surveying & Mapping
Aaron Burrell Land Surveyors, LLC
TBPLS Firm No. 10194217
415 W. Wall St., Suite 204, Midland, Texas 79701
P.O. Box 81041, Midland, Texas 79708
432-848-4439
www.asbsurveyors.com

PACKET
27.7
August 24, 2021

METES & BOUNDS DESCRIPTION

9.70 ACRE TRACT IN SECTION 7, BLOCK 38, T-1-S, T&P RR Co SURVEY, CITY & COUNTY OF MIDLAND, TEXAS.

Legal Description for Zoning:

Being a 9.70 Acre Tract of Land in a 354.08 acre tract recorded in Document No. 2017–36824, Official Public Records, located in Section 7, Block 38, T–1–S, T&P RR Co. Survey, City of Midland, Midland County, Texas.

Boundary being more fully described as follows:

Beginning at (N:10727017.37', E:1757323.48') a point in the north line of said 354.08 acre tract, the north line of Midland County, the south line of Martin County, and the east right of way line of Fairgrounds Road for the northwest corner of this tract, whence the northwest corner of said 354.08 acre tract bears South 89°46'09" West, a distance of 286.60 feet;

Thence South 89°06'49" East with the north line of said 354.08 acre tract and the common line between Midland and Martin Counties, a distance of 1321.08 feet to a point in the north right of way line of Occidental Parkway for the northeast corner of this tract;

Thence with the north right of way line of said Occidental Parkway the following seven (7) courses and distances:

1. with a curve to the left in a southwesterly direction, said curve having a radius length of 1092.00 feet, an arc length of 512.27 feet, a delta angle of 26°52'42", and a chord length of 507.59 feet bearing South 58°22'01" West to a point of tangency in the south line of this tract;
2. South 44°55'41" West, a distance of 112.97 feet to a point of curvature in the south line of this tract;
3. with a curve to the right in a southwesterly direction, said curve having a radius length of 908.00 feet, an arc length of 15.84 feet, a delta angle of 00°59'59", and a chord length of 15.84 feet bearing South 45°25'41" West to a point of tangency in the south line of this tract;
4. North 44°04'19" West, a distance of 30.00 feet to a point of curvature in the south line of this tract;
5. with a curve to the right in a southwesterly direction, said curve having a radius length of 878.00 feet, an arc length of 454.10 feet, a delta angle of 29°38'00", and a chord length of 449.05 feet bearing South 60°44'40" West to a point of tangency in the south line of this tract;
6. South 75°33'40" West, a distance of 147.31 feet to a point of deflection in the south line of this tract;
7. North 59°23'53" West, a distance of 13.78 feet to a point in the east right of way line of said Fairgrounds Road for the southwest corner of this tract;

Thence with the east right of way line of said Fairgrounds Road the following three (3) courses and distances:

1. North 14°23'53" West, a distance of 166.26 feet to a point of curvature in the west line of this tract;
2. with a curve to the left in a northwesterly direction, said curve having a radius length of 1490.00 feet, an arc length of 395.87 feet, a delta angle of 15°13'22", and a chord length of 394.71 feet bearing North 22°00'34" West to a point of reverse curvature in the west line of this tract;
3. with a reverse curve to the right in a northwesterly direction, said curve having a radius length of 1360.00 feet, an arc length of 88.60 feet, a delta angle of 03°43'58", and a chord length of 88.59 feet bearing North 27°45'16" West to the Point of Beginning;

Containing 9.70 total surface acres of land.

Bearings, distances and coordinates are based on the Texas Coordinate System, NAD 83, Central Zone (CORS). Acreage stated is horizontal surface as measured.

This document was prepared under 22 TAC 663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

17 June 2021

STATE OF TEXAS REGISTERED AARON SCOTT BURRELL 5689 PROFESSIONAL LAND SURVEYOR

Aaron S. Burrell
Registered Professional Land Surveyor
Texas No. 5689

AARON BURRELL LAND SURVEYORS, LLC.

Professional Land Surveying & Mapping
Aaron Burrell Land Surveyors, LLC
TBPLS Firm No. 10194217
415 W. Wall St., Suite 204 Midland, Texas 79701
P.O. Box 81041 Midland, Texas 79708
432-848-4439
www.asbsurveyors.com

MIDLAND
Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: 2-21-0246

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)*		Phone (806) 412 - 6611	
Printed Name: Ronnie Wallace, Betenbough Homes		Email Ronniew@betenbough.com	
Address 6305 82nd Street	City Lubbock	State Texas	Zip 79424

Property Owner		Phone (806) 412 - 6611	
Printed Name: Betenbough Homes		Email Ronniew@betenbough.com	
Address 6305 82nd Street	City Lubbock	State Texas	Zip 79424

Representative *(if different from Applicant or Property Owner)*		Phone ( )	
Firm: N / A		Email N / A	
Printed Name:			
Address	City	State	Zip

Street Address: See Attached Site Plan

Legal Description
Lot: See Attached Plat Block: See Attached Plat Subdivision: 9.70 Acre Tract In Section 7, Block 38, T-1-S, T. & P. RR. Co. Survey, City and County of Midland, Texas (NW Corner of Lone Star Trails II)

Current Zoning: **AE**

Proposed Zone: **TH (Townhomes)**
(List by tracts if more than one district is requested)

Reason for Zone Change Request: Townhomes are in demand throughout the Permian Basin.

Present Use of Property: Vacant

Proposed Use of Property: Townhomes

How would this zone change affect the public health, safety and welfare?
Our smaller homes provide an additional, affordable option for new homeowners in Midland.

Describe how conditions affecting the property have changed since present zoning designation: N/A

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature): Ronnie Wallace	Date: June 21, 2021
Applicant (printed): Ronnie Wallace, Land Planner, Betenbough Homes	
Property Owner (signature): Ronnie Wallace	Date: June 21, 2021
Property Owner (printed) : Ronnie Wallace, Land Planner, Betenbough Homes	

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

_____
Authorized Agent (*signature*)

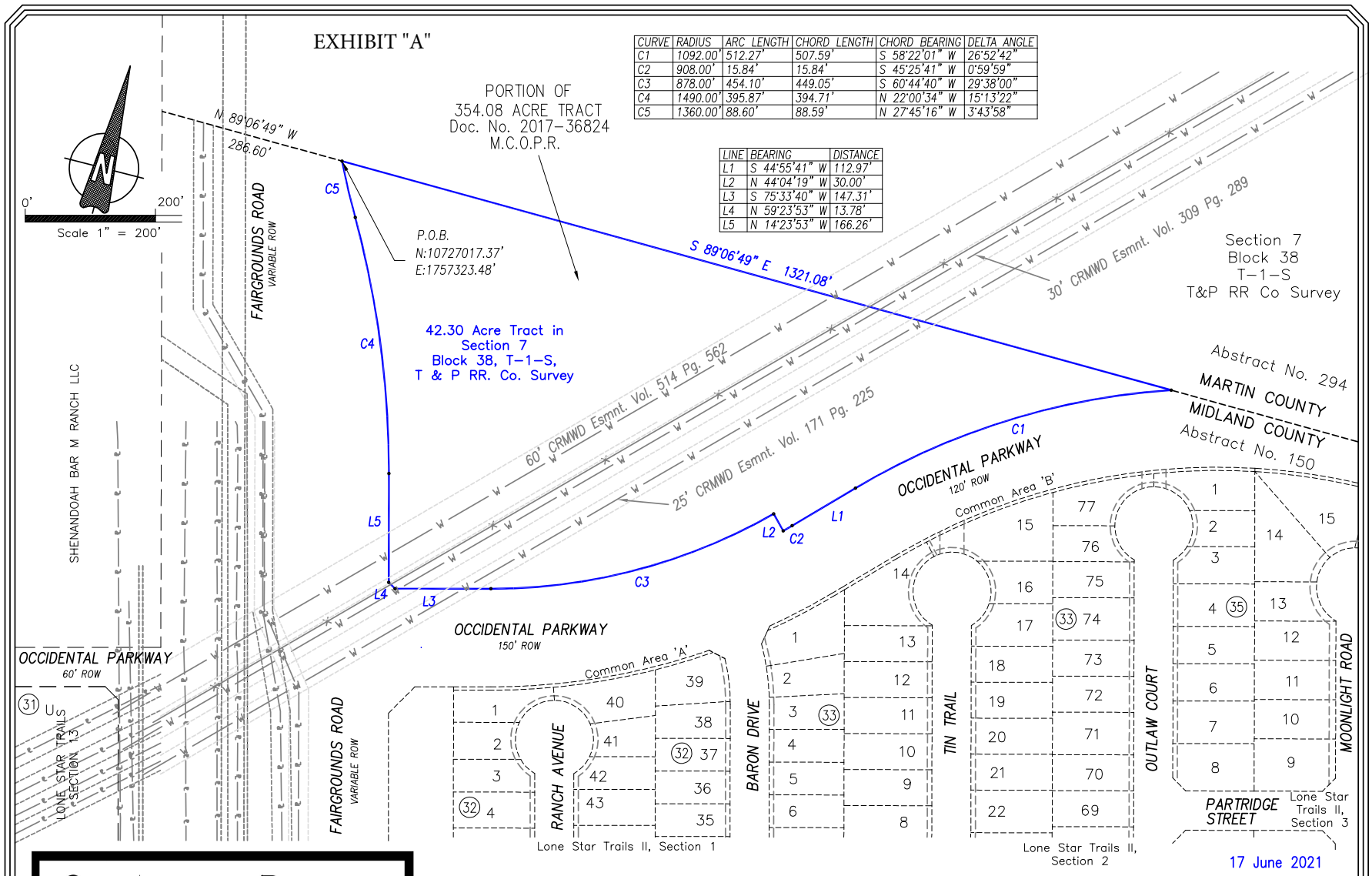
Subscribed and sworn to before me, this _____ day of _____, 20 ___, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☑ Property Owner Authorization	☑ Dimensioned Site Plan
☑ Application Fee	☑ Plans in Digital Format (PDF/JPEG)
Check #_____	
Received By: Y Shaman	Date: RECEIVED JUN 21 2021 BY:

****Application will not be considered for scheduling until reviewed by a planner.****



CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	1092.00'	512.27'	507.59'	S 58°22'01" W	26°52'42"
C2	908.00'	15.84'	15.84'	S 45°25'41" W	0°59'59"
C3	878.00'	454.10'	449.05'	S 60°44'40" W	29°38'00"
C4	1490.00'	395.87'	394.71'	N 22°00'34" W	15°13'22"
C5	1360.00'	88.60'	88.59'	N 27°45'16" W	3°43'58"

LINE	BEARING	DISTANCE
L1	S 44°55'41" W	112.97'
L2	N 44°04'19" W	30.00'
L3	S 75°33'40" W	147.31'
L4	N 59°23'53" W	13.78'
L5	N 14°23'53" W	166.26'

ZONING EXHIBIT

9.70 ACRE TRACT IN SECTION 7, BLOCK 38, T-1-S, T&P RR Co SURVEY, CITY & COUNTY OF MIDLAND, TEXAS.

AARON BURRELL LAND SURVEYORS, LLC.

Professional Land Surveying & Mapping
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PACKET
27.11
August 24, 2021

METES & BOUNDS DESCRIPTION

9.70 ACRE TRACT IN SECTION 7, BLOCK 38, T-1-S, T&P RR Co SURVEY, CITY & COUNTY OF MIDLAND, TEXAS.

Legal Description for Zoning:

Being a 9.70 Acre Tract of Land in a 354.08 acre tract recorded in Document No. 2017–36824, Official Public Records, located in Section 7, Block 38, T–1–S, T&P RR Co. Survey, City of Midland, Midland County, Texas.

Boundary being more fully described as follows:

Beginning at (N:10727017.37', E:1757323.48') a point in the north line of said 354.08 acre tract, the north line of Midland County, the south line of Martin County, and the east right of way line of Fairgrounds Road for the northwest corner of this tract, whence the northwest corner of said 354.08 acre tract bears South 89°46'09" West, a distance of 286.60 feet;

Thence South 89°06'49" East with the north line of said 354.08 acre tract and the common line between Midland and Martin Counties, a distance of 1321.08 feet to a point in the north right of way line of Occidental Parkway for the northeast corner of this tract;

Thence with the north right of way line of said Occidental Parkway the following seven (7) courses and distances:

1. with a curve to the left in a southwesterly direction, said curve having a radius length of 1092.00 feet, an arc length of 512.27 feet, a delta angle of 26°52'42", and a chord length of 507.59 feet bearing South 58°22'01" West to a point of tangency in the south line of this tract;
2. South 44°55'41" West, a distance of 112.97 feet to a point of curvature in the south line of this tract;
3. with a curve to the right in a southwesterly direction, said curve having a radius length of 908.00 feet, an arc length of 15.84 feet, a delta angle of 00°59'59", and a chord length of 15.84 feet bearing South 45°25'41" West to a point of tangency in the south line of this tract;
4. North 44°04'19" West, a distance of 30.00 feet to a point of curvature in the south line of this tract;
5. with a curve to the right in a southwesterly direction, said curve having a radius length of 878.00 feet, an arc length of 454.10 feet, a delta angle of 29°38'00", and a chord length of 449.05 feet bearing South 60°44'40" West to a point of tangency in the south line of this tract;
6. South 75°33'40" West, a distance of 147.31 feet to a point of deflection in the south line of this tract;
7. North 59°23'53" West, a distance of 13.78 feet to a point in the east right of way line of said Fairgrounds Road for the southwest corner of this tract;

Thence with the east right of way line of said Fairgrounds Road the following three (3) courses and distances:

1. North 14°23'53" West, a distance of 166.26 feet to a point of curvature in the west line of this tract;
2. with a curve to the left in a northwesterly direction, said curve having a radius length of 1490.00 feet, an arc length of 395.87 feet, a delta angle of 15°13'22", and a chord length of 394.71 feet bearing North 22°00'34" West to a point of reverse curvature in the west line of this tract;
3. with a reverse curve to the right in a northwesterly direction, said curve having a radius length of 1360.00 feet, an arc length of 88.60 feet, a delta angle of 03°43'58", and a chord length of 88.59 feet bearing North 27°45'16" West to the Point of Beginning;

Containing 9.70 total surface acres of land.

Bearings, distances and coordinates are based on the Texas Coordinate System, NAD 83, Central Zone (CORS). Acreage stated is horizontal surface as measured.

This document was prepared under 22 TAC 663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

17 June 2021

STATE OF TEXAS REGISTERED AARON SCOTT BURRELL 5689 PROFESSIONAL LAND SURVEYOR

Aaron Scott Burrell
Registered Professional Land Surveyor
Texas No. 5689

AARON BURRELL LAND SURVEYORS, LLC.

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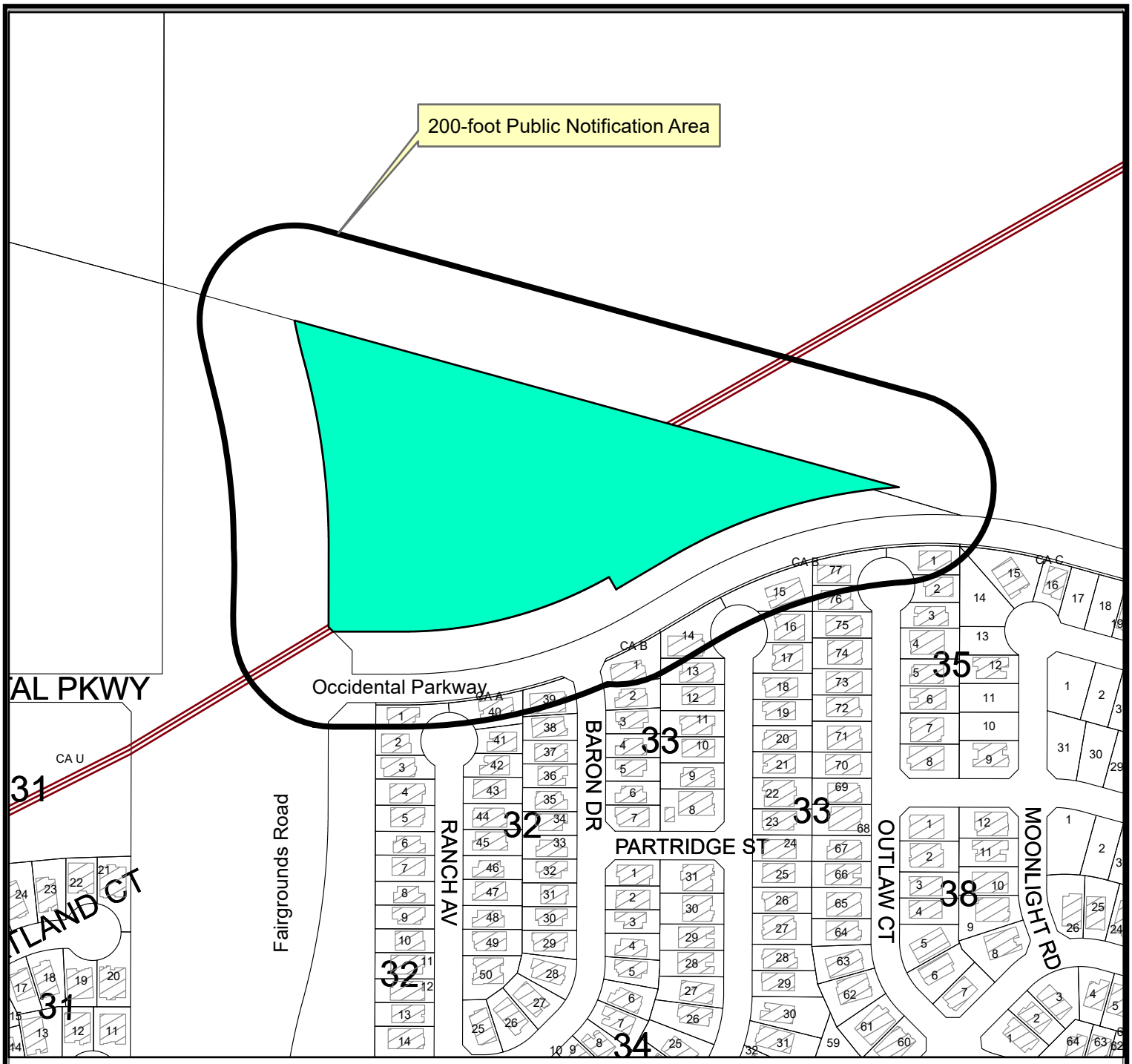


LOCATION MAP

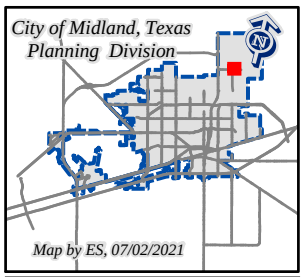
Z-21-0426 **Scale: 1" = 200'**

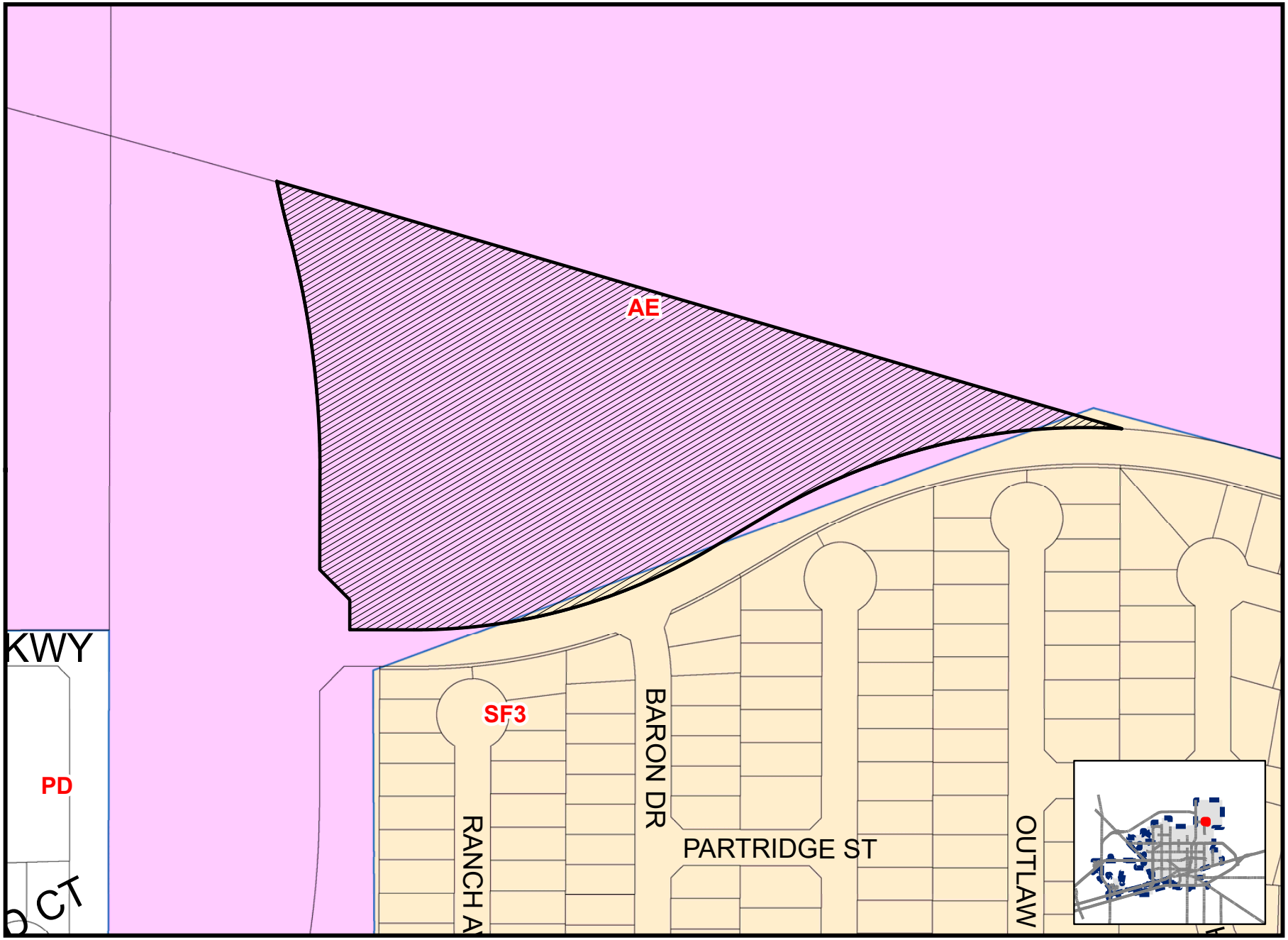
Consider a request by Betenbough Homes for a zone change from AE, Agricultural Estate District to TH, Townhouse Dwelling District on a 9.70-acre tract of land located in Section 7, Block 38, T-1-S, T&P, R.R. Co. Survey, City and County of Midland, Texas.

Generally located on the northeast intersection of Occidental Parkway and Fairgrounds Road. (Council District 1)

L E G E N D

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS





Map By ES, 7/26/2021

Z-21-0246

Scale: 1" = 200'

ZONING MAP

NOR IS IT DESIGNED
INFORMATION CONTAINED
THE USE OF THIS DATA.


XTRA




N Fairgrounds


ROAD
CLOSED

City Council Meeting

Item Number: 28

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Joseph Marynak, Planner

Subject: AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 15, TRACT B, GARDEN HEIGHTS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST LOUISIANA AVENUE, APPROXIMATELY 315 FEET EAST OF NORTH CRESTVIEW ROAD), BY PERMITTING (1) AN INCREASED MAXIMUM NUMBER OF ACCESSORY BUILDINGS, (2) AN INCREASED MAXIMUM SQUARE FOOTAGE OF ALL ACCESSORY BUILDINGS, (3) A REDUCED MINIMUM SIDE YARD SETBACK, AND (4) A REDUCED MINIMUM REAR YARD SETBACK; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Charles M. Francis, is requesting a Special Exception from the City of Midland Zoning Ordinance, Sections 4.09 and 5.04, concerning the size and setback requirements for accessory buildings in order to construct a carport on his property located at 3110 W. Louisiana Avenue.

Recommended City Council Action:

Deny

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The applicant's property is located behind 3110 W Louisiana Avenue and the location of a single family residence. The applicant is requesting a special exception to the maximum area for all accessory buildings, as well as the minimum rear and side yard setbacks.

The property is currently zoned SF-1, Single Family zoning district and does not conform with the above listed regulations. Approval of this special exception would put this property further into non-conformance with the Zoning Ordinance.

Per our City of Midland Zoning Ordinance, Section 4.09 – Accessory Buildings and Uses

A. Residential Accessory Buildings and Uses

Maximum Square Footage of All Accessory Buildings (Combined Area)

Lots 7,500 SF up to 21,999 SF: 10% of the property

Maximum Number of Accessory Buildings

Lots 7,500 SF up to 21,999 SF: 2

Minimum Side and Rear Setback

Lots 7,500 SF up to 21,999 SF: 5 Feet

Also, per Section 5.04 – Residential Zoning District Dimensional Regulations Chart:

SF-1, Single Family Dwelling District

Yard Setback Dimensions

Minimum Side Yard Setback:

Interior Lot: 5 Feet

Minimum Rear Yard Setback: Where an alley adjoins the rear lot line:

5 Feet = any structure (garage, carport) with alley access

The applicant's property is approximately 16,000 square feet. As shown on the site plan (Exhibit A), the applicant already has accessory structures in excess of 1,655 square feet. The proposed carport would increase this number to 2,555 square feet or approximately 15.6% of the property. Additionally, the proposed setbacks are zero feet in the rear and only one (1) foot on the side.

This request has been circulated to all pertinent City departments for review. Below are the departments' comments.

Engineering: (Approved)

No objection to zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during

construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Fire: (Approved)

No comments.

Code Compliance: (Approved)

No Oil or Gas issues.

Building: (Approved)

All future structures must adhere to the 2018 International Residential Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Planning Analysis:

As this request represents a deviation from the existing Zoning Ordinance, staff would recommend denial of this application for a Special Exception to the City of Midland Zoning Ordinance, 4.09 – Accessory Buildings and Uses, and Section 5.04 – Residential Zoning District Dimensional Regulations Chart.

Should the City Council approve this request, the property shall be subject to conditions A through E:

Conditions:

A. That the property shall significantly conform to the site plan shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

B. That the maximum square footage of all accessory structures shall be 2,555 square feet.

C. That the maximum number of accessory buildings shall be limited to 3.

D. That the minimum rear yard setback for an accessory structure with alley access shall be zero feet.

E. That the minimum side yard setback for an accessory structure shall be 1 foot.

Letters of Objection:

As of July 29, 2021, staff has not received any letters of objection

Attachments:

Site Plan (Exhibit A)
Application
Maps

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL EXCEPTION FOR LOT 15, TRACT B, GARDEN HEIGHTS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST LOUISIANA AVENUE, APPROXIMATELY 315 FEET EAST OF NORTH CRESTVIEW ROAD), BY PERMITTING (1) AN INCREASED MAXIMUM NUMBER OF ACCESSORY BUILDINGS, (2) AN INCREASED MAXIMUM SQUARE FOOTAGE OF ALL ACCESSORY BUILDINGS, (3) A REDUCED MINIMUM SIDE YARD SETBACK, AND (4) A REDUCED MINIMUM REAR YARD SETBACK; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); ORDERING RECORDATION BY THE CITY SECRETARY IN THE DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND ORDERING PUBLICATION

WHEREAS, the City Council modified the authority of the Board of Adjustment in Title XI, Chapter 1, Section 7 ("Section 11-1-7") of the Midland City Code; and

WHEREAS, Section 11-1-7 provides for the consideration of requests for special exceptions to the Midland Zoning Ordinance; and

WHEREAS, the Council finds that satisfactory evidence has been presented that the use to be authorized by the granting of the special exception will not be detrimental to the health, safety, comfort and welfare of the occupants of the land area near the tract on which the use to be allowed by special exception will be located; and

WHEREAS, the Council finds that it is clearly and specifically authorized by the terms of Section 11-1-7 to grant such a special exception, and said exception will be in harmony with the general purposes and intent of the zoning provisions of the Midland City Code; and

WHEREAS, after a full and fair public hearing at which all parties in interest were offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the public interest to grant a special exception to the Zoning Code, pursuant to Section 11-1-7, for the purposes herein stated, subject to special conditions;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That a special exception is hereby granted for the property described as Lot 15, Tract B, Garden Heights Addition, City and County of Midland, Texas (the "Property"). Said special exception shall allow (1) an increased maximum number of accessory buildings, (2) an increased maximum square footage of all accessory buildings, (3) a reduced minimum side yard setback, and (4) a reduced minimum rear yard setback.

SECTION TWO. Said special exception is subject to the following special conditions:

A. That the Property shall significantly conform to the site plan shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

B. That the maximum number of accessory buildings on the Property shall be three.

C. That the maximum square footage of all accessory buildings shall be 2,555 square feet.

D. That the minimum side yard setback for an accessory building shall be 1 foot.

E. That the minimum rear yard setback for an accessory building with alley access shall be zero feet.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more

sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to file this ordinance with the Office of the County Clerk for purposes of recordation.

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

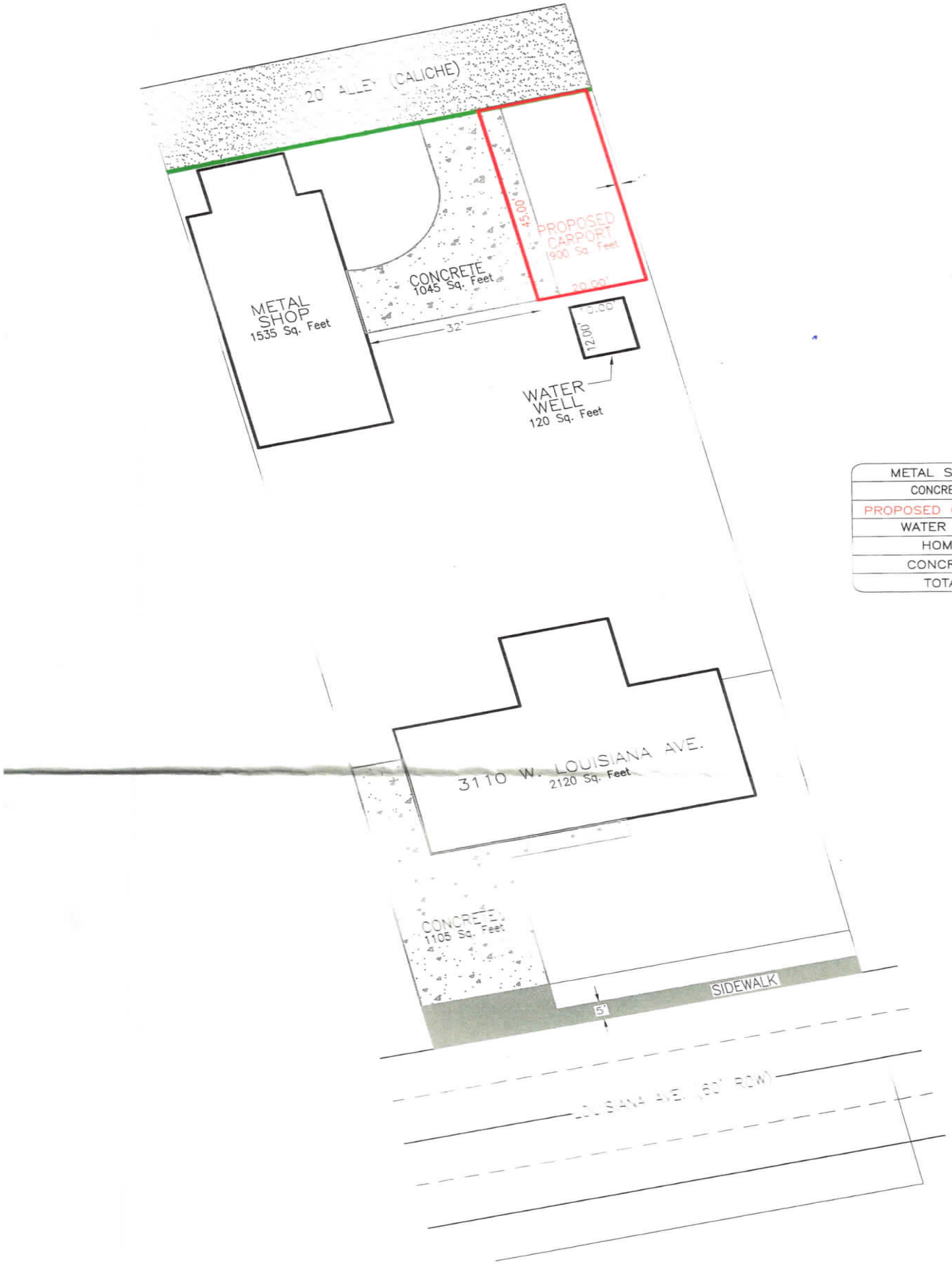
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"



METAL SHOP	1535 Sq. Feet
CONCRETE	1045 Sq. Feet
PROPOSED CARPORT	900 Sq. Feet
WATER WELL	120 Sq. Feet
HOME	2120 Sq. Feet
CONCRETE	1105 Sq. Feet
TOTAL	6825 Sq. Feet

SITE

Concrete

MIDLAND Planning Division

Special Exception Application

Project Number: E-21-0056

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Charles M Francis		Phone (432) 697-0779 Email mike francis egrandcom.net	
Address 3110 W. Louisiana Av.	City Midland	State Tx	Zip 79701

Property Owner Printed Name: Charles M. Francis		Phone (432) 697-0779 Email mike francis egrandcom.net	
Address 3110 W. Louisiana Av.	City Midland	State Tx	Zip 79701

Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 3110 W. Louisiana Ave. Midland Tx

Legal Description
Lot: 15 Block: B Subdivision: Garden Heights

Current Zoning: Single family (SF-1)

This property qualifies as an exception to the City Code because:

- ☐ It is an expansion of a nonconforming use.
- ☑ There are existing nonconforming structures in the area.
- ☐ The addition of architectural or other projections of a minor extent.

Reason for Request: Build Carport for owners Trucks, Cars, antique Tractors. All metal construction. Area shown on plot is only feasible site for Construction.

Submittal and Fees
Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan showing:
  - Parking
  - Building Footprint
- Digital Copies of Site Plan (PDF/JPEG)

Signatures	
Applicant (signature):	Date:
Applicant (printed):	
Property Owner (signature): Charles M Frangs	Date: 7/19/21
Property Owner (printed) : Charles M. Frangs	

The Special Exception shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

_____
Authorized Agent (*signature*)

Subscribed and sworn to before me, this _____ day of _____, 20 ___, to certify which witness my hand and seal of office.

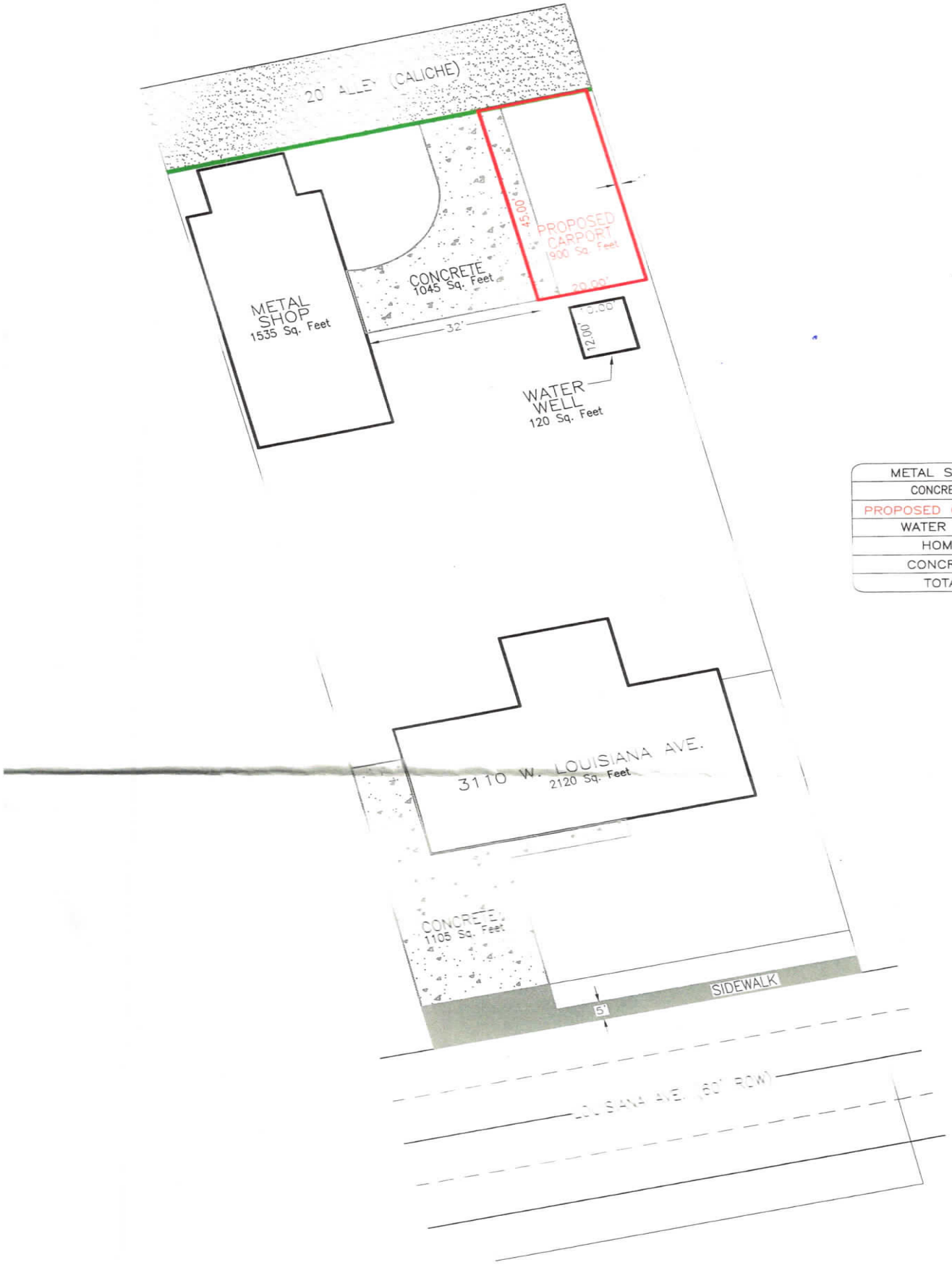
_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☒ Property Owner Authorization	☐ Dimensioned Site Plan
☒ Application Fee	☐ Plans in Digital Format (PDF/JPEG)
Check # 4273	
Received By: V. Sherman	Date: RECEIVED JUL 19 2021

BY: KS

****Application will not be considered for scheduling until reviewed by a planner.****



METAL SHOP	1535 Sq. Feet
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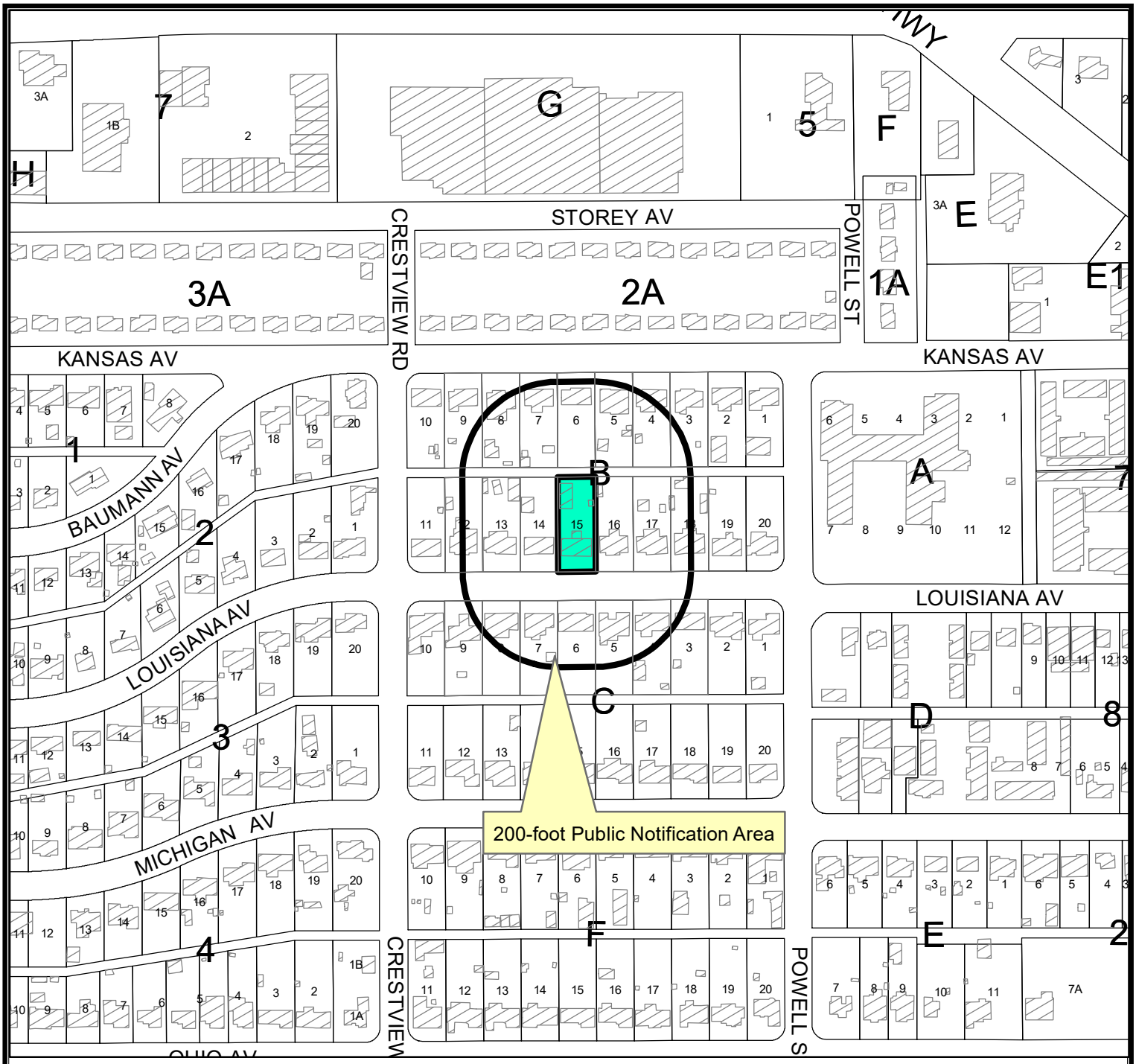
PROPOSED CARPORT	900 Sq. Feet
WATER WELL	120 Sq. Feet
HOME	2120 Sq. Feet
CONCRETE	1105 Sq. Feet
TOTAL	6825 Sq. Feet

SITE

Concrete



LOCATION MAP

E-21-0056 **Scale: 1" = 300'**

Consider an ordinance on a request by Charles M. Francis for a Special Exception from the City of Midland Zoning Ordinance, Section 4.09 – Accessory Buildings and Uses, concerning the maximum square footage of all accessory buildings, the minimum rear and side yard setbacks, and Section 5.04 – Residential Zoning District Dimensional Regulations Chart, concerning the minimum rear and side yard setbacks on Lot 15, Tract B, Garden Heights Addition, City and County of Midland, Texas. Generally located on the north side of West Louisiana Avenue, approximately 315 feet east of North Crestview Road. (Council District 3)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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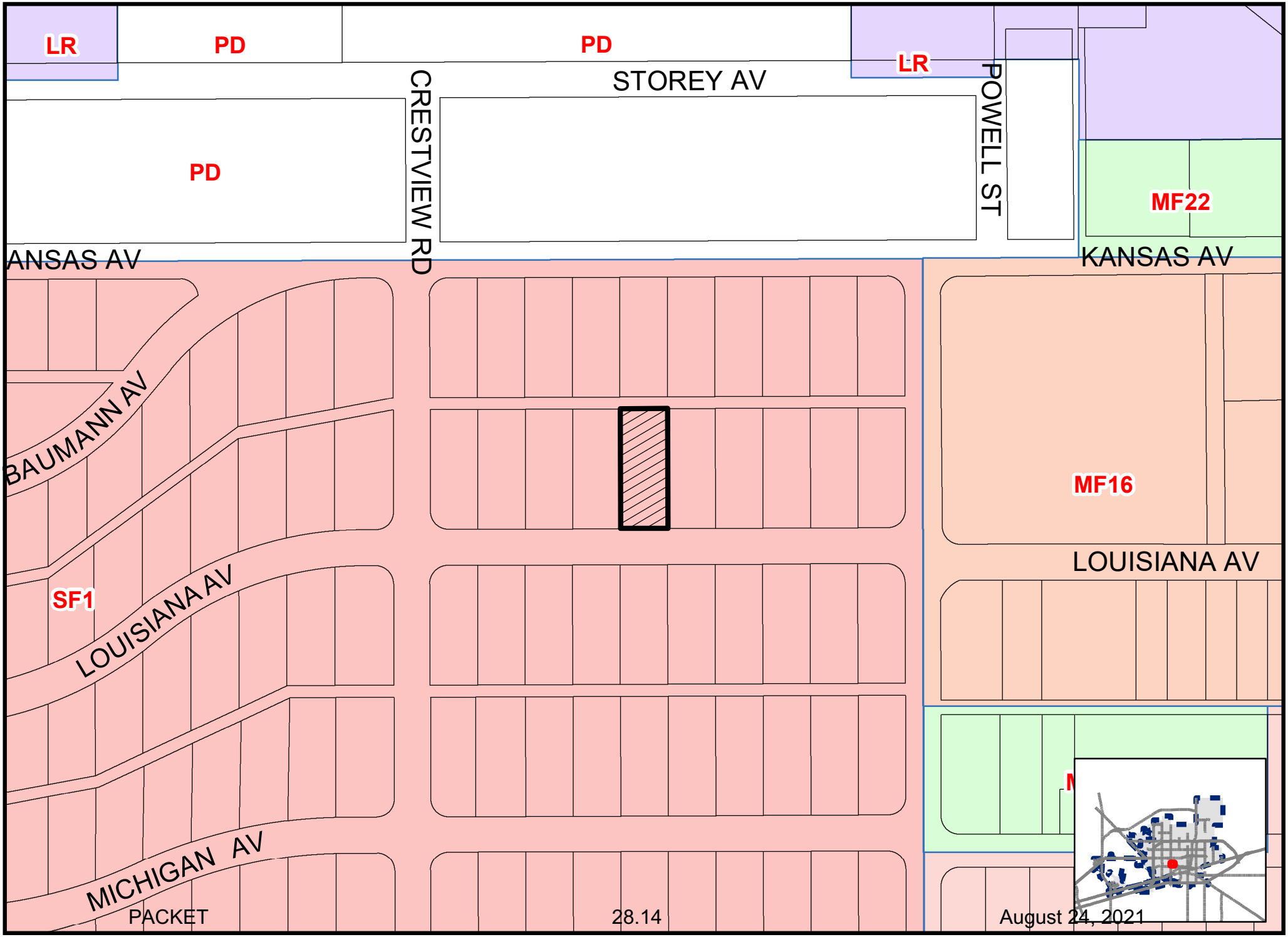
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By JM, 07/27/2021

E-21-0056

Scale: 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2021: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.









City Council Meeting

Item Number: 29

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Joseph Marynak, Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 5,790-SQUARE FOOT PORTION OF A 0.4-ACRE TRACT OF LAND OUT OF THE SOUTHWEST QUARTER OF SECTION 33, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST WALL STREET AND BANKHEAD HIGHWAY), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A VENDOR MARKET FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Joann Cervantes, is requesting a Specific Use Designation with Term for the sale of all alcoholic beverages, for on premises consumption, in a vendor market at 3201 W Wall Street.

Recommended City Council Action:

Approve

Fiscal Impact:

Processing this request does not require any City Funds.

Current Zoning:

RR, Regional Retail District

Surrounding Zoning and Land Use:

The properties to the north, south, and west are zoned RR, Regional Retail District, and the location of car dealerships. The property to the east are zoned C, Commercial District and the location district.

Discussion:

The property is located in the RR, Regional Retail District. This zoning district permits the sale and on premises consumption of alcoholic beverages in a vendor market, with the approval of a Specific Use Designation with Term.

The site is located at 3201 W Wall St, and does not currently have a Specific Use Designation for sale and on premises consumption of alcoholic beverages. The serviceable area will have a maximum indoor floor area of 5,790 square feet. The applicant will only be using the first floor of the location. As such, the site currently exceeds the parking requirement of 20 parking spaces. The site has adequate restroom facilities. The applicant is requesting alcohol service hours the same as their hours of operations which are as the following:

> **Tuesday through Saturday, 9:00 a.m. to 6:00 p.m. and Sunday, 12:00 p.m. (noon) to 6:00 p.m.**

Per Midland City Code 5.4.4. –Prohibited place of business

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public school, public school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no churches, private schools, public schools, public school grounds, athletic stadium, public hospital within 300 feet measurement along the property lines of the street fronts, and from the front door in a direct line across intersection where they occur within this site.

This project has been circulated to all City departments for review. Below are the department comments.

Fire: (Approved)

No objections.

Engineering: (Approved)

No objections.

Transportation: (Approved)

No objection to zone change.

Building Code: (Approved)

The SUD for One More Round is acceptable. The property must adhere to the current maximum occupant load of 386 for the alcohol serviceable area. Occupancy loads must be posted in accordance with section 1004.3 of the 2015 International Fire Code.

Planning:

The request is in compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 6-Character Plan Goal 4, “Encourage the development of places where Midland residents can gather and socialize to build connections” (Tall City Tomorrow page 137). One More Round will create a vibrant atmosphere where residents can browse and shop with local small businesses while enjoying alcoholic beverages.

This request was recommended for approval at the July 19, 2021 Planning and Zoning Commission meeting; therefore, staff recommends approval of the request of the Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, in a vendor market, subject to Condition A through H.

Conditions:

A. That the serviceable area of the vendor market shall be limited to approximately 5,790 square feet as shown in Exhibit “B”, which is attached hereto and incorporated herein for all purposes.

B. That use of the second floor of the building shall be prohibited.

C. That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.

D. That the days and hours of alcoholic beverages sales and consumption shall be limited to:

Tuesday through Saturday, from 9:00 a.m. to 11:00 p.m. and Sunday from 12:00 p.m. (noon) to 6:00 p.m.

E. That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

F. That the establishment shall meet all requirements of the Fire Department and Code Administration.

G. That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on premises consumption to ensure that the conditions of this permit are satisfied.

H. That in accordance with Section 9.07.E.3 of the zoning ordinance, the restaurant shall be in operation within 120 days from the final adoption date of this ordinance.

Letters of Objection:

As of July 29, 2021, staff has not received any letters of objection.

Attachments:

Survey (Exhibit A)
Floor Plan (Exhibit B)
Application
Maps

Robert Patrick

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 5,790-SQUARE FOOT PORTION OF A 0.4-ACRE TRACT OF LAND OUT OF THE SOUTHWEST QUARTER OF SECTION 33, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST WALL STREET AND BANKHEAD HIGHWAY), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A VENDOR MARKET FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation With Term for a 5,790-square foot portion of a 0.4-acre tract of land out of the southwest quarter of Section 33, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "A", which is attached hereto and incorporated herein (the "Property"), as set out hereinafter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to grant the Property a Specific Use Designation With Term for the sale of

all alcoholic beverages in a vendor market (the "Establishment") for on-premises consumption, together with the uses permitted in the present RR, Regional Retail District.

SECTION TWO. That the Property shall be subject to the following conditions and restrictions:

A. That the serviceable area of the Establishment shall be limited to approximately 5,790 square feet as shown in Exhibit "B", which is attached hereto and incorporated herein for all purposes.

B. That the use of the second floor of the building shall be prohibited.

C. That the sale and on-premises consumption of alcoholic beverages shall conform to all applicable state and local laws.

D. That the days and hours of alcoholic beverage sales and consumption shall be limited to the following:

Tuesday through Saturday from 9:00 a.m. to 11:00 p.m.; and
Sunday from 12:00 p.m. (noon) to 6:00 p.m.

E. That the occupancy of the Establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

F. That the Establishment shall meet the requirements of the Fire Department and the Code Administration Division.

G. That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on-premises consumption to ensure that the conditions of this Specific Use Designation With Term are satisfied.

H. That in accordance with Section 11-1-9.07.E.3 of the City Code, the Establishment shall be in operation within 120 days from the final adoption date of this ordinance.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not

affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

FIELD NOTE DESCRIPTION OF THE SURVEY OF A 0.42 ACRE TRACT OF LAND OUT OF THE SW/4 OF SECTION 33, BLOCK 39, T-1-S, T&P RR CO SURVEY, MIDLAND COUNTY, TEXAS, SAID 0.42 ACRE TRACT BEING DESCRIBED MORE FULLY BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A "PK" NAIL SET FOR THE SW CORNER OF THIS TRACT IN THE SOUTHEAST RIGHT-OF-WAY LINE OF WEST WALL AVENUE (FORMERLY KNOWN AS U. S. HIGHWAY 80), FROM WHICH THE NW CORNER OF SAID SECTION 33 BEARS S.39°30'00"W. 2020.00 FEET, N.85°02'00"W. 214.00 FEET AND N.15°00'00"W. 4292.90 FEET;

THENCE N.39°30'00"E. 298.60 FEET ALONG THE SOUTHEAST RIGHT-OF-WAY LINE OF WEST WALL AVENUE TO A 1/2" REINF BAR SET FOR THE NW CORNER OF THIS TRACT;

THENCE S.58°33'41"E. 8.60 FEET TO A 1/2" REINF BAR SET IN THE CURVED NORTHWEST RIGHT-OF-WAY LINE OF OLD BANKHEAD HIGHWAY FOR THE NE CORNER OF THIS TRACT;

THENCE 321.25 FEET ALONG THE CURVED NORTHWEST RIGHT-OF-WAY LINE OF OLD BANKHEAD HIGHWAY (CURVE DATA AS FOLLOWS: DELTA=09°01'11"; TANGENT=160.96'; RADIUS=2040.65') TO A 1/2" REINF BAR SET FOR THE SE CORNER OF THIS TRACT;

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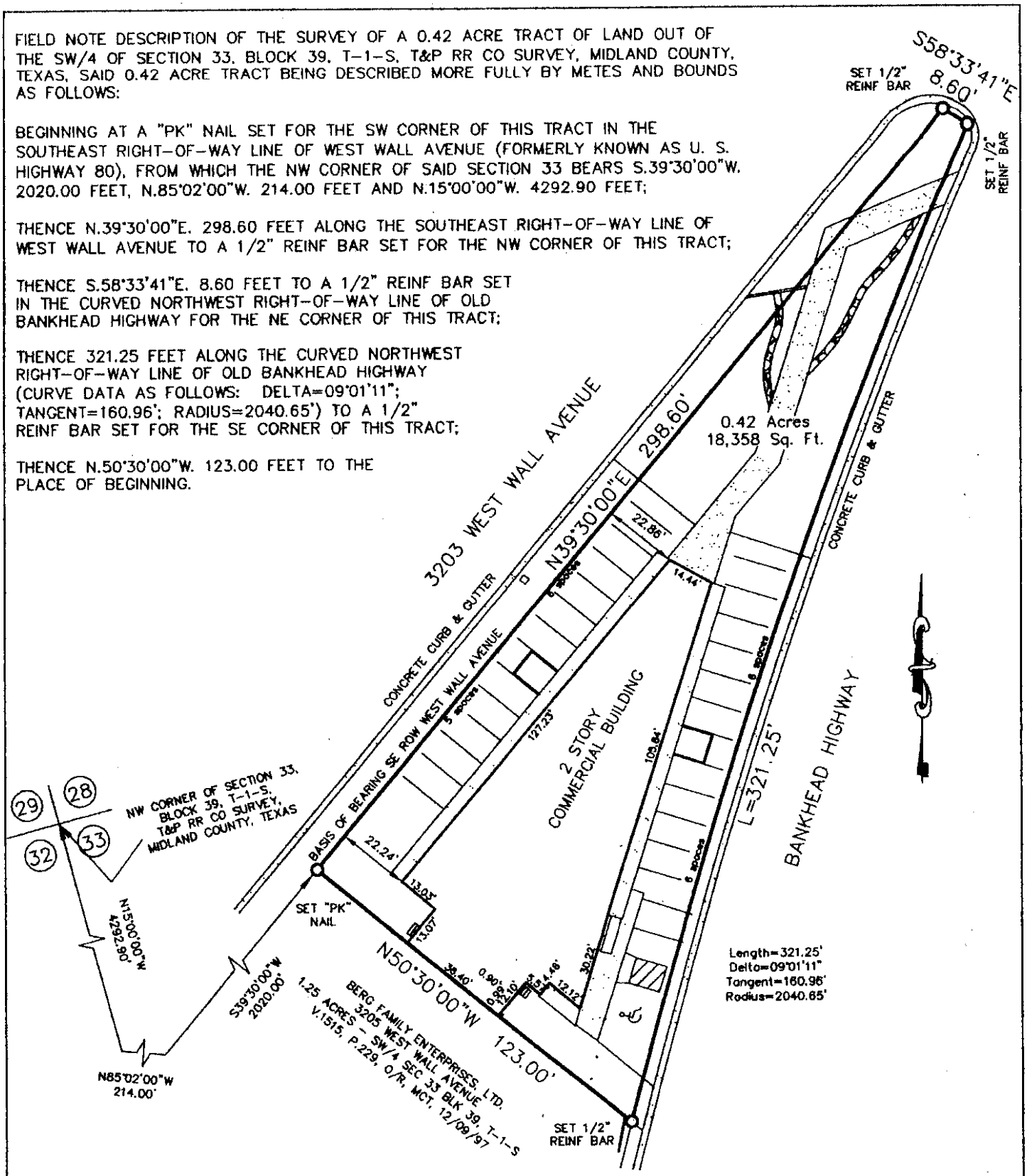


FOR FLOOD INSURANCE RATING PURPOSES: THIS PROPERTY LIES WITHIN FLOOD INSURANCE ZONE DESIGNATION "X" AS DEPICTED ON FLOOD INSURANCE RATE MAP (FIRM) NUMBER 48329-C0201E, MIDLAND COUNTY, TEXAS AND INCORPORATED AREAS EFFECTIVE DATE, DECEMBER 6, 1999, AS ISSUED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA). CENSUS TRACT NO. 11.00

TO THE LIENHOLDERS, NANCY ROYS AND CURTIS ROYS

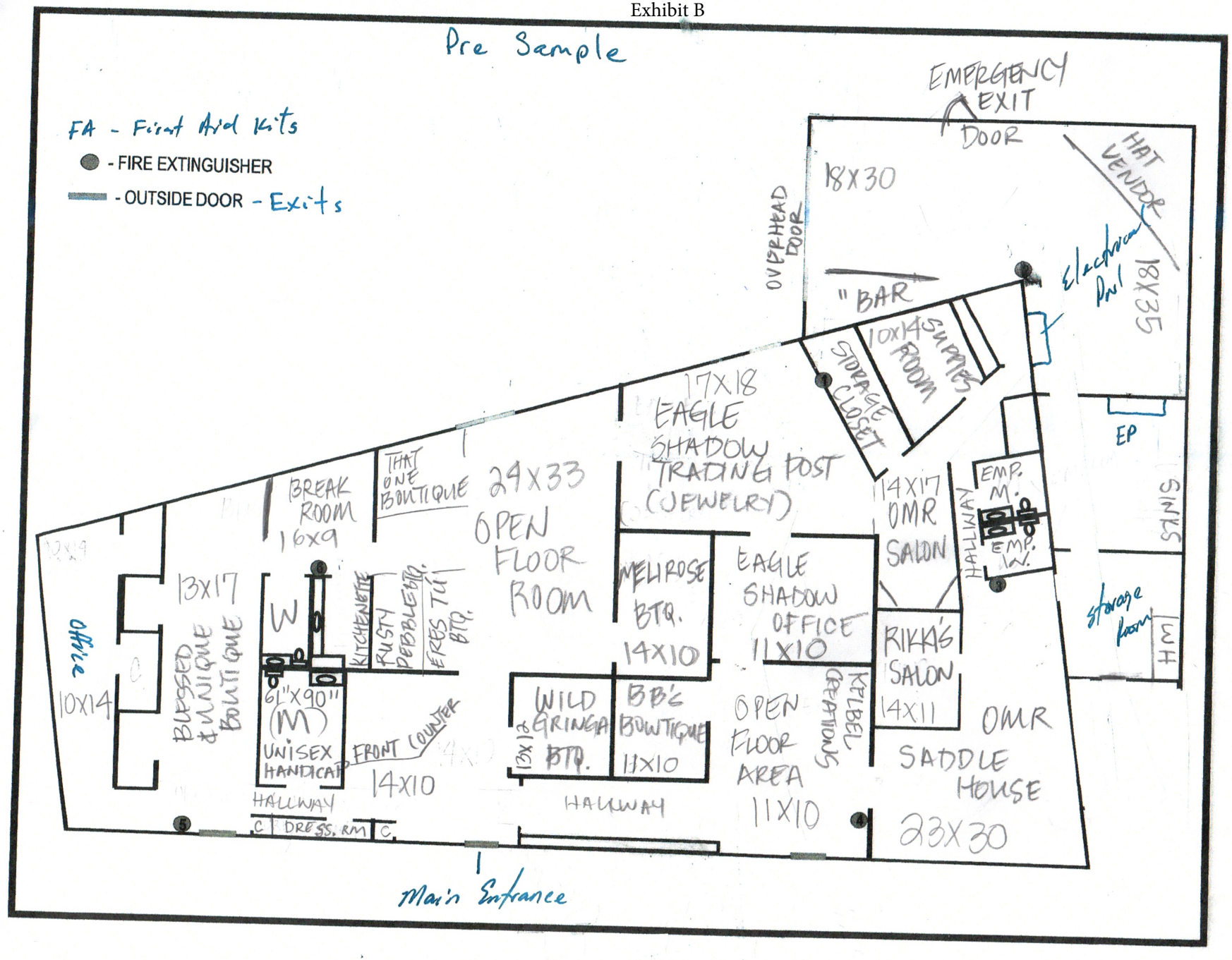
(OWNER) OF THE PREMISES AND TO THE ISSUING TITLE INSURANCE UNDERWRITER: THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS SURVEY WAS THIS DAY MADE ON THE GROUND OF THE PROPERTY LEGALLY DESCRIBED HEREON AND IS CORRECT AND THAT THERE ARE NO DISCREPANCIES, CONFLICTS, SHORTAGES IN AREA, BOUNDARY LINE CONFLICTS, ENCROACHMENTS, OVERLAPPING OF IMPROVEMENTS, EASEMENTS OR RIGHTS-OF-WAY,

SURVEY PLAT

PACKET

29.9

August 24, 2021


Pre Sample
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OMR SADDLE HOUSE 23X30
HALLWAY
C DRESS. RM C.
Main Entrance

MIDLAND
Planning Division

Specific Use Designation with Term for the Sale of Alcoholic Beverages for On-Premises Consumption

Project Number: SUD-21-0103

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: JOANN CERVANTES			Phone (432) 631-2113 Email MIDJOANN@GMAIL.COM
Address 6414 SCR 1160	City MIDLAND	State TX	Zip 79706
Property Owner Printed Name: Nancy Roys			Phone (432) 967-3584 Email nancyjroys@gmail.com
Address 160 E. Gran Vista Dr	City FBG	State TX	Zip 78624
Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:			Phone ( ) Email
Address	City	State	Zip

Street Address: 3201 W. WALL STREET

Business Name: ONE MORE ROUND

Legal Description
Lot: Block: Subdivision:

Current Zoning:

Reason for Request: _____

Type of Business *(restaurant, bar, lounge, nightclub, etc.)*: "SIP & SHOP"

Proposed/Current Days and Hours of Operation: _____
TUES - SATURDAY 9-6 SUN. 12-6

Proposed Days and Hours of Alcohol Service: _____

Total Square Footage of Business: 17,424

Square Footage of Alcohol Serviceable Area: 5790

Restroom Fixtures:	*Men*	**Toilets/Urinals:**	2 / 1	**Bathroom Sinks:**	2
	Women	**Toilets:**	2	**Bathroom Sinks:**	2

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Floor Plan showing:
  - Seating
  - Exits
  - Restrooms
  - Kitchen (if applicable)
  - Total Square Footage
  - Serviceable Square Footage
- Dimensioned Site Plan showing:
  - Parking
  - Business Footprint
- Digital Copies of Floor Plan & Site Plan (PDF/JPEG)

Signatures

Applicant (signature): JoAnn Cervantes Date: 5/24/2021

Applicant (printed): JOANN CERVANTES

Property Owner (signature): Nancy Roys Date: 4/2/2021

Property Owner (printed): Nancy Roys

The Specific Use Designation with Term for the sale of all alcoholic beverages shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

_____
Authorized Agent (*signature*)

Subscribed and sworn to before me, this _____ day of _____, 20 ___, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

****Application will not be considered for scheduling until reviewed by a planner.****

FOR OFFICE USE ONLY	
☑ Property Owner Authorization	☑ Dimensioned Floor Plan
☐ Application Fee	☑ Site Plan
Check #_____	☐ Plans in Digital Format (PDF/JPEG) N/A
Received By: Joseph Marynuk	Date: RECEIVED MAY 24 2021

BY: .....

****Application will not be considered for scheduling until reviewed by a planner.****

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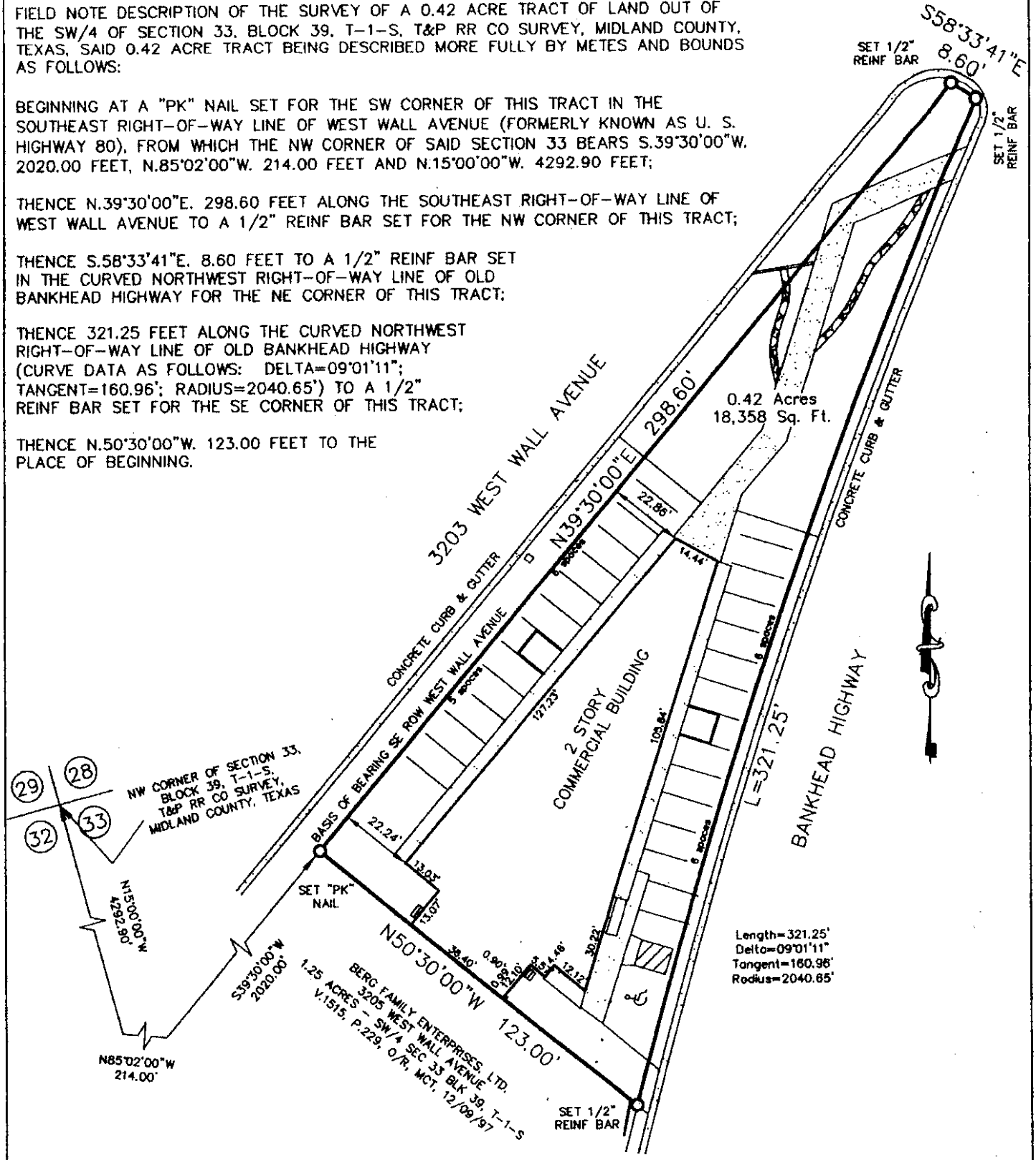

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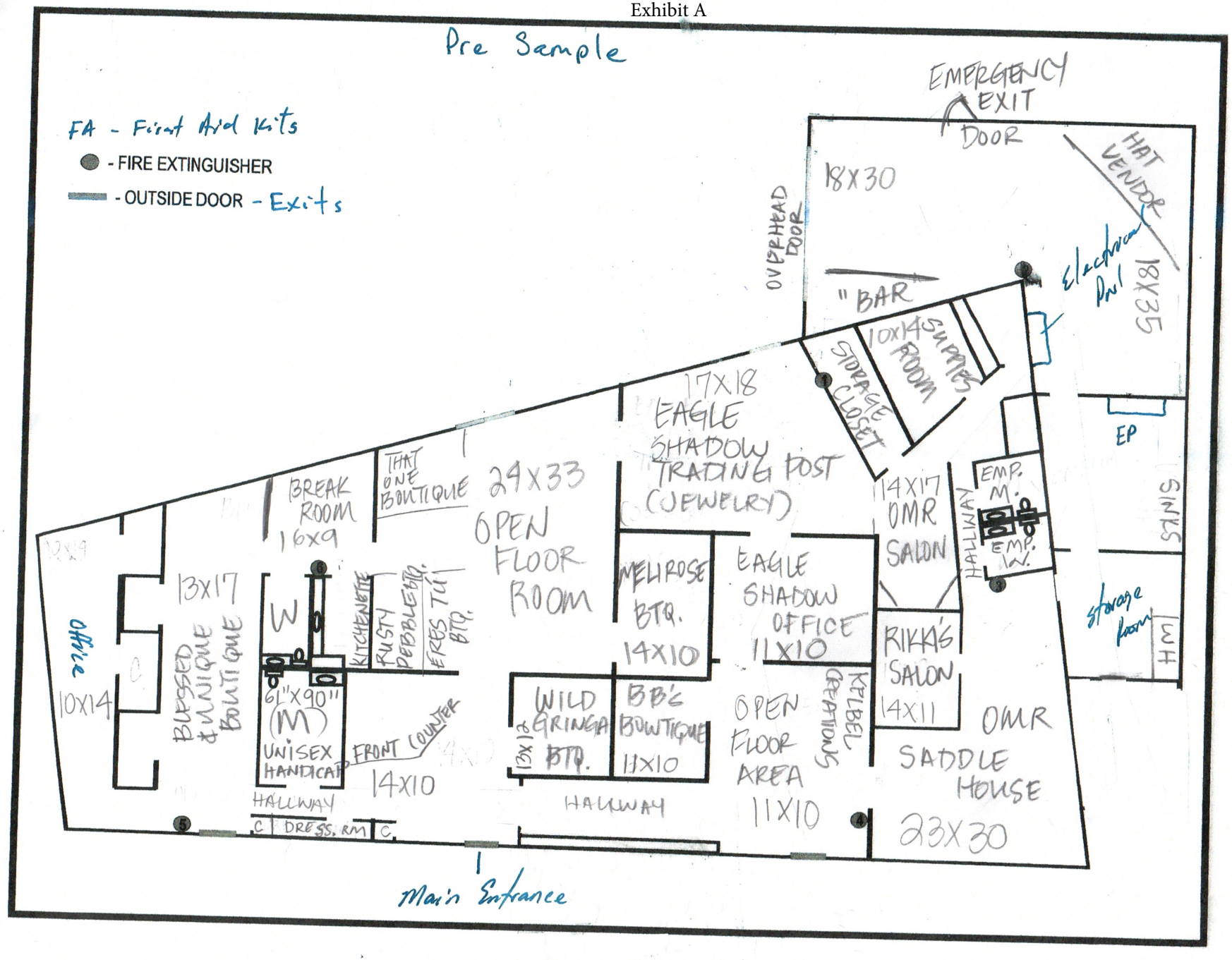
SURVEY PLAT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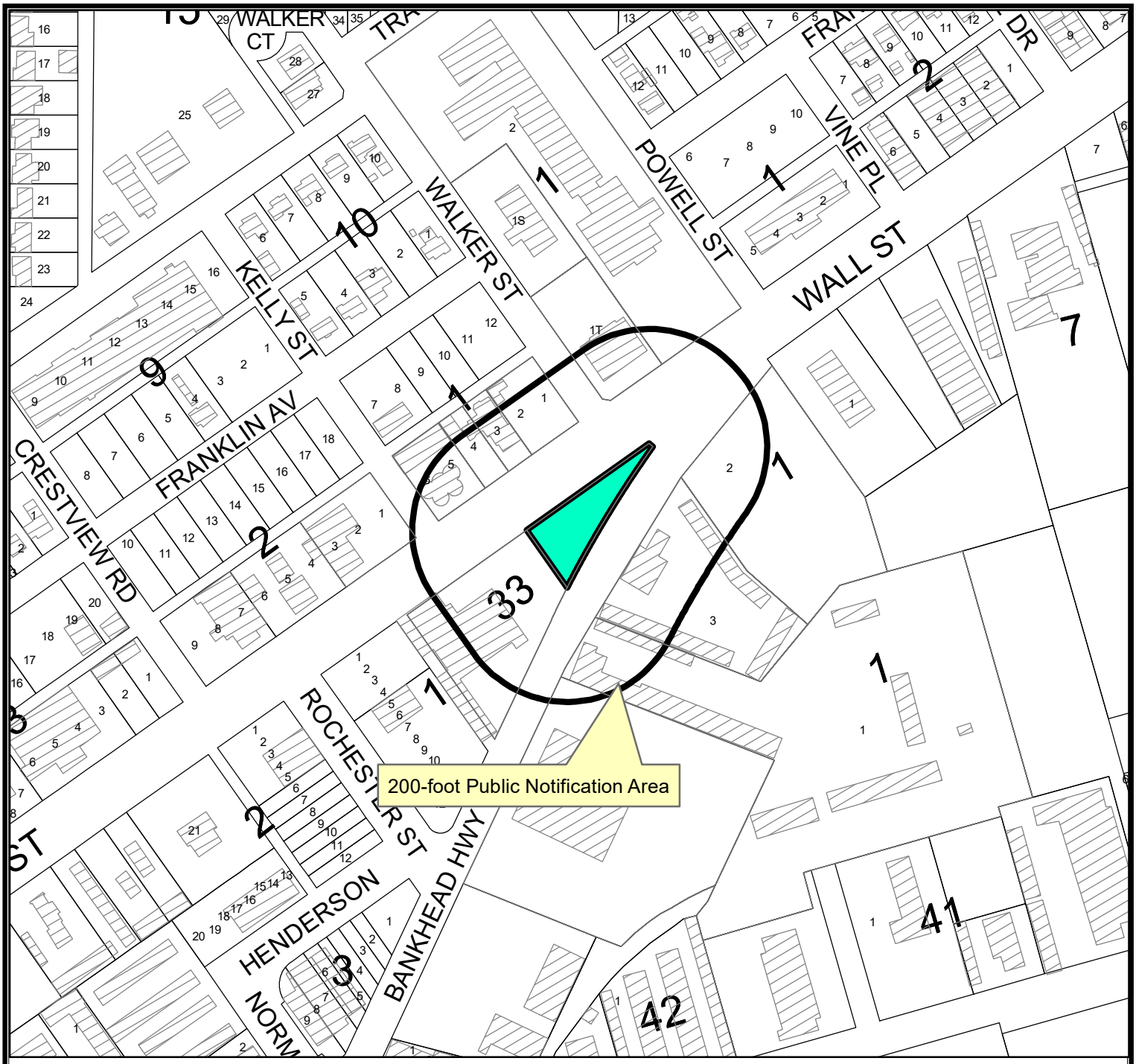
Main Entrance



LOCATION MAP

SUD-21-0103 **Scale: 1" = 250'**

Consider a request by Joann Cervantes for a Specific Use Designation, with term, for the sale and on premises consumption of all alcoholic beverages in a vendor market, on a 5,790 square foot portion of a 0.4 acre tract of land located in the SW/4 of Section 33, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas.

Generally located on the southwest side of the intersection of West Wall Street and Bankhead Highway. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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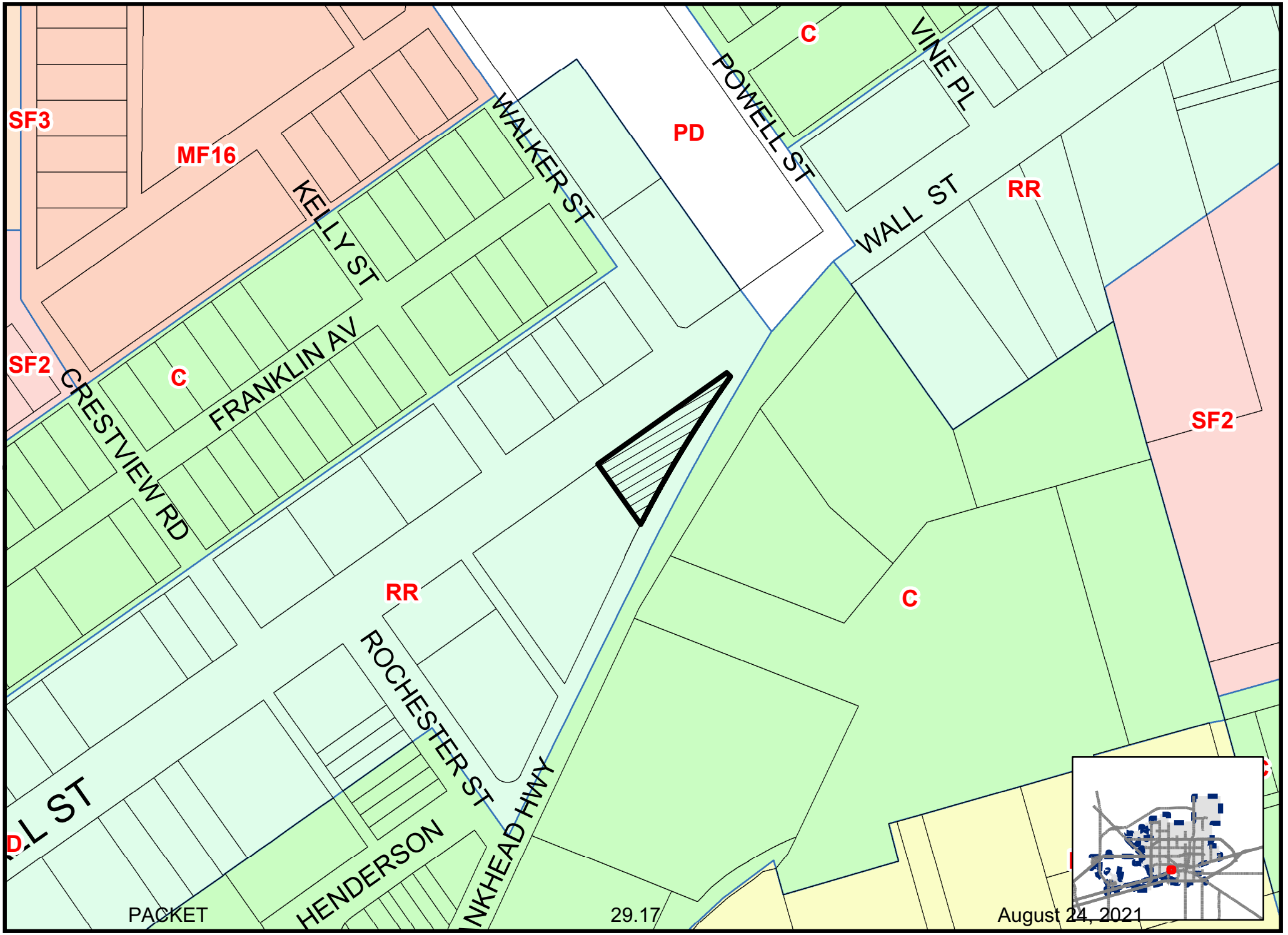

Map By JM, 07/13/2021

SUD-21-0103

Scale: 1" = 200'

ZONING MAP

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Kevlar


One More Round
3201
OPEN
HANDICAPPED PARKING ONLY




BUICK
GMC
Pontiac
SEWELL
CADDY ONE
Chevrolet

City Council Meeting

Item Number: 30

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Michael Pacelli, City Traffic Engineer

Subject: AN ORDINANCE AMENDING TITLE X, "TRAFFIC REGULATIONS", CHAPTER FOUR, "TRAFFIC CONTROL DEVICES", SECTION 11, "SCHOOL ZONES", OF THE MIDLAND CITY CODE, SO AS TO DESIGNATE EACH SCHOOL ZONE WITHIN THE CITY AND REGULATE THE SPEED AND MOVEMENT OF TRAFFIC THEREIN; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO INSTALL APPROPRIATE SIGNS AND MARKINGS; REPEALING ORDINANCE NO. 10114; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS ($200.00); AND ORDERING PUBLICATION (DISTRICT: ALL) (ENGINEERING SERVICES)

Purpose:

To revise school zone speed limit regulations at select locations.

Recommended City Council Action:

Approve

Fiscal Impact:

The cost to modify existing signs is minimal and funded in Traffic Operations regular operating budget.

Discussion:

The Legal Department has prepared an ordinance replacing the existing ordinance for "School Zones and Crossings" within the City of Midland, authorizing revisions to school zones as described below.

The Midland Independent School District (MISD) changed the normal operating hours for nearly all schools within the District for the 2021-2022 school year. Therefore, the school speed zone times need to be adjusted citywide.

With a couple exceptions, most school zones at MISD elementary schools will now be in effect from 6:30 am to 4:00 pm (or 6:30 to 8:00 am and 2:30 to 4:00 pm for zones with split times). Most school zones at MISD secondary schools will be in effect from 7:30 am to 4:45 pm (or 7:30 to 9:00 am and 3:30 to 4:45 pm for zones with split times).

Attempts were also made to contact the eight private schools in Midland that have school speed zones. The only changes for this year are at Midland Academy Charter School.

Due to the early start of MISD's new school year on August 2nd and the late notice of the time changes, City staff has already gone ahead and changed the speed limit signing in anticipation of this ordinance.

Staff recommends approval.

Morris Williams Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE X, "TRAFFIC REGULATIONS", CHAPTER FOUR, "TRAFFIC CONTROL DEVICES", SECTION 11, "SCHOOL ZONES", OF THE MIDLAND CITY CODE, SO AS TO DESIGNATE EACH SCHOOL ZONE WITHIN THE CITY AND REGULATE THE SPEED AND MOVEMENT OF TRAFFIC THEREIN; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO INSTALL APPROPRIATE SIGNS AND MARKINGS; REPEALING ORDINANCE NO. 10114; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS ($200.00); AND ORDERING PUBLICATION

WHEREAS, Section 10-1-1(A)(44) of the City Code defines school zones as areas, whether adjacent to schools or not, when properly marked by signs or pavement markings designating them as school zones; and

WHEREAS, the City Traffic Engineer has recommended the establishment of certain locations within the City to be designated as school zones and certain changes in existing school zones, all based on engineering and traffic investigations; and

WHEREAS, the Council finds it to be in the public interest to follow the recommendations of the City Traffic Engineer in this matter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That Midland City Code Title X, "Traffic Regulations", Chapter 4, "Traffic Control Devices", Section 11, "School Zones", shall hereby be amended to read in its entirety as follows:

10-4-11. SCHOOL ZONES.

The following described areas or locations are hereby designated "School Zones" and are reduced speed zones designated on streets by the City of Midland to facilitate safe crossing of the streets by children going to or leaving public or private elementary or secondary schools during the times the reduced speed limits apply. No person shall drive a motor vehicle in such areas or locations at a speed greater than is reasonable and prudent under the circumstances then existing. The speed limits specified hereinafter shall be lawful, but any speed in excess of the limits specified below during the hours set out hereinafter for each location or when flashing lights are in place and operating shall be prima facie evidence

that the speed is not reasonable or prudent and is unlawful on the days schools are in session.

(A) Abell Junior High School - 20 mph - 7:30 a.m. to 4:45 p.m.

1. Heritage Boulevard from the centerline of Wadley Avenue to a point 170 feet south of the centerline of Highland Boulevard/Highland Court.

2. Highland Boulevard from the centerline of Heritage Boulevard to a point 830 feet west of the centerline of Heritage Boulevard.

(B) Abell Junior High School - 20 mph - 7:30 a.m. to 9:00 a.m. and 3:30 p.m. to 4:45 p.m.

Wadley Avenue from a point 100 feet east of the centerline of Heritage Boulevard to a point 830 feet west of the centerline of Heritage Boulevard.

(C) Alamo Junior High School - 25 mph - 6:30 a.m. to 9:00 a.m. and 2:30 p.m. to 4:45 p.m.

Illinois Avenue - from a point 211 feet east of the centerline of McDonald Street to a point 200 feet west of the centerline of McDonald Street.

(D) Alamo Junior High School - See "Bonham Elementary School and Alamo Junior High School."

(E) Anson Jones Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Illinois Avenue - from a point 210 feet east of the centerline of Stoneybrook Drive to a point 210 feet west of the centerline of Stoneybrook Drive.

(F) Anson Jones Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Stoneybrook Drive - from a point 88 feet north of the centerline of Shadylane Drive to the centerline of Shadylane Drive.

2. Shadylane Drive - from a point 160 feet north of the centerline of Thomason Drive to a point 150 feet east of the centerline of Thornridge Drive.

3. Thornridge Drive - from a point 160 feet north of the centerline of Thomason Drive to the centerline of Shadylane Drive.

(G) Ben Milam Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

1. Wadley Avenue - from a point 293 feet east of the centerline of Edwards Street at its easternmost intersection with Wadley Avenue to a point 280 feet west of the centerline of Edwards Street at its easternmost intersection with Wadley Avenue.

2. Lamesa Road - from a point 200 feet north of the centerline of the west

leg of Dormard Avenue to a point 200 feet south of the centerline of the west leg of Dormard Avenue.

3. Main Street - from a point 175 feet north of the centerline of Dormard Avenue to a point 175 feet south of the centerline of Dormard Avenue.

(H) Ben Milam Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Shandon Avenue - from a point 230 feet west of the centerline of Edwards Street to a point 300 feet east of the centerline of Barber Drive.

2. Dengar Avenue - from a point 230 feet west of the centerline of Edwards Street to the centerline of Edwards Street.

3. Dengar Avenue - from the centerline of Barber Drive to a point 295 feet east of the centerline of Barber Drive.

4. Dormard Avenue - from a point 300 feet west of the centerline of Edwards Street to a point 230 feet east of the centerline of Barber Drive.

5. Edwards Street - from a point 205 feet south of the centerline of Dormard Avenue to a point 160 feet north of the centerline of Shandon Avenue.

6. Barber Drive - from a point 175 feet south of the centerline of Dormard Avenue to a point 155 feet north of the centerline of Shandon Avenue.

(I) Bonham Elementary School and Alamo Junior High School - 20 mph - 6:30 a.m. to 9:00 a.m. and 2:30 p.m. to 4:45 p.m.

Midland Drive - from a point 205 feet north of the centerline of Crockett Avenue to a point 185 feet south of the centerline of Storey Avenue.

(J) Bonham Elementary School and Alamo Junior High School - 20 mph - 6:30 a.m. to 4:45 p.m.

1. Cuthbert Avenue - from a point 235 feet west of the centerline of Delmar Street to a point 185 feet east of the centerline of Bonham Street.

2. Storey Avenue - from a point 450 feet west of the centerline of Delmar Street to the centerline of McDonald Street.

3. Storey Avenue - from the centerline of Bonham Street to a point 220 feet east of the centerline of Bonham Street.

4. Delmar Street - from a point 195 feet south of the centerline of Storey Avenue to the centerline of Storey Avenue.

5. Delmar Street - from a point 170 feet north of the centerline of Cuthbert

Avenue to the centerline of Cuthbert Avenue.

6. McDonald Street - from a point 200 feet south of the centerline of Storey Avenue to a point 115 feet north of the centerline of Cuthbert Avenue.

7. Bonham Street - from a point 170 feet south of the centerline of Storey Avenue to a point 118 feet north of the centerline of Cuthbert Avenue.

8. Dunbar Street - from a point 115 feet north of the centerline of Cuthbert Avenue to the centerline of Cuthbert Avenue.

(K) Bowie Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

1. "A" Street - from a point 140 feet north of the centerline of Elk Avenue to a point 175 feet south of the centerline of Douglas Avenue.

2. Douglas Avenue - from the centerline of "A" Street to a point 195 feet east of the centerline of "A" Street.

3. Douglas Avenue - from a point 205 feet east of the centerline of "D" Street to a point 175 feet west of the centerline of "D" Street.

(L) Bowie Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Elk Avenue - from the centerline of "B" Street to the centerline of "A" Street.

2. Douglas Avenue - from a point 90 feet east of the centerline of "C" Street to the centerline of "B" Street.

3. Princeton Avenue - from a point 255 feet west of the centerline of "B" Street to the centerline of "B" Street.

4. "B" Street - from a point 150 feet north of the centerline of Elk Avenue to a point 160 feet south of the centerline of Princeton Avenue.

(M) Bunche Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Pennsylvania Avenue - from a point 165 feet east of the centerline of Carver Street to a point 190 feet east of the centerline of Jackson Street.

2. Adams Street - from the centerline of Pennsylvania Avenue to a point 135 feet north of the centerline of Pennsylvania Avenue.

3. Jackson Street - from a point 140 feet north of the centerline of Pennsylvania Avenue to a point 215 feet north of the centerline of Cloverdale Road.

4. California Avenue - from the centerline of Jackson Street to a point 200 feet east of the centerline of Jackson Street.

(N) Burnett Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Spraberry Drive - from a point 175 feet north of the centerline of Devonian Drive to a point 130 feet north of the centerline of Pleasant Drive.

2. Ruby Drive - from the centerline of Canyon Drive to a point 165 feet north of the centerline of Devonian Drive.

3. Raymond Drive - from a point 185 feet north of the centerline of Canyon Drive to a point 50 feet north of the centerline of Pleasant Drive.

4. Devonian Drive - from a point 230 feet west of the centerline of Spraberry Drive to the centerline of Spraberry Drive.

5. Canyon Drive - from the centerline of Spraberry Drive to a point 280 feet east of the centerline of Raymond Drive.

6. Pasadena Drive - from the centerline of Spraberry Drive to a point 230 feet west of the centerline of Spraberry Drive.

7. Howard Drive - from the centerline of Raymond Drive to a point 295 feet east of the centerline of Raymond Drive.

(O) Bush Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Whittle Way - from a point 175 feet north of the centerline of Preston Avenue to a point 200 feet south of the centerline of Preston Avenue.

(P) Bush Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Idlewilde Drive - from a point 90 feet north of the centerline of Rainbow Road to the centerline of Preston Drive.

2. Preston Drive - from a point 150 feet east of the centerline of Idlewilde Drive to a point 150 feet west of the centerline of Sunburst Drive.

3. Sunburst Drive - from a point 90 feet north of the centerline of Rainbow Road to a point 150 feet north of the centerline of Preston Drive.

(Q) Carver Center - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Carver Street - from a point 175 feet north of the centerline of Texas Avenue to a point 160 feet south of the centerline of Wall Street.

2. Texas Avenue - from a point 150 feet west of the centerline of Carver Street to the centerline of Carver Street.

3. Adams Street - from a point 150 feet south of the centerline of Wall

Street to the centerline of Wall Street.

4. Jesse Street - from a point 100 feet north of the centerline of Wall Street to the centerline of Wall Street.

(R) Coleman High School - 20 mph - 7:30 a.m. to 4:45 p.m.

1. Golf Course Road - from a point 60 feet west of the centerline of Benton Street to a point 120 feet west of the centerline of Tilden Street.

2. Tilden Street - from a point 70 feet north of the centerline of Jax Street to the centerline of Golf Course Road.

(S) DeZavala Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

1. Lamesa Road - from a point 300 feet north of the centerline of Louisiana Avenue to a point 250 feet south of the centerline of Louisiana Avenue.

2. Louisiana Avenue - from a point 200 feet west of the centerline of Lamesa Road to a point 150 feet east of the centerline of Lamesa Road.

3. Garden Lane - from a point 180 feet west of the centerline of Lee Street to a point 191 feet east of the centerline of Lee Street.

4. Walnut Lane - from a point 184 feet west of the centerline of Lee Street to a point 196 feet east of the centerline of Lee Street.

(T) DeZavala Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Orchard Lane - from the centerline of Lee Street to a point 175 feet east of the centerline of Lee Street.

2. Lee Street - from a point 325 feet north of the centerline of Mesquite Street to a point 50 feet north of the centerline of South Street.

3. Mesquite Street - from the centerline of Lee Street to a point 175 feet east of the centerline of Lee Street.

(U) Emerson Elementary School and Goddard Junior High School - 20 mph - 6:30 a.m. to 4:45 p.m.

1. Ward Street - from a point 250 feet south of the centerline of Haynes Drive to a point 135 feet north of the centerline of Emerson Place.

2. Moss Avenue - from a point 465 feet east of the centerline of Whitney Drive to the centerline of Ward Street.

3. Goddard Drive - from a point 185 feet east of the centerline of Ward Street to the centerline of Ward Street.

4. Emerson Drive - from a point 185 feet east of the centerline of Ward Street to the centerline of Ward Street.

5. Lanham Street - from a point 85 feet north of the centerline of Goddard Street to a point140 feet south of the centerline of Haynes Drive.

6. Haynes Drive - from a point 175 feet east of the centerline of Lanham Street to a point 150 feet west of the centerline of Ward Street.

(V) Fannin Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

1. Neely Avenue - from a point 290 feet east of the centerline of Lanham Street to a point 300 feet west of the centerline of Lanham Street.

2. Garfield Street - from a point 466 feet south of the centerline of Cimmaron Drive to a point 135 feet north of the centerline of Dengar Avenue.

3. Ward Street - from a point 150 feet north of the centerline of Fannin Avenue to a point 160 feet south of the centerline of Fannin Avenue.

(W) Fannin Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Cimmaron Avenue - from a point 285 feet west of the centerline of Lanham Street to a point 250 feet east of the centerline of Mogford Street.

2. Frontier Avenue - from a point 295 feet west of the centerline of Lanham Street to the centerline of Lanham Street.

3. Fannin Avenue - from a point 255 feet west of the centerline of Lanham Street to a point 325 feet east of the centerline of Mogford Street.

4. Lanham Street - from a point 160 feet south of the centerline of Fannin Avenue to a point 180 feet north of the centerline of Cimmaron Avenue.

5. Mogford Street - from a point 155 feet south of the centerline of Fannin Avenue to a point 170 feet north of the centerline of Cimmaron Avenue.

(X) Fasken Elementary School - 25 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Holiday Hill Road - from a point 200 feet north of the centerline of Sherwood Drive to a point 200 feet south of Sherwood Drive.

(Y) Fasken Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Sherwood Drive - from a point 100 feet east of the centerline of

Sandstone Drive to a point 100 feet west of the centerline of Val Verde Drive.

2. Sandstone Drive - from a point 100 feet north of the centerline of Sherwood Drive to a point 100 feet south of the centerline of Val Verde Drive.

3. Val Verde Drive - from the centerline of Sherwood Drive to the centerline of Sandstone Drive.

4. Becker Drive - from the centerline of Sandstone Drive to a point 100 feet south of the centerline of Sandstone Drive.

(Z) General Tommy Franks Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Jax Avenue - from a point 190 feet west of the centerline of Fort Worth Street to the centerline of Terrell Street.

2. Parker Avenue - from a point 190 feet west of the centerline of Fort Worth Street to a point 155 feet east of the centerline of Terrell Street.

3. Fort Worth Street - from the centerline of Parker Avenue to a point 160 feet south of the centerline of Hamby Avenue.

4. Terrell Street - from the centerline of Parker Avenue to a point 100 feet north of the centerline of Jax Avenue.

5. Dallas Street - from the centerline of Parker Avenue to a point 180 feet south of the centerline of Parker Avenue.

(AA) General Tommy Franks Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Lamesa Road - from a point 135 feet south of the centerline of Parker Avenue at its southernmost intersection with Lamesa Road to a point 200 feet north of the centerline of Parker Avenue at its southernmost intersection with Lamesa Road.

(AB) Goddard Junior High School - See "Emerson Elementary School and Goddard Junior High School."

(AC) Greathouse Elementary School 25 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Briarwood Avenue - from a point 540 feet east of the centerline of Mathis Street to a point 450 feet west of the centerline of Mathis Street.

(AD) Greathouse Elementary School 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Oriole Drive - from a point 220 feet north of the centerline of Woodhollow Drive to a point 198 feet south of the centerline of Woodhollow Drive.

(AE) Greathouse Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Mathis Street - from a point 515 feet north of the centerline of Briarwood Avenue to a point 100 feet north of the centerline of Greathouse Avenue.

2. Greathouse Avenue - from a point 180 feet south of the centerline of Mathis Street to a point 450 feet north of the centerline of Mathis Street.

3. Quicksand Drive - from the centerline of Mathis Street to a point 180 feet west of the centerline of Mathis Street.

4. Woodhollow Drive - from the centerline of Mathis Street to a point 390 feet east of the centerline of Mathis Street.

(AF) Henderson Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Bentwood Drive - from a point 265 feet north of the centerline of Graceland Drive to a point 138 feet south of the centerline of Joy Drive.

2. Wilshire Drive - from the centerline of Graceland Drive to a point 160 feet north of the centerline of Graceland Drive.

3. Erie Drive - from the centerline of Graceland Drive to a point 205 feet north of the centerline of Graceland Drive.

4. Eisenhower Drive - from a point 135 feet north of the centerline of Graceland Drive to a point 135 feet south of the centerline of Graceland Drive.

5. Graceland Drive - from a point 130 feet west of the centerline of Bentwood Drive to a point 135 feet east of the centerline of Eisenhower Drive.

(AG) Hillander Private School - 20 mph - 7:30 a.m. to 9:00 a.m. and 1:30 p.m. to 4:00 p.m.

1. Wadley Avenue - from a point 275 feet east of the centerline of "I" Street to a point 560 feet west of the centerline of "I" Street.

2. "I" Street - from a point 170 feet north of the centerline of Wadley Avenue to a point 215 feet south of the centerline of Wadley Avenue.

(AH) Jane Long Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Devonian Drive - from a point 180 feet north of the centerline of Tanner Drive to a point 200 feet south of the centerline of Cedar Spring Drive.

2. Leddy Drive - from the centerline of Cedar Spring Drive to a point 165 feet north of the centerline of Tanner Drive.

3. Tanner Drive - from a point 250 feet west of the centerline of Devonian Drive to a point 215 feet east of the centerline of Leddy Drive.

4. Beckley Drive - from the centerline of Cedar Spring Drive to a point 150 feet south of the centerline of Cedar Spring Drive.

5. Aberdeen Drive - from the centerline of Cedar Spring Drive to a point 250 feet south of the centerline of Cedar Spring Drive.

6. Mercedes Drive - from a point 240 feet west of the centerline of Devonian Drive to the centerline of Devonian Drive.

7. Avondale Drive - from the centerline of Leddy Drive to a point 85 feet east of the centerline of Leddy Drive.

8. Cedar Spring Drive - from a point 125 feet west of the centerline of Devonian Drive to a point 185 feet east of the centerline of Leddy Drive.

(AI) Lamar Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Illinois Avenue - from a point 330 feet east of the centerline of Crestview Road to a point 240 feet west of the centerline of Crestview Road.

(AJ) Lamar Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Kessler Avenue - from a point 120 feet east of the centerline of Midkiff Road to a point 220 feet east of the centerline of Crestview Road.

2. Peach Street - from a point 165 feet south of the centerline of Illinois Avenue to the centerline of Kessler Avenue.

3. Crestview Road - from a point 185 feet south of the centerline of Illinois Avenue to a point 170 feet south of the centerline of Kessler Avenue.

4. Barkley Street - from a point 180 feet east of the centerline of Crestview Road to the centerline of Crestview Road.

(AK) Legacy Freshman High School - 20 mph - 7:30 a.m. to 9:00 a.m. and 3:30 p.m. to 4:45 p.m.

Scharbauer Drive - from a point 195 feet west of the centerline of Butternut Lane to a point 202 feet east of the centerline of Butternut Lane.

(AL) Legacy Freshman High School - 20 mph - 7:30 a.m. to 4:45 p.m.

1. Oak Avenue - from a point 150 feet west of the centerline of Butternut Lane to a point 200 feet east of the centerline of Lincoln Street.

2. Lincoln Street - from a point 145 feet north of the centerline of Oak Avenue to a point 145 feet north of the centerline of Magnolia Avenue.

3. Maple Avenue - from a point 229 feet east of the centerline of Lincoln Street to the centerline of Lincoln Street.

4. Butternut Lane - from a point 150 feet north of the centerline of Oak Avenue to a point 50 feet north of the centerline of Magnolia Avenue.

(AM) Legacy High School - See "Rusk Elementary School and Legacy High School."

(AN) Midland Academy Charter School - 20 mph - 7:00 a.m. to 8:30 a.m. and 3:00 p.m. to 4:30 p.m.

1. Baird Street - from a point 97 feet north of the centerline of Michigan Avenue to a point 145 feet south of the centerline of Tennessee Avenue.

2. Michigan Avenue - from a point 180 feet east of the centerline of Weatherford Street to a point 180 feet west of the centerline of Baird Street.

3. Tennessee Avenue - from a point 180 feet east of the centerline of Weatherford Street to a point 180 feet west of the centerline of Baird Street.

4. Weatherford Street - from a point 95 feet north of the centerline of Michigan Avenue to a point 165 feet south of the centerline of Tennessee Avenue.

(AO) Midland Christian School - 20 mph - 7:30 a.m. to 8:30 a.m. and 3:00 p.m. to 4:30 p.m.

Neely Avenue - from a point 175 feet east of the centerline of Culver Drive to a point 225 feet west of the centerline of Culver Drive.

(AP) Midland Christian School - 20 mph - 7:30 a.m. to 4:30 p.m.

1. Culver Drive - from the centerline of Gulf Avenue to a point 385 feet north of the centerline of Gulf Avenue.

2. Gulf Avenue - from a point 190 feet east of the centerline of Culver Drive to the centerline of Culver Drive.

3. Northrup Drive - from a point 384 feet south of the centerline of Sinclair Avenue to a point 135 feet north of the centerline of Gulf Avenue.

4. Sinclair Avenue - from a point 158 feet east of the centerline of Culver Drive to the centerline at Northrup Drive.

(AQ) Midland Classical Academy School - 20 mph - 7:30 a.m. to 4:00 p.m.

Whitman Drive - from a point 87 feet north of the centerline of Mockingbird Lane to a point 650 feet south of the centerline of Savoy Place.

(AR) Midland Freshman High School - 25 mph - 7:30 a.m. to 9:00 a.m. and 3:30 p.m. to 4:45 p.m.

Rankin Highway - from a point 265 feet north of the centerline of Hicks Avenue to a point 170 feet south of the centerline of Hicks Avenue.

(AS) Midland Freshman High School - 20 mph - 7:30 a.m. to 4:45 p.m.

1. Main Street - from a point 180 feet north of the centerline of Hicks Avenue to a point 180 feet south of the centerline of Gist Avenue.

2. Baird Street - from the centerline of Hicks Avenue to a point 150 feet north of the centerline of Hicks Avenue.

3. Weatherford Street - from the centerline of Hicks Avenue to a point 150 feet north of the centerline of Hicks Avenue.

4. Hicks Avenue - from a point 200 feet west of the centerline of Main Street to a point 175 feet east of the centerline of Weatherford Street.

5. Montgomery Avenue - from the centerline of Main Street to a point 210 feet west of the centerline of Main Street.

6. Gist Avenue - from a point 200 feet west of the centerline of Main Street to a point 1040 feet east of the centerline of Main Street.

(AT) Midland High School - 20 mph - 7:30 a.m. to 4:45 p.m.

1. Ohio Avenue - from a point 150 feet east of the centerline of San Angelo Street to the centerline of "A" Street.

2. "C" Street - from a point 130 feet south of the centerline of Illinois Avenue to the centerline of Illinois Avenue.

3. "D" Street - from a point 115 feet south of the centerline of Illinois Avenue to a point 45 feet north of the centerline of Ohio Avenue.

4. Illinois Avenue - from a point 267 feet west of the centerline of "E" Street to a point 185 feet east of the centerline of "A" Street.

5. "A" Street - from a point 85 feet south of the centerline of Tennessee Avenue to a point 280 feet south of the centerline of Illinois Avenue.

6. Tennessee Avenue - from a point 103 feet west of the centerline of "B" Street to a point 60 feet east of the centerline of "A" Street.

(AU) Midland Montessori School - 20 mph - 7:30 a.m. to 4:30 p.m.

Austin Street - from a point 200 feet north of the centerline of Cuthbert Avenue to a point 80 feet south of the centerline of Bedford Avenue.

(AV) Pease Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Magnolia Avenue - from a point 280 feet west of the centerline of Benton Street to a point 295 feet east of the centerline of Peterson Street.

2. Hickory Avenue - from a point 340 feet west of the centerline of Benton Street to the centerline of Benton Street.

3. Scharbauer Drive - from a point 335 feet west of the centerline of Benton Street to a point 290 feet east of the centerline of Peterson Street.

4. Benton Street - from a point 215 feet north of the centerline of Scharbauer Drive to a point 290 feet east of the centerline of Peterson Street.

5. Peterson Street - from the centerline of Scharbauer Drive to a point 200 feet north of the centerline of Magnolia Avenue.

(AW) Quanah Parker Elementary School - 30 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Midland Drive - from a point 340 feet north of the centerline of St. Andrews Drive to a point 350 feet south of the centerline of St. Andrews Drive.

(AX) Quanah Parker Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Godfrey Drive - from a point 150 feet north of the centerline of St. Andrews Drive to a point 135 feet south of the centerline of St. Andrews Drive.

(AY) Quanah Parker Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. St. Andrews Drive - from a point 150 feet west of the centerline of Casady Court to a point 140 feet west of the centerline of Norwood Street.

2. Greenbriar Drive - from a point 150 feet south of the centerline of St. Andrews Drive to the centerline of St. Andrews Drive.

3. Merrill Drive - from a point 150 feet west of the centerline of Norwood Street to the centerline of Norwood Street.

4. Russell Drive - from a point 175 feet west of the centerline of Norwood Street to the centerline of Norwood Street.

5. Norwood Street - from the centerline of St. Andrews Drive to a point 150 feet north of the centerline of Russell Drive.

(AZ) Rusk Elementary School and Legacy High School - 20 mph - 6:30 a.m. to 4:45 p.m.

1. Neely Avenue - from a point 175 feet west of the centerline of McDonald Street to a point 250 feet east of the centerline of Tarleton Street.

2. McDonald Street - from a point 155 feet south of the centerline of Neely Avenue to a point 115 feet north of the centerline of Cimmaron Avenue.

3. Wedgewood Street - from a point 200 feet south of the centerline of Neely Avenue to the centerline of Cimmaron Avenue.

4. Cimmaron Avenue - from a point 205 feet west of the centerline of McDonald Street to a point 170 feet east of the centerline of Shandon Avenue.

5. Fannin Avenue - from the centerline of McDonald Street to a point 200 feet west of the centerline of McDonald Street.

6. Shandon Avenue - from a point 235 feet north of the centerline of Cimmaron Avenue to the centerline of Cimmaron Avenue.

7. Imperial Avenue - from a point 235 feet north of the centerline of Cimmaron Avenue to the centerline of Cimmaron Avenue.

8. Godfrey Street - from a point 145 feet south of the centerline of Neely Avenue to a point 158 feet north of the centerline of Rebel Drive.

(BA) Rusk Elementary School - 20 mph - 6:30 a.m. to 4:45 p.m.

1. Dengar Avenue - from a point 250 feet east of the centerline of Tarleton Street to the centerline of Tarleton Street.

2. Fannin Avenue - from the centerline of Tarleton Street to a point 240 feet east of the centerline of Tarleton Street.

3. Cimmaron Avenue - from the centerline of Tarleton Street to a point 295 feet east of the centerline of Tarleton Street.

4. Tarleton Street - from a point 175 feet south of the centerline of Neely Avenue to a point 140 feet north of the centerline of Dengar Avenue.

(BB) St. Ann's School - 20 mph - 7:00 a.m. to 4:00 p.m.

1. Texas Avenue - from a point 195 feet west of the centerline of "N" Street to a point 30 feet west of the centerline of "L" Street.

2. "N" Street - from the centerline of Illinois Avenue to a point 180 feet south of the centerline of Texas Avenue.

3. "M" Street - from the centerline of Illinois Avenue to a point 180 feet south of the centerline of Texas Avenue.

(BC) Sam Houston Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 5:30 p.m.

1. Cuthbert Avenue - from a point 335 feet east of the centerline of "N" Street at its easternmost intersection with Cuthbert Avenue to a point 297 feet west of the centerline of "N" Street at its easternmost intersection with Cuthbert Avenue.

2. "N" Street - from the centerline of Louisiana Avenue to the centerline of Cuthbert Avenue.

(BD) Sam Houston Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

1. Louisiana Avenue - from a point 285 feet east of the centerline of Garfield Street to a point 40 feet east of the centerline of "L" Street.

2. "L" Street - from a point 238 feet south of the centerline of Louisiana Avenue to a point 150 feet north of the centerline of Louisiana Avenue.

3. "M" Street - from a point 250 feet south of the centerline of Louisiana Avenue to the centerline of Louisiana Avenue.

4. Michigan Avenue - from a point 180 feet east of the centerline of North "N" Street to a point 180 feet west of the centerline of North "N" Street.

5. "N" Street - from a point 315 feet south of the centerline of Louisiana Avenue to the centerline of Louisiana Avenue.

(BE) San Jacinto Junior High School - 20 mph - 7:30 a.m. to 9:00 a.m. and 3:30 p.m. to 4:45 p.m.

1. Golf Course Road - from a point 208 feet east of the centerline of "N" Street to a point 185 feet west of the centerline of "N" Street.

2. Garfield Street - from a point 287 feet south of the centerline of Community Lane to a point 287 feet north of the centerline of Community Lane.

(BF) San Jacinto Junior High School - 20 mph - 7:30 a.m. to 4:45 p.m.

1. Community Lane - from a point 160 feet east of the centerline of Garfield Street to a point 120 feet east of the centerline of "N" Street.

2. Douglas Avenue - from the centerline of "N" Street to a point 190 feet east of the centerline of "N" Street.

3. Hodges Street - from the centerline of Community Lane to a point 225 feet north of the centerline of Community Lane.

4. "N" Street - from a point 340 feet north of the centerline of Community Lane to a point 170 feet south of the centerline of Douglas Avenue.

(BG) Santa Rita Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Bluebird Lane - from a point 215 feet east of the centerline of Whitman Street to a point 200 feet west of the centerline of Whitman Street.

(BH) Santa Rita Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

Whitman Drive - from a point 760 feet north of the centerline of Bluebird Lane to a point 920 feet south of the centerline of Mockingbird Lane.

(BI) Scharbauer Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Crowley Boulevard - from a point 250 feet south of the centerline of Hereford Boulevard to a point 575 feet north of the centerline of Hereford Boulevard.

2. Hereford Boulevard - from a point 250 feet south of the centerline of Homestead Boulevard to a point 136 feet north of the centerline of Crowley Boulevard.

3. Homestead Boulevard - from the centerline of Hereford Boulevard to a point 425 feet west of the centerline of Hereford Boulevard.

(BJ) South Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Big Spring Street - from a point 220 feet north of the centerline of Dakota Street to a point 165 feet south of the centerline of Dakota Street.

(BK) South Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Dakota Avenue - from a point 155 feet west of the centerline of Colorado Street to a point 240 feet east of the centerline of Main Street.

2. New Jersey Avenue - from a point 205 feet west of the centerline of Colorado Street to a point 235 feet east of the centerline of Main Street.

3. Colorado Street - from a point 145 feet south of the centerline of New Jersey Avenue to a point 230 feet north of the centerline of Dakota Avenue.

4. Loraine Street from a point 230 feet south of the centerline of New Jersey Avenue to the centerline of New Jersey Avenue.

5. Loraine Street - from the centerline of Dakota Avenue to a point 175 feet north of the centerline of Dakota Avenue.

6. Main Street - from a point 120 feet south of the centerline of New Jersey Avenue to a point 200 feet north of the centerline of Dakota Avenue.

(BL) Travis Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.

1. Gist Avenue - from a point 190 feet west of the centerline of Marshall Street to a point 170 feet east of the centerline of Atlanta Street.

2. Marshall Street - from the centerline of Gist Avenue to a point 205 feet north of the centerline of Gist Avenue.

3. Jefferson Street - from the centerline of Gist Avenue to a point 215 feet north of the centerline of Gist Avenue.

4. Atlanta Street - from the centerline of Gist Avenue to a point 190 feet north of the centerline of Gist Avenue.

(BM) Trinity Private School - 25 mph - 7:30 a.m. to 8:30 a.m. and 2:45 p.m. to 4:45 p.m.

Wadley Avenue - from a point 150 feet west of the centerline of Godfrey Street to the centerline of Tarleton Street.

(BN) Trinity Private School - 20 mph - 7:30 a.m. to 8:30 a.m. and 2:45 p.m. to 4:45 p.m.

1. Godfrey Street - from a point 150 feet south of the centerline of Wadley Avenue to a point 265 feet south of the centerline of Trinity Drive.

2. Jordan Avenue - from a point 150 feet south of the centerline of Wadley Avenue to the centerline of Wadley Avenue.

(BO) Washington Elementary School - 20 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Indiana Avenue - from a point 225 feet west of the centerline of Tilden Street to a point 210 feet east of the centerline of Tilden Street.

(BP) Washington Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Wall Street - from a point 150 feet west of the centerline of Carver Street to the centerline of Calhoun Street.

2. Tilden Street - from a point 155 feet north of the centerline of Wall Street to a point 100 feet north of the centerline of Indiana Avenue.

3. Donald Street - from a point 100 feet north of the centerline of Wall Street to the centerline of Wall Street.

4. Lincoln Street - from a point 100 feet north of the centerline of Wall Street to the centerline of Wall Street.

5. Jackson Street - from a point 100 feet north of centerline of Wall Street to the centerline of Wall Street.

(BQ) West Education Center - 20 mph - 7:00 a.m. to 4:30 p.m.

1. Missouri Avenue - from a point 40 feet east of the centerline of Garfield Street to a point 255 feet east of the centerline of "N" Street.

2. Indiana Avenue - from a point 40 feet east of the centerline of Garfield Street to a point 155 feet east of the centerline of "N" Street.

3. "N" Street - from a point 200 feet north of the centerline of Missouri Avenue to a point 215 feet south of the centerline of Indiana Avenue.

4. "O" Street - from a point 165 feet north of the centerline of Missouri Avenue to the centerline of Missouri Avenue.

(BR) Yarbrough Elementary School - 20 mph - 6:30 a.m. to 4:00 p.m.

1. Shea Lane - from a point 340 feet east of the centerline of Hall of Fame Boulevard to a point 90 feet north of the centerline of Legends Boulevard.

2. Legends Boulevard - from the centerline of Shea Lane to a point 170 feet east of the centerline of Wagner Drive.

3. Wagner Street / Drive from a point 100 feet north of the centerline of Legends Boulevard to a point 100 feet south of the centerline of Riverfront Drive.

4. Riverfront Drive - from a point 215 feet west of the centerline of Coliseum Court to the centerline of Wagner Drive.

(BS) Yarbrough Elementary School - 25 mph - 6:30 a.m. to 8:00 a.m. and 2:30 p.m. to 4:00 p.m.

Avalon Drive - from a point 200 feet north of the centerline of Hall of Fame Boulevard to a point 200 feet south of the centerline of Hall of Fame Boulevard.

SECTION TWO. The Traffic Engineer is hereby authorized and directed to erect and install appropriate signs and markings at the designated locations, in conformance with the State Highway Department's manual and specifications, indicating and carrying out the provisions of this ordinance.

SECTION THREE. That Ordinance No. 10114 is hereby expressly repealed; and the provisions of this ordinance are to be cumulative of all other ordinances or parts of

ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. That the repeal of the ordinances or parts of ordinances effectuated by the enactment of this ordinance shall not be construed as abating any actions now pending under or by virtue of such ordinances or as discontinuing, abating, modifying, or altering any penalty accruing or as affecting the liability of any person, firm or corporation or as waiving any right of the municipality under any section or provision existing at the time of the passage of this ordinance.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two hundred dollars ($200.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Michael Pacelli, City Traffic Engineer

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

S:\Ordinances\Traffic\School Zones\2021\Amending School Zones - August 2021.wpd

City Council Meeting

Item Number: 31

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Michael Pacelli, City Traffic Engineer

Subject: AN ORDINANCE ALTERING PRIMA FACIE SPEED LIMITS ALONG CERTAIN STREETS IN THE CITY; AUTHORIZING INSTALLATION OF APPROPRIATE SIGNS AND MARKINGS; REPEALING ORDINANCE NO. 9945; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS ($200.00); AND ORDERING PUBLICATION (DISTRICT: ALL) (ENGINEERING SERVICES)

Purpose:

To establish speed limit regulations at select locations.

Recommended City Council Action:

Approve

Fiscal Impact:

None

Discussion:

The Legal Department has prepared an ordinance establishing speed limits on various roadways throughout the City and repealing any previous and/or conflicting ordinances.

This revised ordinance adds speed limits on several roadways for which the posted speed limit differs from the prima facie (default) speed limit established by state law, but which were not included in the prior ordinance.

No speed limits are being increased or decreased from the prior ordinance.

Staff recommends approval.

Morris Williams Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE ALTERING PRIMA FACIE SPEED LIMITS ALONG CERTAIN STREETS IN THE CITY; AUTHORIZING INSTALLATION OF APPROPRIATE SIGNS AND MARKINGS; REPEALING ORDINANCE NO. 9945; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS ($200.00); AND ORDERING PUBLICATION

WHEREAS, under Section 542.202 and Section 545.356 of the Texas Transportation Code, the City Council is authorized to make certain findings based upon engineering and traffic investigations and to alter the prima facie speed limits on City streets or portions thereof; and

WHEREAS, the City Traffic Engineer has made studies and surveys of the traffic flowing along certain streets within the City limits of Midland, Texas; and

WHEREAS, the Council finds and determines from the above mentioned studies that certain streets, as hereinafter described in this ordinance, should be speed zoned to rates hereinafter set out in this ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That no person shall drive a vehicle on those certain streets as set out below at a speed greater than is reasonable or prudent under the circumstances then existing. The speed limits specified in this Section shall be lawful, but any speed in excess of the limits specified in this Section shall be prima facie evidence that the speed is not reasonable or prudent and is unlawful. Such speed limits are hereby fixed at the rates of speed indicated for vehicles traveling upon the named streets and highways, or parts thereof, described as follows:

A Street (both directions)

40 mph - from the northern terminus of A Street to the centerline of Loop 250

40 mph - from the centerline of Veterans Airpark Lane to the centerline of Scharbauer Drive

35 mph - from the centerline of Scharbauer Drive to the centerline of Wall Street

30 mph - from the centerline of Wall Street to the southern terminus of A Street

Avalon Drive (both directions)

40 mph - from the northern terminus of Avalon Drive to the centerline of Briarwood Avenue

40 mph - from the centerline of State Highway 191 to the southern terminus of Avalon Drive

Bent Tree Trail (both directions)

25 mph - in its entirety

Bluebird Lane (both directions)

35 mph - from the centerline of Midland Drive to the centerline of Kingston Drive

25 mph - from the centerline of Kingston Drive to the eastern terminus of Bluebird Lane

Briarwood Avenue (both directions)

60 mph - from the centerline of State Highway 158 to the centerline of Avalon Drive

45 mph - from the centerline of Avalon Drive to the centerline of Holiday Hill Road

40 mph - from the centerline of Holiday Hill Road to the centerline of Mathis Street

35 mph - from the centerline of Mathis Street to the centerline of Midland Drive

Cardinal Lane (both directions)

30 mph - from the centerline of Oriole Drive to the centerline of Midland Drive

35 mph - from the centerline of Midland Drive to the centerline of Midkiff Road

Coyote Trail (both directions)

40 mph - in its entirety

Crestgate Avenue (both directions)

25 mph - from the centerline of Midland Drive to the centerline of Gateway Street

Cuthbert Avenue (both directions)

30 mph - from the western terminus of Cuthbert Avenue to the centerline of Midkiff Road

35 mph - from the centerline of Midkiff Road the centerline of Ward Street

25 mph - from the centerline of Ward Street to the centerline of Garfield Street

25 mph - from the centerline of Garfield Street to a point 220 feet east of F Street

30 mph - from a point 220 feet east of F Street to the eastern terminus of Cuthbert Avenue

Deauville Boulevard (both directions)

40 mph - from the centerline of Avalon Drive to the centerline of Loop 250

Driftwood Drive (both directions)

25 mph - in its entirety

Fairgrounds Road (both directions)

45 mph - from the northern terminus of Fairgrounds Road to the centerline of Loop 250

50 mph - from the centerline of Loop 250 to the southern City limits

Florida Avenue (both directions)

35 mph - from the centerline of Garfield Street to the centerline of Big Spring Street

Garfield Street (both directions)

40 mph - from the northern terminus of Garfield Street to the centerline of Bluebird Lane

45 mph - from the centerline of Bluebird Lane to the centerline of Loop 250

40 mph - from the centerline of Loop 250 to the centerline of Wadley Avenue

35 mph - from the centerline of Wadley Avenue to the centerline of Michigan Avenue

Golden Gate Drive (both directions)

40 mph - from the northern terminus of Golden Gate Drive to the centerline of Briarwood Avenue

Golf Course Road (both directions)

35 mph - from the centerline of Andrew Highway/Alpine Street to the centerline of Scharbauer Drive

30 mph - from the centerline of Scharbauer Drive to the centerline of A Street

30 mph - from the centerline of Big Spring Street to the centerline of Fairgrounds Road

35 mph - from the centerline of Fairgrounds Road to the eastern terminus of Golf Course Road

Green Tree Boulevard (both directions)

35 mph - from the western terminus of Green Tree Boulevard to the centerline of Holiday Hill Road

25 mph - from the centerline of Holiday Hill Road to the centerline of Midland Drive

Holiday Hill Road (both directions)

40 mph - from the northern City limits to the centerline of Loop 250

Humble Avenue (both directions)

25 mph - from the centerline of Scharbauer Drive to the centerline of Big Spring Street

Illinois Avenue (both directions)

35 mph - from the centerline of Thomason Drive to the centerline of Andrews Highway

25 mph - from the centerline of Andrews Highway to the centerline of N Street

35 mph - from the centerline of N Street to the centerline of A Street

30 mph - from the centerline of A Street to the centerline of Front Street

Island Circle (both directions)

25 mph - in its entirety

Island Drive (both directions)

25 mph - in its entirety

La Force Boulevard (both directions)

35 mph - from the centerline of Business Interstate 20 to the centerline of Banks Drive

30 mph - from the centerline of Banks Drive to a point 590 feet east of Banks Drive

20 mph - from a point 590 feet east of Banks Drive to a point 1,155 feet east of Banks Drive

15 mph - from a point 1,155 feet east of Banks Drive to a point 2,560 feet east of Banks Drive

30 mph - from a point 2,560 feet east of Banks Drive to the centerline of La Force Boulevard

Lamesa Road (northbound)

45 mph - from the southern City limits to a point 195 feet north of the centerline of Taylor Avenue

40 mph - from a point 195 feet north of the centerline of Taylor Avenue to a point 245 feet north of the centerline of Wall Street

35 mph - from a point 245 feet north of the centerline of Wall Street to a point 170 feet north of Wadley Avenue

45 mph - from a point 170 feet north of Wadley Avenue to the centerline of the north service road of Loop 250

Lamesa Road (southbound)

45 mph - from the centerline of the north service road of Loop 250 to a point 130 feet south of the centerline of Wadley Avenue

35 mph - from a point 130 feet south of the centerline of Wadley Avenue to a point 140 feet north of the centerline of Missouri Avenue

40 mph - from a point 140 feet north of the centerline of Missouri Avenue to a point 180 feet south of the centerline of Taylor Avenue

45 mph - from a point 180 feet south of the centerline of Taylor Avenue to the southern City limits

Midkiff Road (both directions)

40 mph - from the northern terminus of Midkiff Road to the centerline of Mockingbird Drive

45 mph - from the centerline of Mockingbird Lane to the centerline of Loop 250

40 mph - from the centerline of Loop 250 to the centerline of Wall Street

35 mph - from the centerline of Wall Street to the centerline of Industrial Avenue

40 mph - from the centerline of Industrial Avenue to the centerline of Stokes Avenue

45 mph - from the centerline of Stokes Avenue to the southern City limits

Midland Drive (both directions)

35 mph - from the northern terminus of Midland Drive to the centerline of Green Tree

Boulevard

45 mph - from the centerline of Green Tree Boulevard to the centerline of Loop 250

35 mph - from the centerline of Andrews Highway to the centerline of Wall Street

Mockingbird Lane (both directions)

30 mph - from the western terminus of Mockingbird Lane to the centerline of Midland Drive

45 mph - from the centerline of Midland Drive to the centerline of Midkiff Road

40 mph - from the centerline of Midkiff Road to the centerline of Big Spring Street

45 mph - from the centerline of Big Spring Street to the eastern terminus of Mockingbird Lane

Neely Avenue (both directions)

30 mph - in its entirety

Polo Parkway (both directions)

25 mph - from the centerline of Loop 250 to the northern terminus of Polo Parkway

Roadrunner Trail (both directions)

40 mph - in its entirety

Rustic Trail (both directions)

25 mph - in its entirety

Scharbauer Drive (both directions)

35 mph - from the centerline Golf Course Road to the eastern terminus of Scharbauer Drive

Sequoia Drive (both directions)

25 mph - in its entirety

Sloan Field Boulevard (both directions)

35 mph - from the centerline of Wright Drive to the centerline of Windecker Street

30 mph - from to centerline of Windecker Street to the eastern terminus of Sloan Field Boulevard into La Force Boulevard

Solomon Lane (both directions)

30 mph - in its entirety

Teakwood Trace (both directions)

25 mph - in its entirety

Thomason Drive (both directions)

35 mph - from the western terminus of Thomason Drive to the centerline of Holly Drive/Anetta Drive

30 mph - from the centerline of Holly Drive/Anetta Drive to the centerline of Wall Street

Todd Drive (both directions)

40 mph - from the northern terminus of Todd Drive to the centerline of Golf Course Road (within the City limits)

30 mph - from the centerline of Golf Course Road to the centerline of Business Interstate 20

Tradewinds Boulevard (both directions)

35 mph - from the centerline of the south service road of State Highway 191 to the centerline of Thomason Drive

40 mph - from the centerline of Thomason Drive to the centerline of the north service road of Business Interstate 20

Tumbleweed Trail (both directions)

40 mph - in its entirety

Veterans Airpark Lane (both directions)

40 mph - in its entirety

Wadley Avenue (both directions)

40 mph - from the western terminus of Wadley Avenue to the centerline of Big Spring Street

35 mph - from the centerline of Big Spring Street to the centerline of Lamesa Road

45 mph - from the centerline of Lamesa Road to the eastern terminus of Wadley Avenue

Wall Street (both directions)

35 mph - from the centerline of Andrews Highway to the centerline of B Street

30 mph - from the centerline of B Street to the centerline of Front Street

Wright Drive (both directions)

35 mph - in its entirety

SECTION TWO. That the above speed zoning is based upon findings and determinations of the City Council made as a result of certain traffic surveys and studies made by the City Traffic Engineer.

SECTION THREE. That the Traffic Engineer of the City of Midland is hereby authorized and directed to install appropriate speed zone signs commensurate with the provisions of this ordinance.

SECTION FOUR. That any person violating the prima facie speed limits established by this ordinance shall, upon conviction, be punished by a fine of not less than one Dollar ($1.00) nor more than Two Hundred Dollars ($200.00), as fully prescribed by Section 542.401 of the Texas Transportation Code.

SECTION FIVE. That Ordinance No. 9945 is hereby expressly repealed; and the provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

Not repealed, amended, or in any way affected by this ordinance are those ordinances establishing speed limits in school zones or school crossings and those ordinances establishing temporary regulatory construction speed limits.

SECTION SIX. That repeal of the ordinances, or parts of ordinances, effectuated by the enactment of this ordinance shall not be construed as abating any actions pending under or by virtue of such ordinances; or as discontinuing, abating, modifying or altering any penalty accruing or to accrue; or as affecting the liability of any person, firm or corporation;

or as waiving any right of the municipality under any section or provision existing at the time of the passage of this ordinance.

SECTION SEVEN. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION EIGHT. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Michael Pacelli, City Traffic Engineer

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

City of Midland
Office Memorandum

DATE: August 24, 2021

TO: The Honorable Mayor and City Council Members

FROM: John Ohnemiller, City Attorney
Kevin Bailey, Assistant City Attorney

SUBJECT: An Ordinance Amending Title VI, "Police Regulations," Chapter 10, "Dangerous Dogs," of the City Code of Midland, Texas

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The proposed ordinance amends Title VI, Chapter 10, of the Midland City Code (the "Dangerous Dogs Ordinance") by adding a provision applicable to dog owner's appeal of a dangerous dog determination by the Municipal Court.

The amendment is minor in nature and provides that the Municipal Court may not order the destruction of such a dog during the pendency of a dog owner's appeal in accordance with state law.

As always, please do not hesitate to contact our office if you have any questions.

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE VI, "POLICE REGULATIONS", CHAPTER 10, "DANGEROUS DOGS", OF THE CITY CODE OF MIDLAND, TEXAS; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS ($500.00); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION

WHEREAS, the City Council finds that it is in the best interest of the health, safety and welfare of the citizens of the City of Midland to make amendments to Title VI, Chapter 10, of the Midland City Code;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That Title X, "Police Regulations", Chapter 10, "Dangerous Dogs", of the Midland City Code, is hereby amended to read in its entirety as follows:

6-10-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the following meanings:

(a) "*Authorized investigator*" means the director's designee, a City of Midland animal services officer, or a City of Midland police officer.

(b) "*Bodily injury*" means physical pain, illness, or any impairment of physical condition.

(c) *"Cat"* means a domesticated animal that is a member of the feline family.

(d) "*Dangerous dog*" means a dog that:

(1) Makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own;

(2) Commits unprovoked acts in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own and those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person; or

(3) Commits an unprovoked attack on another dog or cat that injures or harms such dog or cat and such unprovoked attack occurs in a place other than an

enclosure in which the dog committing the attack was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own.

(e) "*Director*" means the director of animal services for the City of Midland.

(f) "*Dog*" means a domesticated animal that is a member of the canine family.

(g) "*Municipal court*" means the City of Midland municipal court.

(h) "*Owner*" means a person who owns, possesses, harbors, keeps or has custody or control of a dog.

(i) "*Public place*" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, alleys, streets, rights-of-way, highways, parks, and public and private schools.

(j) "*Secure enclosure*" means a fenced area or structure that is:

(1) Locked;

(2) Capable of preventing the entry of the general public, including children;

(3) Capable of preventing the escape or release of a dog; and

(4) In conformance with the requirements for enclosures established by the City of Midland Animal Services Division.

(k) *"Serious bodily injury"* means an injury characterized by severe bite wounds or severe ripping and tearing of muscle that would cause a reasonably prudent person to seek treatment from a medical professional and would require hospitalization without regard to whether the person actually sought medical treatment.

6-10-2. Dangerous dog determination.

(a) If a person reports an incident involving an alleged dangerous dog to the director or an authorized investigator, then the director or authorized investigator, as applicable, may investigate the incident. If after conducting the investigation, the director or authorized investigator, as applicable, determines that there is probable cause to believe the dog is a dangerous dog, then the director or authorized investigator, as applicable, shall file a sworn petition in municipal court seeking a judicial determination that the dog is a dangerous dog.

(b) Notwithstanding subsection (a), the director or an authorized investigator may file a sworn petition in municipal court seeking a judicial determination that a dog is a dangerous dog based on his or her own observations and investigation without first receiving a report of an incident involving such dog.

(c) The sworn petition filed with the municipal court may contain the following information:

(1) Name, address and telephone number of the complainant;

(2) Date, time and location of the incident involving the dog;

(3) Description of the dog;

(4) Name, address and telephone number of the dog's owner, if known;

(5) A statement regarding the dog that is believed to be a dangerous dog, stating the facts upon which such petition is based;

(6) A statement that the dog has exhibited vicious propensities in past conduct, if known; or

(7) Other facts or circumstances of the incident.

6-10-3. Possession of dog pending hearing.

If after reviewing the petition, the municipal court finds that there is probable cause to believe that the dog in question is a dangerous dog, the municipal court shall order the animal services division to seize the dog and shall issue a warrant authorizing such seizure pending the hearing. The animal services division shall seize the dog and shall provide for the impoundment of the dog in secure humane conditions. If the animal services division has the alleged dangerous dog in its possession, the animal services division shall maintain such possession prior to the hearing unless the municipal court orders that the dog should be released to its owner pending the hearing.

6-10-4. Hearing.

(a) Upon filing of a petition under Section 6-10-2, the municipal court shall set a hearing to determine whether the dog is a dangerous dog. The hearing must be commenced not later than the tenth day after the dog is seized or delivered.

(b) The municipal court shall give written notice of the time and place of the hearing to:

(1) The owner of the dog or the person from whom the dog was seized;

(2) The director; and

(3) The person who filed the petition, if other than the director.

(c) Any interested party, including the city attorney's office, is entitled to present evidence at the hearing.

(d) The person who filed the petition shall have the burden of proof at the hearing. The standard of proof required is by a preponderance of the evidence.

(e) The municipal court shall render a decision in writing within 72 hours after the conclusion of the hearing.

(f) The municipal court may order the humane destruction of the dog if the owner of the dog has not been located before the fifteenth day after the seizure and impoundment of the dog.

6-10-5. Judicial determination.

(a) If the municipal court finds that the dog is not a dangerous dog, the municipal court shall order the animal services division to return the dog to the owner, if the dog is in the city's possession.

(b) If the municipal court finds that the dog is a dangerous dog, the municipal court shall order the director to immediately seize the dangerous dog, unless the dangerous dog is already in the possession of the animal services division, and further order the owner of the dangerous dog to do the following not later than the eleventh day after the municipal court has determined that the dog is a dangerous dog:

(1) Register the dangerous dog with the animal services division and pay a $50.00 yearly registration fee;

(2) Provide for a secure enclosure in which the dangerous dog will be kept and allow the animal services division reasonable access to said secure enclosure for the purpose of inspecting its sufficiency as a secure enclosure;

(3) Obtain a current animal license from the city for the dangerous dog;

(4) Obtain a current rabies vaccination for the dangerous dog;

(5) Obtain liability insurance coverage in an amount of at least $1,000,000.00 to cover damages resulting from an attack by the dangerous dog causing bodily injury to a person, with the City of Midland named as an additional insured on such insurance policy;

(6) Pay all costs or fees assessed by the City of Midland related to the seizure and impoundment of the dangerous dog, which shall include a $50.00 per day dangerous dog boarding/quarantine fee; and

(7) Provide satisfactory proof to the municipal court that the owner has complied with this subsection in all respects.

(c) If the municipal court finds that the dog caused the death of a person by attacking, biting, or mauling the person, the court shall order the dog to be humanely destroyed.

(d) If the municipal court finds that the dog caused serious bodily injury of a person by attacking, biting, or mauling the person, the court may order the dog to be humanely destroyed.

(e) If the municipal court finds that an owner has not fully complied with an order issued under subsection (b) within eleven days, the municipal court shall order the animal services division to humanely destroy the dangerous dog.

(f) Any order to destroy a dog issued by the municipal court under Subsections (c), (d) or (e) is stayed for a period of ten calendar days from the date the order is issued, during which period the dog's owner may file a notice of appeal. The municipal court may not order the destruction of a dog during the pendency of an appeal under Section 822.0424 of the Texas Health and Safety Code.

6-10-6. Dangerous dog offenses; penalties.

(a) A person commits an offense if the person is the owner of a dangerous dog and the dog makes an unprovoked attack on another person outside the dog's enclosure and causes bodily injury to that person.

(b) A person who owns or keeps custody or control of a dangerous dog commits an offense if the person fails to comply with the conditions set by the municipal court in accordance with Section 6-10-5(b) of this code or Section 822.042 of the Texas Health and Safety Code.

(c) A violation of this Section shall be punishable by a fine not to exceed $500.00. If a person is found guilty of an offense under Subsection (a), the municipal court may order the dangerous dog to be humanely destroyed.

6-10-7. Affirmative defenses.

It is an affirmative defense to prosecution under Section 6-10-6 that:

(a) The person is a veterinarian, peace officer, person employed by a recognized animal shelter, or person employed by the state or a political subdivision of the state to deal with stray animals and has temporary ownership, custody, or control of the dog in connection with the person's employment.

(b) The person is an employee of the institutional division of the Texas Department of Criminal Justice or a law enforcement agency that trains or uses dogs for law enforcement or corrections purposes.

(c) The person is an employee of a guard dog company under Chapter 1702, Texas Occupations Code, and has ownership, custody or control of the dog in connection with the person's employment.

(d) The dog was defending a person from an assault or a person's property from damage or theft by the injured person.

6-10-8. Effect.

This chapter does not affect the applicability of any other law, ordinance, rule, regulation or other legal requirement of the City of Midland or the State of Texas.

6-10-9. Governance.

The City of Midland elects to be governed by Section 822.0422 of the Texas Health and Safety Code.

SECTION TWO. The provisions of this ordinance are to be cumulative of all other ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with

any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION THREE. If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding five hundred dollars ($500.00) pursuant to state law.

SECTION FIVE. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by law as an alternative method of publishing.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council

member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

City Council Meeting

Item Number: 33

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Valerie A. Sherman, Senior Planner

Subject: AN ORDINANCE ESTABLISHING THE INITIAL ZONING CLASSIFICATIONS OF THE AREA INDICATED AS BEING A 131.190-ACRE TRACT OF LAND OUT OF SECTION 35, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AS AN LR, LOCAL RETAIL DISTRICT, IN PART, AND AN SF-3, SINGLE-FAMILY DWELLING DISTRICT, IN PART; SAID TRACT BEING GENERALLY LOCATED ON THE WEST SIDE OF STATE HIGHWAY 158, APPROXIMATELY 1,001 FEET NORTH OF STATE HIGHWAY 191; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT: NONE) (DEVELOPMENT SERVICES)

Purpose:

Consider an ordinance on a request by D.R. Horton, Inc. for the initial zoning of a 131.190-acres tract of land located in Section 35, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, located on the west side of State Highway 158, approximately 1,001 feet north of State Highway 191.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the city.

Discussion:

The applicant, D.R. Horton, Inc. is requesting the initial zoning of a 131.190- acres tract of land

located in Section 35, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, located on the west side of State Highway 158, approximately 1,001 feet north of State Highway 191, which is currently being annexed to be SF-3, Single-Family Dwelling District, in part; and LR, Local Retail District, in part.

The applicant is requesting for the initial zoning of the land to be annexed to be LR, Local Retail District for Tracts 1 and 2 (refer to Exhibit A) and SF-3, Single-Family Dwelling District for Tract 3 (refer to Exhibit A), to develop a new residential subdivision.

The site is currently in the process of being annexed into City Limits as well as in the process of being platted.

This case has been circulated to and reviewed by all pertinent City departments for internal review and has received no objections. Their comments are as follows.

Engineering: (Approved)

No objection to zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Fire: (Approved)

No objections.

Code Administration: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Oil and Gas: (Approved)

No Oil or Gas wells identified within 500 ft. permitted well radius or in the 135 ft. non-permitted well radius of location on plat.

Planning:

The Future Land Use Map in Tall City Tomorrow Comprehensive Plan calls for Urban-Medium uses in this location, encompassing a mix of housing types, neighborhood and community commercial, office and service uses.

This request was recommended for approval at the June 21, 2021 Planning and Zoning Commission meeting.

Staff recommends approval of this initial zoning of SF-3, Single-Family Dwelling District, in part; and LR, Local Retail District, in part, subject to condition A.

Conditions:

A. That the use and development of the tracts identified in Exhibit “A” as Tracts 1 and 2 shall conform to the regulations of the LR, Local Retail District.

B. That the use and development of the tract identified in Exhibit “A” as Tract 3 shall conform to the regulations of the SF-3, Single-Family Dwelling District.

Letters of Objection:

As of July 7, 2021, staff has received two letters of objection to this request.

Attachments:

Survey (Exhibit A)
Petition
Service Agreement
Application
Maps
Letters of Objection

Robert Patrick

City Manager’s Office

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING THE INITIAL ZONING CLASSIFICATIONS OF THE AREA INDICATED AS BEING A 131.190-ACRE TRACT OF LAND OUT OF SECTION 35, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AS AN LR, LOCAL RETAIL DISTRICT, IN PART, AND AN SF-3, SINGLE-FAMILY DWELLING DISTRICT, IN PART; SAID TRACT BEING GENERALLY LOCATED ON THE WEST SIDE OF STATE HIGHWAY 158, APPROXIMATELY 1,001 FEET NORTH OF STATE HIGHWAY 191; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, notice has been given to all parties in interest and citizens by publication in the official newspaper and otherwise of public hearings to be held before the City Council on July 13, 2021, and on August 24, 2021 (collectively, the "Hearing Dates"), to consider an amendment to the Zoning District Map of the City of Midland, Texas, so as to establish the initial zoning classifications of the property described in Section One hereof as an LR, Local Retail District, in part, and an SF-3, Single-Family Dwelling District, in part, as set out in Title XI, Chapter 1 of the City Code of Midland, Texas; and

WHEREAS, such public hearings were held in the Council Chambers on the Hearing Dates, as advertised; and

WHEREAS, after full hearings, at which all parties in interest and citizens were given an opportunity to be heard; and after considering among other things, the character of the property involved and the surrounding area and its peculiar suitability for particular uses; and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality, the Council finds it to be in the best interest of the health, safety, morals and general welfare of the City of Midland to amend the Zoning District Map accordingly;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the initial zoning classifications of the area indicated on Exhibit "A", attached hereto and incorporated herein by reference, are hereby established as follows:

A. The zoning classification of the tracts identified in Exhibit "A" as Tract 1 and Tract 2 is established as an LR, Local Retail District.

B. The zoning classification of the tract identified in Exhibit "A" as Tract 3 is established as an SF-3, Single-Family Dwelling District.

The Zoning District Map of the City of Midland, Texas, is hereby amended to reflect the establishment of these initial zoning classifications.

SECTION TWO. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION THREE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION FIVE. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on

first reading, the ___day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the ___ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

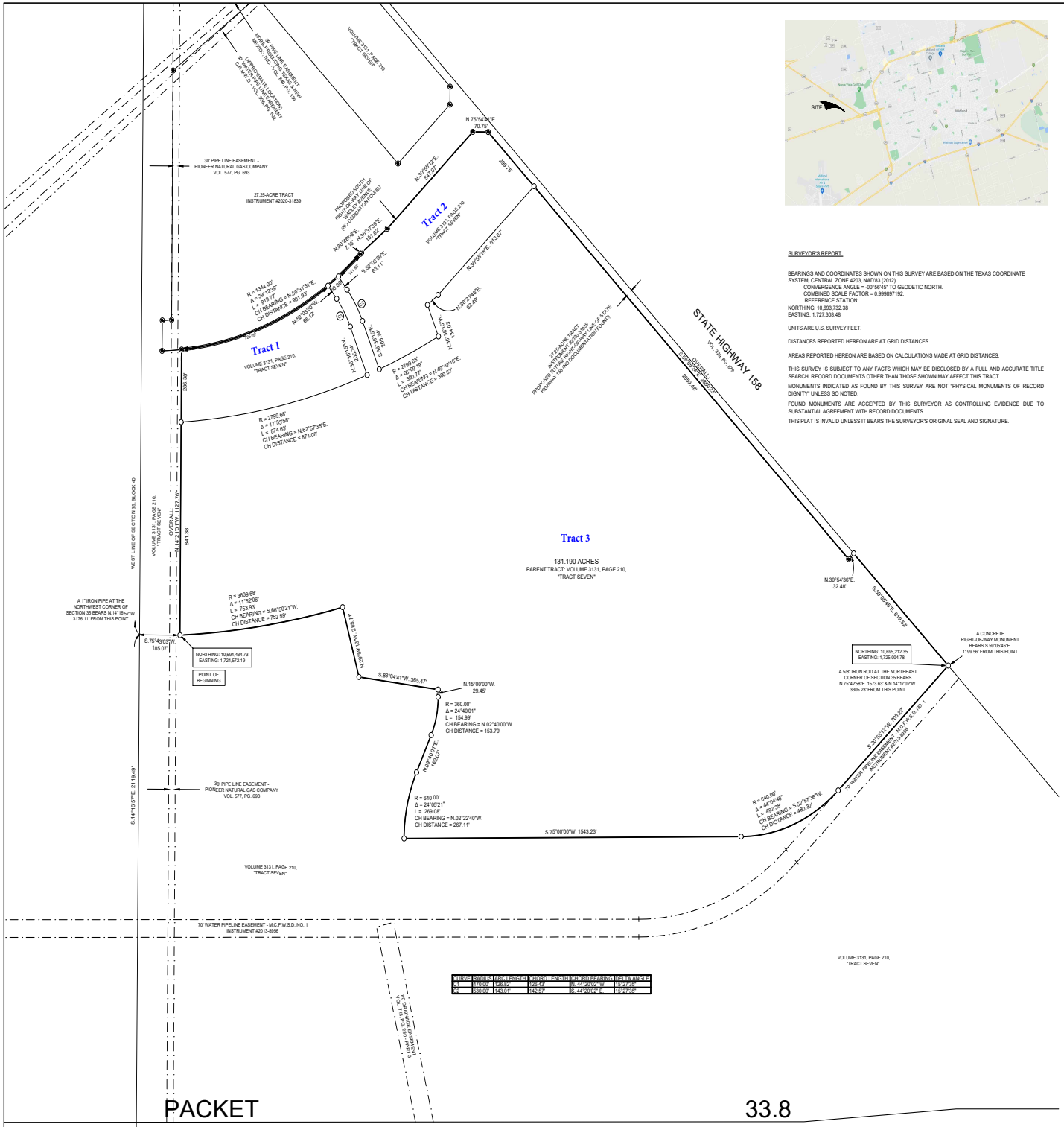
_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney



CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	470.00'	126.82'	126.43'	S. 44°29'05" W.	15°27'49"
C2	830.00'	134.01'	133.87'	S. 44°29'05" E.	15°27'49"

A PERIMETER SURVEY OF A 131.190-ACRE TRACT IN SECTION 35, BLOCK 40, T-1-S, T. & P. RAILROAD SURVEY,

MIDLAND COUNTY, TEXAS

PARENT TRACT: A 982.1540-ACRE TRACT OF LAND DESCRIBED AS "TRACT SEVEN" IN A WARRANTY DEED RECORDED IN VOLUME 3131, PAGE 210 OF THE OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY, TEXAS

SURVEYORS REPORT:

BEARINGS AND COORDINATES SHOWN ON THIS SURVEY ARE BASED ON THE TEXAS COORDINATE SYSTEM, CENTRAL ZONE 4203, NAD83 (2012).
CONVERGENCE ANGLE = -00°56'45" TO GEODETIC NORTH.
COMBINED SCALE FACTOR = 0.999897192.
REFERENCE STATION:
NORTHING: 10,693,732.38
EASTING: 1,727,308.48

UNITS ARE U.S. SURVEY FEET.

DISTANCES REPORTED HEREON ARE AT GRID DISTANCES.

AREAS REPORTED HEREON ARE BASED ON CALCULATIONS MADE AT GRID DISTANCES.

THIS SURVEY IS SUBJECT TO ANY FACTS WHICH MAY BE DISCLOSED BY A FULL AND ACCURATE TITLE SEARCH. RECORD DOCUMENTS OTHER THAN THOSE SHOWN MAY AFFECT THIS TRACT.

MONUMENTS INDICATED AS FOUND BY THIS SURVEY ARE NOT "PHYSICAL MONUMENTS OF RECORD DIGNITY" UNLESS SO NOTED.

FOUND MONUMENTS ARE ACCEPTED BY THIS SURVEYOR AS CONTROLLING EVIDENCE DUE TO SUBSTANTIAL AGREEMENT WITH RECORD DOCUMENTS.

THIS PLAT IS INVALID UNLESS IT BEARS THE SURVEYOR'S ORIGINAL SEAL AND SIGNATURE.

LEGAL DESCRIPTION:

A 131.190-ACRE TRACT OF LAND IN SECTION 35, BLOCK 40, T-1-S, T. & P. RAILROAD SURVEY, ABSTRACT NUMBER 378, MIDLAND COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 982.154-ACRE TRACT OF LAND CONVEYED TO CUMBERLAND AND WESTERN RESOURCES, LLC, DESCRIBED AS "TRACT SEVEN" IN A WARRANTY DEED RECORDED IN VOLUME 3131, PAGE 210 OF THE OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY, TEXAS, SAID 131.190-ACRE TRACT BEING FURTHER DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

(1) THENCE NORTH 14 DEGREES 21 MINUTES 01 SECONDS WEST A DISTANCE OF 1127.76 FEET TO A POINT IN A CURVE IN THE PROPOSED SOUTHEAST RIGHT-OF-WAY LINE OF WADLEY AVENUE, IN THE SOUTH LINE OF A 27.25-ACRE TRACT OF LAND CONVEYED TO CWS ROYALE, SW, L.P., DESCRIBED IN A SPECIAL WARRANTY DEED WITH VENDOR'S LIEN RECORDED IN INSTRUMENT 2020-31839 OF THE OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY, TEXAS, FOR THE NORTHWEST CORNER OF THIS TRACT, WHENCE A 5/8-INCH IRON ROD WITH A PLASTIC CAP MARKED "KHA" FOUND AT THE SOUTHWEST CORNER OF SAID 27.25-ACRE TRACT BEARS SOUTH 72 DEGREES 02 MINUTES 05 SECONDS WEST A CHORD DISTANCE OF 89.32 FEET;

(2) THENCE NORTHEASTERLY, ALONG THE PROPOSED SOUTHEAST RIGHT-OF-WAY LINE OF SAID WADLEY AVENUE AND THE SOUTH LINE OF SAID 27.25-ACRE TRACT, AND A CURVE TO THE LEFT, AN ARC DISTANCE OF 919.77 FEET, SAID CURVE HAVING A RADIUS OF 1344.00 FEET, A DELTA ANGLE OF 39 DEGREES 12 MINUTES 39 SECONDS, A CHORD BEARING OF NORTH 50 DEGREES 31 MINUTES 31 SECONDS EAST, AND A CHORD DISTANCE OF 901.93 FEET TO A 5/8-INCH IRON ROD WITH A PLASTIC CAP MARKED "KHA" FOUND AT A POINT OF INTERSECTION FOR A CORNER OF THIS TRACT;

(3) THENCE NORTH 30 DEGREES 46 MINUTES 03 SECONDS EAST, ALONG THE PROPOSED SOUTHEAST RIGHT-OF-WAY LINE OF SAID WADLEY AVENUE AND THE SOUTH LINE OF SAID 27.25-ACRE TRACT, A DISTANCE OF 7.15 FEET TO A 5/8-INCH IRON ROD WITH A PLASTIC CAP MARKED "KHA" FOUND AT A POINT OF INTERSECTION FOR A CORNER OF THIS TRACT;

(4) THENCE NORTH 36 DEGREES 37 MINUTES 39 SECONDS EAST, ALONG THE PROPOSED SOUTHEAST RIGHT-OF-WAY LINE OF SAID WADLEY AVENUE AND THE SOUTH LINE OF SAID 27.25-ACRE TRACT, A DISTANCE OF 151.02 FEET TO A 5/8-INCH IRON ROD WITH A PLASTIC CAP MARKED "KHA" FOUND AT A POINT OF INTERSECTION FOR A CORNER OF THIS TRACT;

(5) THENCE NORTH 30 DEGREES 55 MINUTES 12 SECONDS EAST, ALONG THE PROPOSED SOUTHEAST RIGHT-OF-WAY LINE OF SAID WADLEY AVENUE AND THE SOUTH LINE OF SAID 27.25-ACRE TRACT, A DISTANCE OF 547.07 FEET TO A 5/8-INCH IRON ROD WITH A PLASTIC CAP MARKED "KHA" FOUND AT A POINT OF INTERSECTION FOR A CORNER OF THIS TRACT;

(6) THENCE NORTH 75 DEGREES 54 MINUTES 41 SECONDS EAST, ALONG THE PROPOSED SOUTHEAST RIGHT-OF-WAY LINE OF SAID WADLEY AVENUE AND THE SOUTH LINE OF SAID 27.25-ACRE TRACT, A DISTANCE OF 70.75 FEET TO A 5/8-INCH IRON ROD WITH A PLASTIC CAP MARKED "KHA" FOUND AT A POINT OF INTERSECTION IN THE PROPOSED OUTHWEST RIGHT-OF-WAY LINE OF STATE HIGHWAY 158 AND THE SOUTHWEST LINE OF SAID 27.25-ACRE TRACT, FOR THE NORTHEAST CORNER OF THIS TRACT;

(7) THENCE SOUTH 59 DEGREES 05 MINUTES 24 SECONDS EAST, ALONG THE PROPOSED SOUTHWEST RIGHT-OF-WAY LINE OF SAID STATE HIGHWAY 158 AND THE SOUTHWEST LINE OF SAID 27.25-ACRE TRACT, A DISTANCE OF 2359.23 FEET TO A 5/8-INCH IRON ROD WITH A PLASTIC CAP MARKED "KHA" FOUND AT A POINT OF INTERSECTION FOR A CORNER OF THIS TRACT;

(8) THENCE NORTH 30 DEGREES 54 MINUTES 36 SECONDS EAST A DISTANCE OF 32.48 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET IN THE EXISTING SOUTHWEST RIGHT-OF-WAY LINE OF STATE HIGHWAY 158, DESCRIBED IN A DEED RECORDED IN VOLUME 329, PAGE 679 OF THE DEED RECORDS OF MIDLAND COUNTY, TEXAS, AT A POINT OF INTERSECTION FOR A CORNER OF THIS TRACT;

(9) THENCE SOUTH 59 DEGREES 05 MINUTES 45 SECONDS EAST, ALONG THE EXISTING SOUTHWEST RIGHT-OF-WAY LINE OF SAID STATE HIGHWAY 158, A DISTANCE OF 619.52 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET IN THE NORTHWEST LINE OF A 70-FOOT WIDE WATER PIPELINE EASEMENT CONVEYED TO THE MIDLAND COUNTY FRESH WATER SUPPLY DISTRICT NO. 1, RECORDED IN INSTRUMENT 2013-8956 OF THE OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY, TEXAS, FOR THE SOUTHEAST CORNER OF THIS TRACT, SAID POINT HAVING COORDINATES OF NORTHING: 10,695,212.35 AND EASTING: 1,725,004.78, TEXAS COORDINATE SYSTEM, CENTRAL ZONE 4203, NORTH AMERICAN DATUM OF 1983, WHENCE A CONCRETE RIGHT-OF-WAY MONUMENT FOUND IN THE SOUTHWEST RIGHT-OF-WAY LINE OF SAID STATE HIGHWAY 158 BEARS SOUTH 58 DEGREES 05 MINUTES 45 SECONDS EAST A DISTANCE OF 1199.56 FEET AND A 5/8-INCH IRON ROD FOUND AT THE NORTHEAST CORNER OF SAID SECTION 35 BEARS NORTH 75 DEGREES 42 MINUTES 58 SECONDS EAST A DISTANCE OF 1573.63 FEET AND NORTH 14 DEGREES 17 MINUTES 02 SECONDS WEST A DISTANCE OF 3305.23 FEET;

(10) THENCE SOUTH 30 DEGREES 55 MINUTES 12 SECONDS WEST, ALONG THE NORTHWEST LINE OF SAID 70-FOOT WIDE WATER PIPELINE EASEMENT, A DISTANCE OF 705.22 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF CURVATURE FOR A CORNER OF THIS TRACT;

(11) THENCE SOUTHWESTERLY, ALONG A CURVE TO THE RIGHT, AN ARC DISTANCE OF 492.38 FEET, SAID CURVE HAVING A RADIUS OF 640.00 FEET, A DELTA ANGLE OF 44 DEGREES 04 MINUTES 48 SECONDS, A CHORD BEARING OF SOUTH 52 DEGREES 57 MINUTES 36 SECONDS WEST, AND A CHORD DISTANCE OF 480.32 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF TANGENCY FOR A CORNER OF THIS TRACT;

(12) THENCE SOUTH 75 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 1543.23 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF INTERSECTION FOR THE MOST SOUTHERLY SOUTHWEST CORNER OF THIS TRACT;

(13) THENCE NORTHWESTERLY, ALONG A CURVE TO THE RIGHT, AN ARC DISTANCE OF 269.08 FEET, SAID CURVE HAVING A RADIUS OF 640.00 FEET, A DELTA ANGLE OF 24 DEGREES 05 MINUTES 21 SECONDS, A CHORD BEARING OF NORTH 02 DEGREES 22 MINUTES 40 SECONDS WEST, AND A CHORD DISTANCE OF 267.11 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF TANGENCY FOR A CORNER OF THIS TRACT;

(14) THENCE NORTH 09 DEGREES 40 MINUTES 01 SECONDS EAST A DISTANCE OF 162.07 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF CURVATURE FOR A CORNER OF THIS TRACT;

(15) THENCE NORTHWESTERLY, ALONG A CURVE TO THE LEFT, AN ARC DISTANCE OF 154.99 FEET, SAID CURVE HAVING A RADIUS OF 360.00 FEET, A DELTA ANGLE OF 24 DEGREES 40 MINUTES 01 SECONDS, A CHORD BEARING OF NORTH 02 DEGREES 40 MINUTES 00 SECONDS WEST, AND A CHORD DISTANCE OF 153.79 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF TANGENCY FOR A CORNER OF THIS TRACT;

(16) THENCE NORTH 15 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 29.45 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF INTERSECTION FOR AN ELL CORNER OF THIS TRACT;

(17) THENCE SOUTH 83 DEGREES 04 MINUTES 41 SECONDS WEST A DISTANCE OF 365.47 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF INTERSECTION FOR A CORNER OF THIS TRACT;

(18) THENCE NORTH 29 DEGREES 59 MINUTES 13 SECONDS WEST A DISTANCE OF 285.71 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF INTERSECTION FOR AN ELL CORNER OF THIS TRACT;

(19) THENCE SOUTHWESTERLY, ALONG A CURVE TO THE RIGHT, AN ARC DISTANCE OF 753.93 FEET, SAID CURVE HAVING A RADIUS OF 3639.68 FEET, A DELTA ANGLE OF 11 DEGREES 52 MINUTES 06 SECONDS, A CHORD BEARING OF SOUTH 66 DEGREES 50 MINUTES 21 SECONDS WEST, AND A CHORD DISTANCE OF 752.59 FEET TO THE POINT OF BEGINNING. BEARINGS AND COORDINATES CALLED IN THIS DESCRIPTION ARE BASED ON THE TEXAS COORDINATE SYSTEM, CENTRAL ZONE 4203, NORTH AMERICAN DATUM OF 1983. CONVERGENCE TO GEODETIC NORTH IS -00 DEGREES 56 MINUTES 45 SECONDS AT A CITY OF MIDLAND MONUMENT WITH COORDINATE VALUES OF NORTHING: 10,693,732.38 AND EASTING: 1,727,308.48, U.S. SURVEY FEET. DISTANCES CALLED IN THIS DESCRIPTION ARE GRID DISTANCES. AREAS REPORTED IN THIS DESCRIPTION ARE BASED ON CALCULATIONS MADE WITH GRID DISTANCES.

THIS PLAT WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY AND THE INFORMATION HEREON REPRESENTS THE FINDINGS OF THIS SURVEY TO THE BEST OF MY KNOWLEDGE AND BELIEF.

SURVEYED: FEBRUARY 05, 2021

SAMUEL WYATT
R.P.L.S. 6453

August 24, 2021

Parkhill
Parkhill.com
TBPELS FIRM REGISTRATION NO. 10194091

MIDLAND
Planning Division

Annexation/Initial Zoning Application

Project Number: A-21-0026

Case Number: Z-21-0228

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: D.R. Horton, Inc		Phone ( ) Email	
Address 6751 North Freeway	City Fort Worth	State Texas	Zip 76131

Property Owner Printed Name: Cumberland & Western Resources LLC		Phone ( ) Email	
Address 2200 Lapsley Lane	City Bowling Green	State KY	Zip 42103

Representative *(if different from Applicant or Property Owner)* Firm: Parkhill Printed Name: Josh Wallender (Proj # 4534.21)		Phone (432) 697-1447 Email jwallender @parkhill.com	
Address 1700 W Wall Street	City Midland	State Texas	Zip 79701

Street Address: See Attached metes and bounds

Legal Description
Lot: Block: Subdivision:

Current Zoning: N/A

Proposed Zone: SF-3 & LR
(List by tracts if more than one district is requested)

Reason for Annexation/Zone Change Request: New Residential Subdivision

Present Use of Property: Vacant

Proposed Use of Property: Residential

How would this annexation/zone change affect the public health, safety and welfare? It will provide additional housing and development of the community.

Describe how this annexation/zone change will affect adjacent properties: It will improve access and utilization of the surrounding properties

Submittal and Fees
Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature):	Date:
Applicant (printed):	
Property Owner (signature):	Date: 5/10/21
Property Owner (printed) : GREG BETTERTON	

The Annexation/Initial Zoning shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Josh Wallender who, being by me duly sworn, upon oath says: That (s)he is authorized by Cumberland + Western, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Authorized Agent (*signature*)

Subscribed and sworn to before me, this 14 day of May, 2021, to certify which witness my hand and seal of office.

SHERI MULLINS
My Notary ID # 8145198
Expires October 10, 2022

Sheri Mullins

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☐ Property Owner Authorization	☐ Metes and Bounds (Sealed by Surveyor)
☐ Application Fee	☐ Files in Digital Format (PDF/JPEG)
Check #_____	☐ Petition
Received By:	Date:

****Application will not be considered for scheduling until reviewed by a planner.****

PETITION FOR ANNEXATION

Dear City of Midland:

As current owner of the tract(s) of land described in Exhibit(s) 'A' (the "Property"), said Exhibit(s) being attached hereto and incorporated herein, Cumberland & Western Resources, LLC ("Owner") submits this petition for annexation and hereby requests that the Property be added to and annexed to the City of Midland.

Signature of Owner or Owner's Authorized Representative

GREG BETTERTON

Printed Name

MANAGER

Title

THE STATE OF Florida §

§

COUNTY OF Sarasota §

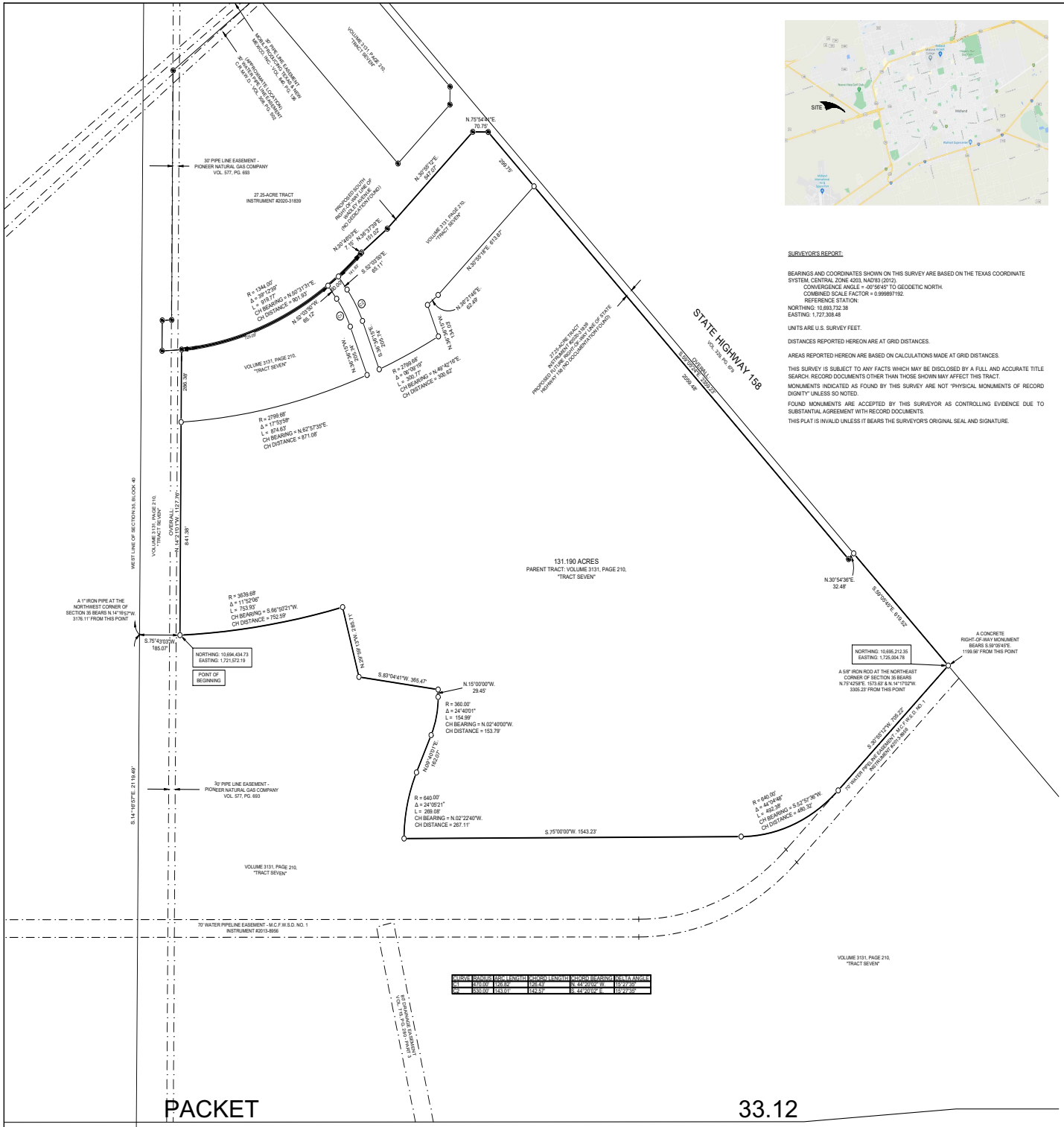
This instrument was acknowledged before me on the 10 day of May, 2021, by Greg Betterton in the capacity herein stated.

MY COMMISSION EXPIRES

Notary Public, State of FL

NOTARY PUBLIC STATE OF FLORIDA

ELISE J. DURANCEAU
Commission # HH 082709
Expires March 8, 2025
Bonded Thru Budget Notary Services



CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	470.00'	129.82'	129.43'	S. 44°29'05" W.	15°49'39"
C2	530.00'	146.41'	145.97'	S. 44°29'05" E.	15°49'39"

A PERIMETER SURVEY OF A 131.190-ACRE TRACT IN SECTION 35, BLOCK 40, T-1-S, T. & P. RAILROAD SURVEY,

MIDLAND COUNTY, TEXAS

PARENT TRACT: A 982.1540-ACRE TRACT OF LAND DESCRIBED AS "TRACT SEVEN" IN A WARRANTY DEED RECORDED IN VOLUME 3131, PAGE 210 OF THE OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY, TEXAS

SURVEYOR'S REPORT:

BEARINGS AND COORDINATES SHOWN ON THIS SURVEY ARE BASED ON THE TEXAS COORDINATE SYSTEM, CENTRAL ZONE 4203, NAD83 (2012).
CONVERGENCE ANGLE = -00°56'45" TO GEODETIC NORTH.
COMBINED SCALE FACTOR = 0.999897192.
REFERENCE STATION:
NORTHING: 10,693,732.38
EASTING: 1,727,308.48

UNITS ARE U.S. SURVEY FEET.

DISTANCES REPORTED HEREON ARE AT GRID DISTANCES.

AREAS REPORTED HEREON ARE BASED ON CALCULATIONS MADE AT GRID DISTANCES.

THIS SURVEY IS SUBJECT TO ANY FACTS WHICH MAY BE DISCLOSED BY A FULL AND ACCURATE TITLE SEARCH. RECORD DOCUMENTS OTHER THAN THOSE SHOWN MAY AFFECT THIS TRACT.

MONUMENTS INDICATED AS FOUND BY THIS SURVEY ARE NOT "PHYSICAL MONUMENTS OF RECORD DIGNITY" UNLESS SO NOTED.

FOUND MONUMENTS ARE ACCEPTED BY THIS SURVEYOR AS CONTROLLING EVIDENCE DUE TO SUBSTANTIAL AGREEMENT WITH RECORD DOCUMENTS.

THIS PLAT IS INVALID UNLESS IT BEARS THE SURVEYOR'S ORIGINAL SEAL AND SIGNATURE.

LEGAL DESCRIPTION:

A 131.190-ACRE TRACT OF LAND IN SECTION 35, BLOCK 40, T-1-S, T. & P. RAILROAD SURVEY, ABSTRACT NUMBER 378, MIDLAND COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 982.154-ACRE TRACT OF LAND CONVEYED TO CUMBERLAND AND WESTERN RESOURCES, LLC, DESCRIBED AS "TRACT SEVEN" IN A WARRANTY DEED RECORDED IN VOLUME 3131, PAGE 210 OF THE OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY, TEXAS, SAID 131.190-ACRE TRACT BEING FURTHER DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

(1) THENCE NORTH 14 DEGREES 21 MINUTES 01 SECONDS WEST A DISTANCE OF 1127.76 FEET TO A POINT IN A CURVE IN THE PROPOSED SOUTHEAST RIGHT-OF-WAY LINE OF WADLEY AVENUE, IN THE SOUTH LINE OF A 27.25-ACRE TRACT OF LAND CONVEYED TO CWS ROYALE, SW, L.P., DESCRIBED IN A SPECIAL WARRANTY DEED WITH VENDOR'S LIEN RECORDED IN INSTRUMENT 2020-31839 OF THE OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY, TEXAS, FOR THE NORTHWEST CORNER OF THIS TRACT, WHENCE A 5/8-INCH IRON ROD WITH A PLASTIC CAP MARKED "KHA" FOUND AT THE SOUTHWEST CORNER OF SAID 27.25-ACRE TRACT BEARS SOUTH 72 DEGREES 02 MINUTES 05 SECONDS WEST A CHORD DISTANCE OF 89.32 FEET;

(2) THENCE NORTHEASTERLY, ALONG THE PROPOSED SOUTHEAST RIGHT-OF-WAY LINE OF SAID WADLEY AVENUE AND THE SOUTH LINE OF SAID 27.25-ACRE TRACT, AND A CURVE TO THE LEFT, AN ARC DISTANCE OF 919.77 FEET, SAID CURVE HAVING A RADIUS OF 1344.05 FEET, A DELTA ANGLE OF 39 DEGREES 12 MINUTES 39 SECONDS, A CHORD BEARING OF NORTH 50 DEGREES 31 MINUTES 31 SECONDS EAST, AND A CHORD DISTANCE OF 901.93 FEET TO A 5/8-INCH IRON ROD WITH A PLASTIC CAP MARKED "KHA" FOUND AT A POINT OF INTERSECTION FOR A CORNER OF THIS TRACT;

(3) THENCE NORTH 30 DEGREES 46 MINUTES 03 SECONDS EAST, ALONG THE PROPOSED SOUTHEAST RIGHT-OF-WAY LINE OF SAID WADLEY AVENUE AND THE SOUTH LINE OF SAID 27.25-ACRE TRACT, A DISTANCE OF 7.15 FEET TO A 5/8-INCH IRON ROD WITH A PLASTIC CAP MARKED "KHA" FOUND AT A POINT OF INTERSECTION FOR A CORNER OF THIS TRACT;

(4) THENCE NORTH 36 DEGREES 37 MINUTES 39 SECONDS EAST, ALONG THE PROPOSED SOUTHEAST RIGHT-OF-WAY LINE OF SAID WADLEY AVENUE AND THE SOUTH LINE OF SAID 27.25-ACRE TRACT, A DISTANCE OF 151.02 FEET TO A 5/8-INCH IRON ROD WITH A PLASTIC CAP MARKED "KHA" FOUND AT A POINT OF INTERSECTION FOR A CORNER OF THIS TRACT;

(5) THENCE NORTH 30 DEGREES 55 MINUTES 12 SECONDS EAST, ALONG THE PROPOSED SOUTHEAST RIGHT-OF-WAY LINE OF SAID WADLEY AVENUE AND THE SOUTH LINE OF SAID 27.25-ACRE TRACT, A DISTANCE OF 547.07 FEET TO A 5/8-INCH IRON ROD WITH A PLASTIC CAP MARKED "KHA" FOUND AT A POINT OF INTERSECTION FOR A CORNER OF THIS TRACT;

(6) THENCE NORTH 75 DEGREES 54 MINUTES 41 SECONDS EAST, ALONG THE PROPOSED SOUTHEAST RIGHT-OF-WAY LINE OF SAID WADLEY AVENUE AND THE SOUTH LINE OF SAID 27.25-ACRE TRACT, A DISTANCE OF 70.75 FEET TO A 5/8-INCH IRON ROD WITH A PLASTIC CAP MARKED "KHA" FOUND AT A POINT OF INTERSECTION IN THE PROPOSED OUTHWEST RIGHT-OF-WAY LINE OF STATE HIGHWAY 158 AND THE SOUTHWEST LINE OF SAID 27.25-ACRE TRACT, FOR THE NORTHEAST CORNER OF THIS TRACT;

(7) THENCE SOUTH 59 DEGREES 05 MINUTES 24 SECONDS EAST, ALONG THE PROPOSED SOUTHWEST RIGHT-OF-WAY LINE OF SAID STATE HIGHWAY 158 AND THE SOUTHWEST LINE OF SAID 27.25-ACRE TRACT, A DISTANCE OF 2359.23 FEET TO A 5/8-INCH IRON ROD WITH A PLASTIC CAP MARKED "KHA" FOUND AT A POINT OF INTERSECTION FOR A CORNER OF THIS TRACT;

(8) THENCE NORTH 30 DEGREES 54 MINUTES 36 SECONDS EAST A DISTANCE OF 32.48 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET IN THE EXISTING SOUTHWEST RIGHT-OF-WAY LINE OF STATE HIGHWAY 158, DESCRIBED IN A DEED RECORDED IN VOLUME 329, PAGE 679 OF THE DEED RECORDS OF MIDLAND COUNTY, TEXAS, AT A POINT OF INTERSECTION FOR A CORNER OF THIS TRACT;

(9) THENCE SOUTH 59 DEGREES 05 MINUTES 45 SECONDS EAST, ALONG THE EXISTING SOUTHWEST RIGHT-OF-WAY LINE OF SAID STATE HIGHWAY 158, A DISTANCE OF 619.52 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET IN THE NORTHWEST LINE OF A 70-FOOT WIDE WATER PIPELINE EASEMENT CONVEYED TO THE MIDLAND COUNTY FRESH WATER SUPPLY DISTRICT NO. 1, RECORDED IN INSTRUMENT 2013-8956 OF THE OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY, TEXAS, FOR THE SOUTHEAST CORNER OF THIS TRACT, SAID POINT HAVING COORDINATES OF NORTHING: 10,695,212.35 AND EASTING: 1,725,004.78, TEXAS COORDINATE SYSTEM, CENTRAL ZONE 4203, NORTH AMERICAN DATUM OF 1983, WHENCE A CONCRETE RIGHT-OF-WAY MONUMENT FOUND IN THE SOUTHWEST RIGHT-OF-WAY LINE OF SAID STATE HIGHWAY 158 BEARS SOUTH 59 DEGREES 05 MINUTES 45 SECONDS EAST A DISTANCE OF 1199.56 FEET AND A 5/8-INCH IRON ROD FOUND AT THE NORTHEAST CORNER OF SAID SECTION 35 BEARS NORTH 75 DEGREES 42 MINUTES 58 SECONDS EAST A DISTANCE OF 1573.63 FEET AND NORTH 14 DEGREES 17 MINUTES 02 SECONDS WEST A DISTANCE OF 3305.23 FEET;

(10) THENCE SOUTH 30 DEGREES 55 MINUTES 12 SECONDS WEST, ALONG THE NORTHWEST LINE OF SAID 70-FOOT WIDE WATER PIPELINE EASEMENT, A DISTANCE OF 705.22 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF CURVATURE FOR A CORNER OF THIS TRACT;

(11) THENCE SOUTHWESTERLY, ALONG A CURVE TO THE RIGHT, AN ARC DISTANCE OF 492.38 FEET, SAID CURVE HAVING A RADIUS OF 640.00 FEET, A DELTA ANGLE OF 44 DEGREES 04 MINUTES 48 SECONDS, A CHORD BEARING OF SOUTH 52 DEGREES 57 MINUTES 36 SECONDS WEST, AND A CHORD DISTANCE OF 480.32 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF TANGENCY FOR A CORNER OF THIS TRACT;

(12) THENCE SOUTH 75 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 1543.23 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF INTERSECTION FOR THE MOST SOUTHERLY SOUTHWEST CORNER OF THIS TRACT;

(13) THENCE NORTHWESTERLY, ALONG A CURVE TO THE RIGHT, AN ARC DISTANCE OF 269.08 FEET, SAID CURVE HAVING A RADIUS OF 640.00 FEET, A DELTA ANGLE OF 24 DEGREES 05 MINUTES 21 SECONDS, A CHORD BEARING OF NORTH 02 DEGREES 22 MINUTES 40 SECONDS WEST, AND A CHORD DISTANCE OF 267.11 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF TANGENCY FOR A CORNER OF THIS TRACT;

(14) THENCE NORTH 09 DEGREES 40 MINUTES 01 SECONDS EAST A DISTANCE OF 162.07 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF CURVATURE FOR A CORNER OF THIS TRACT;

(15) THENCE NORTHWESTERLY, ALONG A CURVE TO THE LEFT, AN ARC DISTANCE OF 154.99 FEET, SAID CURVE HAVING A RADIUS OF 360.00 FEET, A DELTA ANGLE OF 24 DEGREES 40 MINUTES 01 SECONDS, A CHORD BEARING OF NORTH 02 DEGREES 40 MINUTES 00 SECONDS WEST, AND A CHORD DISTANCE OF 153.79 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF TANGENCY FOR A CORNER OF THIS TRACT;

(16) THENCE NORTH 15 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 29.45 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF INTERSECTION FOR AN ELL CORNER OF THIS TRACT;

(17) THENCE SOUTH 83 DEGREES 04 MINUTES 41 SECONDS WEST A DISTANCE OF 365.47 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF INTERSECTION FOR A CORNER OF THIS TRACT;

(18) THENCE NORTH 29 DEGREES 59 MINUTES 13 SECONDS WEST A DISTANCE OF 285.71 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF INTERSECTION FOR AN ELL CORNER OF THIS TRACT;

(19) THENCE SOUTHWESTERLY, ALONG A CURVE TO THE RIGHT, AN ARC DISTANCE OF 753.93 FEET, SAID CURVE HAVING A RADIUS OF 3639.68 FEET, A DELTA ANGLE OF 11 DEGREES 52 MINUTES 06 SECONDS, A CHORD BEARING OF SOUTH 66 DEGREES 50 MINUTES 21 SECONDS WEST, AND A CHORD DISTANCE OF 752.59 FEET TO THE POINT OF BEGINNING. BEARINGS AND COORDINATES CALLED IN THIS DESCRIPTION ARE BASED ON THE TEXAS COORDINATE SYSTEM, CENTRAL ZONE 4203, NORTH AMERICAN DATUM OF 1983. CONVERGENCE TO GEODETIC NORTH IS -00 DEGREES 56 MINUTES 45 SECONDS AT A CITY OF MIDLAND MONUMENT WITH COORDINATE VALUES OF NORTHING: 10,693,732.38 AND EASTING: 1,727,308.48, U.S. SURVEY FEET. DISTANCES CALLED IN THIS DESCRIPTION ARE GRID DISTANCES. AREAS REPORTED IN THIS DESCRIPTION ARE BASED ON CALCULATIONS MADE WITH GRID DISTANCES.

THIS PLAT WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY AND THE INFORMATION HEREON REPRESENTS THE FINDINGS OF THIS SURVEY TO THE BEST OF MY KNOWLEDGE AND BELIEF.

SURVEYED: FEBRUARY 05, 2021

SAMUEL WYATT
R.P.L.S. 6453

August 24, 2021

Parkhill
Parkhill.com
TBPELS FIRM REGISTRATION NO. 10194091

PACKET 33.12

Parkhill

A 131.190-ACRE TRACT OF LAND IN SECTION 35, BLOCK 40, T-1-S, T. & P. RR. SURVEY, ABSTRACT NO. 378, MIDLAND COUNTY, TEXAS

A 131.190-acre tract of land in Section 35, Block 40, T-1-S, T. & P. Railroad Survey, Abstract Number 378, Midland County, Texas, being a portion of that certain 982.154-acre tract of land conveyed to Cumberland and Western Resources, LLC, described as "Tract Seven" in a warranty deed recorded in Volume 3131, Page 210 of the Official Public Records of Midland County, Texas, said 131.190-acre tract being further described by metes and bounds as follows:

BEGINNING at a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set for the most westerly southwest corner of this tract, said beginning point having coordinates of NORTHING: 10,694,434.73 and EASTING: 1,721,572.19, Texas Coordinate System, Central Zone 4203, North American Datum of 1983, whence a 1-inch iron pipe found at the northwest corner of said Section 35 bears *South 75 degrees 43 minutes 03 seconds West* a distance of 185.07 feet and *North 14 degrees 16 minutes 57 seconds West* a distance of 3176.11 feet and the previous location of a 1/2-inch iron rod in a rock mound at the southwest corner of said Section 35 bears *South 75 degrees 43 minutes 03 seconds West* a distance of 185.07 feet and *South 14 degrees 16 minutes 57 seconds East* a distance of 2119.49 feet;

(1) THENCE *North 14 degrees 21 minutes 01 seconds West* a distance of 1127.76 feet to a point in a curve in the proposed southeast right-of-way line of Wadley Avenue, in the south line of a 27.25-acre tract of land conveyed to CWS Royale, SW, L.P., described in a special warranty deed with vendor's lien recorded in Instrument 2020-31839 of the Official Public Records of Midland County, Texas, for the northwest corner of this tract, whence a 5/8-inch iron rod with a plastic cap marked "KHA" found at the southwest corner of said 27.25-acre tract bears *South 72 degrees 02 minutes 05 seconds West* a chord distance of 89.32 feet;

(2) THENCE northeasterly, along the proposed southeast right-of-way line of said Wadley Avenue and the south line of said 27.25-acre tract, and a curve to the left, an arc distance of 919.77 feet, said curve having a radius of 1344.00 feet, a delta angle of *39 degrees 12 minutes 39 seconds*, a chord bearing of *North 50 degrees 31 minutes 31 seconds East*, and a chord distance of 901.93 feet to a 5/8-inch iron rod with a plastic cap marked "KHA" found at a point of intersection for a corner of this tract;

(3) THENCE *North 30 degrees 46 minutes 03 seconds East*, along the proposed southeast right-of-way line of said Wadley Avenue and the south line of said 27.25-acre tract, a distance of 7.15 feet to a 5/8-inch iron rod with a plastic cap marked "KHA" found at a point of intersection for a corner of this tract;

(4) THENCE *North 36 degrees 37 minutes 39 seconds East*, along the proposed southeast right-of-way line of said Wadley Avenue and the south line of said 27.25-acre tract, a distance of 151.02 feet to a 5/8-inch iron rod with a plastic cap marked "KHA" found at a point of intersection for a corner of this tract;

(5) THENCE *North 30 degrees 55 minutes 12 seconds East*, along the proposed southeast right-of-way line of said Wadley Avenue and the south line of said 27.25-acre tract, a distance of 547.07 feet to a 5/8-inch iron rod with a plastic cap marked "KHA" found at a point of intersection for a corner of this tract;

(6) THENCE *North 75 degrees 54 minutes 41 seconds East*, along the proposed southeast right-of-way line of said Wadley Avenue and the south line of said 27.25-acre tract, a distance of 70.75 feet to a 5/8-inch iron rod with a plastic cap marked "KHA" found at a point of intersection in the proposed southwest right-of-way line of State Highway 158 and the southwest line of said 27.25-acre tract, for the northeast corner of this tract;

(7) THENCE *South 59 degrees 05 minutes 24 seconds East*, along the proposed southwest right-of-way line of said State Highway 158 and the southwest line of said 27.25-acre tract, a distance of 2359.23 feet to a 5/8-inch iron rod with a plastic cap marked "KHA" found at a point of intersection for a corner of this tract;

(8) THENCE *North 30 degrees 54 minutes 36 seconds East* a distance of 32.48 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set in the existing southwest right-of-way line of State Highway 158, described in a deed recorded in Volume 329, Page 679 of the Deed Records of Midland County, Texas, at a point of intersection for a corner of this tract;

(9) THENCE *South 59 degrees 05 minutes 45 seconds East*, along the existing southwest right-of-way line of said State Highway 158, a distance of 619.52 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set in the northwest line of a 70-foot wide water pipeline easement conveyed to the Midland County Fresh Water Supply District No. 1, recorded in Instrument 2013-8956 of the Official Public Records of Midland County, Texas, for the southeast corner of this tract, said point having coordinates of NORTHING: 10,695,212.35 and EASTING: 1,725,004.78, Texas Coordinate System, Central Zone 4203, North American Datum of 1983, whence a concrete right-of-way monument found in the southwest right-of-way line of said State Highway 158 bears *South 59 degrees 05 minutes 45 seconds East* a distance of 1199.56 feet and a 5/8-inch iron rod found at the northeast corner of said Section 35 bears *North 75 degrees 42 minutes 58 seconds East* a distance of 1573.63 feet and *North 14 degrees 17 minutes 02 seconds West* a distance of 3305.23 feet;

(10) THENCE *South 30 degrees 55 minutes 12 seconds West*, along the northwest line of said 70-foot wide water pipeline easement, a distance of 705.22 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set at a point of curvature for a corner of this tract;

(11) THENCE southwesterly, along a curve to the right, an arc distance of 492.38 feet, said curve having a radius of 640.00 feet, a delta angle of *44 degrees 04 minutes 48 seconds*, a chord bearing of *South 52 degrees 57 minutes 36 seconds West*, and a chord distance of 480.32 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set at a point of tangency for a corner of this tract;

(12) THENCE *South 75 degrees 00 minutes 00 seconds West* a distance of 1543.23 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set at a point of intersection for the most southerly southwest corner of this tract;

(13) THENCE northwesterly, along a curve to the right, an arc distance of 269.08 feet, said curve having a radius of 640.00 feet, a delta angle of *24 degrees 05 minutes 21 seconds*, a chord bearing of *North 02 degrees 22 minutes 40 seconds West*, and a chord distance of 267.11 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set at a point of tangency for a corner of this tract;

(14) THENCE *North 09 degrees 40 minutes 01 seconds East* a distance of 162.07 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set at a point of curvature for a corner of this tract;

(15) THENCE northwesterly, along a curve to the left, an arc distance of 154.99 feet, said curve having a radius of 360.00 feet, a delta angle of *24 degrees 40 minutes 01 seconds*, a chord bearing of *North 02 degrees 40 minutes 00 seconds West*, and a chord distance of 153.79 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set at a point of tangency for a corner of this tract;

(16) THENCE *North 15 degrees 00 minutes 00 seconds West*, a distance of 29.45 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set at a point of intersection for an ell corner of this tract;

(17) THENCE *South 83 degrees 04 minutes 41 seconds West* a distance of 365.47 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set at a point of intersection for a corner of this tract;

(18) THENCE *North 29 degrees 59 minutes 13 seconds West* a distance of 285.71 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set at a point of intersection for an ell corner of this tract;

(19) THENCE southwesterly, along a curve to the right, an arc distance of 753.93 feet, said curve having a radius of 3639.68 feet, a delta angle of *11 degrees 52 minutes 06 seconds*, a chord bearing of *South 66 degrees 50 minutes 21 seconds West*, and a chord distance of 752.59 feet to the **POINT OF BEGINNING**. Bearings and coordinates called in this description are based on the Texas Coordinate System, Central Zone 4203, North American Datum of 1983. Convergence to geodetic north is *-00 degrees 56 minutes 45 seconds* at a City of Midland Monument with coordinate values of NORTHING: 10,693,732.38 and EASTING: 1,727,308.48, U.S. Survey Feet. Distances called in this description are grid distances. Areas reported in this description are based on calculations made with grid distances.

SERVICE AGREEMENT

THIS AGREEMENT is made and effective the 10th day of June 2021, by and between the CITY OF MIDLAND, TEXAS, hereinafter called "CITY," and CUMBERLAND & WESTERN RESOURCES, LLC, hereinafter referred to as "PETITIONER" whether one or more. **WHEREAS,** a petition for annexation of a **131.190-acres tract of land, located in Section 35, Block 40, T-1-S, T&P Railroad Company Survey, Midland County, Texas**, said tract being more fully described by metes and bounds therein (the "Area"), has been submitted to CITY by PETITIONER, the owner(s) of the land located in the Area, a copy of which is attached hereto as Exhibit "A" and incorporated herein for all purposes; and

WHEREAS, before CITY annexes the Area, CITY and PETITIONER must enter into a written agreement for the provision of services in the Area in accordance with Section 43.0672 of the Local Government Code;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is (1) to list each service CITY will provide in the Area on the effective date of the annexation, (2) to establish a schedule that includes the period within which CITY will provide each service in the Area that is not provided on the effective date of the annexation, and (3) to establish the duty of PETITIONER to pay fees similar to impact fees in the event that CITY has adopted, or adopts in the future, one or more ordinances establishing impact fees. PETITIONER understands and agrees that CITY is not required to provide a service that is not included in this Agreement. PETITIONER further understands and agrees that the execution of this Agreement does not constitute a promise by CITY to annex the Area and that this Agreement is not a permit for purposes of Chapter 245 of the Local Government Code.

ARTICLE II. TERM

The term of this Agreement shall be one year; provided, however, that if CITY annexes the Area within one year from the effective date, the term of this Agreement shall continue until such time when all services described in this Agreement are provided in the Area, and at such time, the Agreement shall terminate and shall be of no further force or effect except for those provisions that expressly survive termination. If CITY does not annex the Area during the term of this Agreement, this Agreement shall terminate and shall be of no further force or effect, and CITY shall have no duty to provide services to the Area.

ARTICLE III. SERVICES TO BE PROVIDED UPON ANNEXATION

CITY will provide the following services in the Area on the date that the ordinance annexing the Area becomes effective:

A. **Engineering:** CITY's Engineering Services Department will maintain streets, drainage facilities, and rights-of-way in accordance with CITY policies, procedures, and ordinances and applicable laws. PETITIONER understands and agrees that PETITIONER may be required to construct public improvements, including but not limited to (i) roadways adjacent to property located in the Area upon platting and (ii) roadway connections to existing facilities in the Area upon issuance of building permits in accordance with applicable laws and ordinances. PETITIONER understands and agrees that the Area will be included in CITY's service area of CITY's drainage utility.

B. **Utilities:** CITY will provide water services and wastewater collection services, upon platting property in the Area, in accordance with the City Code at rates established by ordinances for such services; provided, however, that no such service shall be provided until the public improvements necessary therefor have been constructed and CITY has approved said improvements. PETITIONER understands and agrees that CITY may require PETITIONER to construct such public improvements in accordance with applicable laws and ordinances.

C. **Development:** CITY's Development Services Department will provide planning, land development, land use, building review and inspection, and code enforcement services in accordance with applicable laws, rules, regulations, and ordinances.

D. **Police:** CITY's Police Department will provide emergency and routine call response, traffic enforcement, and law enforcement services in the Area.

E. **Fire:** CITY's Fire Department will provide emergency service for fire protection services and emergency medical services.

F. **Community Services:** CITY's Community Services Department will provide access to services and programs that may be offered by the Health and Senior Services Division, services and programs that may be offered by Animal Services Division, and access to City-owned parks.

G. **Solid Waste:** CITY's Solid Waste Department will provide residential garbage pickup service only. PETITIONER understands and agrees that CITY will not provide garbage pickup services to new commercial developments.

Regarding the services described above, PETITIONER understands and agrees that CITY will provide a level of services that is comparable to the level of services available in other parts of the City of Midland with topography, land use, and population density similar to those reasonably contemplated or projected for the Area. PETITIONER understands and acknowledges that any CITY departments or divisions identified above may change names or be reorganized. Any reference to a specific CITY department or division also includes any subsequent CITY department or division that will provide the same or similar services.

ARTICLE IV. IMPACT FEES

A. **Fees to be assessed and collected.** Except as otherwise described herein, if CITY has adopted, or adopts in the future, one or more ordinances establishing impact fees in accordance with Chapter 395 of the Local Government Code, CITY shall assess and collect fees associated with the development of the Area as described for impact fees in the applicable impact fee ordinance(s) (the "Fees").

B. **Service areas.** For purposes of assessing and collecting Fees for water and wastewater under this Agreement, the Area is deemed to be located within CITY's capital improvements plan service area therefor. For the purpose of assessing and collecting Fees for roadways under this Agreement, the Area is deemed to be located in CITY's capital improvements plan roadway service area(s) immediately adjacent thereto; provided, however, that if the Area is not located immediately adjacent to a roadway service area and is located immediately adjacent to a tract of land that is associated with an agreement regarding fees similar to the Fees in this Agreement, the Area is deemed to be located in the roadway service area(s) specified in such similar agreement associated with the adjacent tract of land.

C. **Capital improvements and facility expansions.** For purposes of this Agreement, a capital improvement or facility expansion that will serve the Area shall be deemed to be included in CITY's capital improvements plan if:

   a. said capital improvement or facility expansion is substantially similar to a type of capital improvement or facility expansion identified in CITY's capital improvements plan; or

   b. said capital improvement or facility expansion is an extension of a capital improvement or facility expansion identified in CITY's capital improvements plan.

D. **Time of assessment.** Fees shall be assessed at the time of recordation of a final plat of any portion of the Area, at the time the Area is annexed, or on the effective date(s) of the applicable impact fee ordinance(s), whichever is later.

E. **Time of collection.** CITY shall collect the Fees from PETITIONER at the time of issuance of a building permit. PETITIONER acknowledges and agrees that no building permit or certificate of occupancy shall be issued until PETITIONER has paid the applicable Fees.

F. **Amendment to land use assumptions, capital improvements plan, or impact fees.** Notwithstanding any provision in this Agreement to the contrary, if CITY amends its land use assumptions, capital improvements plan, or impact fees such that PETITIONER would be required to pay impact fees, CITY shall assess and PETITIONER shall pay the applicable impact fees in accordance with the applicable impact fee ordinance(s), as amended; provided, however, that to the extent CITY assesses applicable Fees for service units under this Agreement, PETITIONER shall pay such Fees in accordance with this Agreement and shall not be required to pay the applicable impact fees for the same service units.

G. **Article to survive termination.** If CITY annexes the Area within one year from the

effective date, the provisions of this Article shall survive termination of this Agreement.

ARTICLE V. GOVERNMENTAL IMMUNITY

By executing this agreement CITY is not waiving its right of governmental immunity. CITY is retaining its immunity from suit. CITY is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY. THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

ARTICLE VI. RELEASE

NOTWITHSTANDING ANY OTHER PROVISIONS, PETITIONER HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH PETITIONER HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF AGREEMENT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, CITY'S NEGLIGENCE, OR CLAIMS UNDER CHAPTER 395 OF THE TEXAS LOCAL GOVERNMENT CODE. THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

ARTICLE VII. ATTORNEYS' FEES

In the event of any conflict between the parties hereto such that either party brings or commences any legal action or proceeding related to this Agreement, including but not limited to any action pursuant to the provisions of the Texas Uniform Declaratory Judgments Act (Tex. Civ. Prac. & Rem. Code §37.001, et seq., as amended), the parties hereto agree to waive any and all rights to recovery of attorneys' fees to which the prevailing party might otherwise be entitled.

BY EXECUTING THIS AGREEMENT, THE PARTIES AGREE TO WAIVE AND DO HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM EITHER PARTY HAS OR MAY HAVE IN THE FUTURE AGAINST THE OTHER PARTY, SPECIFICALLY AND SOLELY REGARDING THE AWARD OF ATTORNEYS' FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE PARTIES SPECIFICALLY AGREE THAT IF A PARTY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING

RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET. SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE PARTY BRINGING THE ACTION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEYS' FEES TO WHICH THE PARTY MIGHT OTHERWISE BE ENTITLED.

THE PARTIES AGREE THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. EACH PARTY ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE PARTIES FURTHER ACKNOWLEDGE AND AGREE THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND PETITIONER. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE TERMINATION OF THIS AGREEMENT. PETITIONER AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

ARTICLE VIII. GENERAL PROVISIONS

A. **Governing law and venue.** This Agreement shall be governed by the laws of the State of Texas. All performance made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. This Agreement shall be governed by, interpreted, enforced and construed under the laws of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction. The provisions of this Article VIII.A. shall survive termination of this Agreement.

B. **Notice.** Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as

follows:

If to CITY: City Manager's Office
P.O. Box 1152
Midland, Texas 79702

If to PETITIONER: Cumberland & Western Resources LLC
735 E. Venice Avenue, Suite 200
Venice, Florida 34285

The parties hereto may change the above-designated addresses by giving notice pursuant to the terms of this Section.

C. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

D. **Use of language.** Words in the singular shall be held to include the plural, unless the context otherwise requires.

E. **Amendments, modifications, alterations.** No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

F. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.

G. **Notice of alleged breach; statutory prerequisites.** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, PETITIONER or PETITIONER'S legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one-hundred fifty (150) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which PETITIONER will settle, the physical and mailing addresses of PETITIONER at the time and date the claim was presented and the physical and mailing addresses of PETITIONER for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom PETITIONER relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except CITY from any liability whatsoever. CITY is under no obligation to provide notice to PETITIONER that PETITIONER'S notice is insufficient. CITY reserves the right to request reasonable additional information regarding the claim. Said additional information shall be

supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, PETITIONER'S failure to comply with the requirements herein shall perpetually bar PETITIONER'S claim for damages under Chapter 271 of the Texas Local Government Code and Section 311.034 of the Texas Government Code, regardless of whether CITY has actual or constructive notice or knowledge of said claim or alleged damages. The provisions of this Article VIII.G. shall survive termination of this agreement. **PETITONER AGREES THAT THE REQUIREMENTS OF THIS ENTIRE AGREEMENT ARE REASONABLE.**

H. **Covenants run with the land.** The provisions of this Agreement are covenants that run with the land located in the Area. CITY and PETITIONER agree that this Agreement may be recorded in the deed records of the county in which the Area is located. CITY and PETITIONER acknowledge and agree that this Agreement is binding upon CITY and PETITIONER and their respective successors, executors, heirs, and assigns, as applicable. The provisions of this Article VIII.H. shall survive termination of this Agreement.

EXECUTED the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM

_____
John Ohnemiller, City Attorney

PETITIONER:

By: _____

Name: GREG BETTERTON

Title: MANAGER

STATE OF FLORIDA §

§

COUNTY OF SARASOTA §

BEFORE ME, the undersigned authority, on this 4th day of JUNE, 2021 personally appeared, GREG BETTERTON, an officer of CUMBERLAND & WESTERN, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 4 day of JUNE, 2021.

_____

Notary Public, State of Florida

NOTARY PUBLIC STATE OF FLORIDA

ELISE J. DURANCEAU
Commission # HH 082709
Expires March 8, 2025
Bonded Thru Budget Notary Services

EXHIBIT "A" TO SERVICE AGREEMENT

PETITION FOR ANNEXATION

Dear City of Midland:

As current owner of the tract(s) of land described in Exhibit(s) "A" (the "Property"), said Exhibit(s) being attached hereto and incorporated herein, Cambridge Westland Resources, LLC ("Owner") submits this petition for annexation and hereby requests that the Property be added to and annexed to the City of Midland.

Signature of Owner or Owner's Authorized Representative

Greg Bettinger

Printed Name

Manager

Title

THE STATE OF Florida §

§

COUNTY OF Sarasota §

This instrument was acknowledged before me on the 10 day of May, 2021, by Greg Bettinger in the capacity herein stated.

MY COMMISSION EXPIRES

Notary Public, State of FL

ELISE J. DURANCEAU
Commission # HH 082709
Expires March 8, 2025
Bonded Thru Budget Notary Services

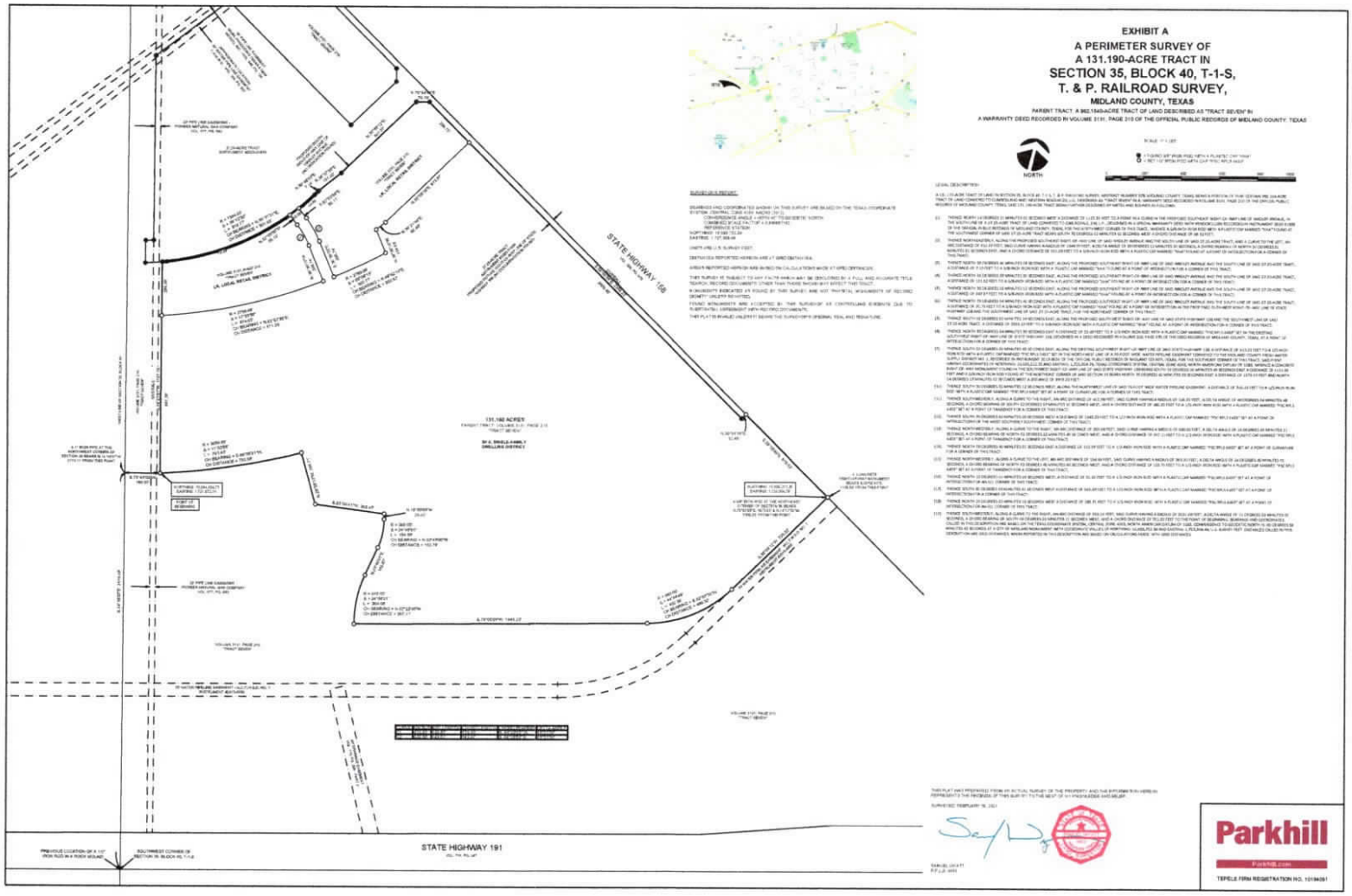


EXHIBIT A
A PERIMETER SURVEY OF
A 131.190-ACRE TRACT IN
SECTION 35, BLOCK 40, T-1-S,
T. & P. RAILROAD SURVEY,
MIDLAND COUNTY, TEXAS
PARENT TRACT: A 962.1540-ACRE TRACT OF LAND DESCRIBED AS "TRACT SEVEN" IN
A WARRANTY DEED RECORDED IN VOLUME 3131, PAGE 210 OF THE OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY, TEXAS
NORTH
STATE HIGHWAY 158
STATE HIGHWAY 191
131.190 ACRES
Parkhill
TBPELS FIRM REGISTRATION NO. 10194091

Parkhill

CONTINUATION OF EXHIBIT A

A 131.190-ACRE TRACT OF LAND IN SECTION 35, BLOCK 40, T-1-S, T. & P. RR. SURVEY, ABSTRACT NO. 378, MIDLAND COUNTY, TEXAS

A 131.190-acre tract of land in Section 35, Block 40, T-1-S, T. & P. Railroad Survey, Abstract Number 378, Midland County, Texas, being a portion of that certain 982.154-acre tract of land conveyed to Cumberland and Western Resources, LLC, described as "Tract Seven" in a warranty deed recorded in Volume 3131, Page 210 of the Official Public Records of Midland County, Texas, said 131.190-acre tract being further described by metes and bounds as follows:

BEGINNING at a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set for the most westerly southwest corner of this tract, said beginning point having coordinates of NORTHING: 10,694,434.73 and EASTING: 1,721,572.19, Texas Coordinate System, Central Zone 4203, North American Datum of 1983, whence a 1-inch iron pipe found at the northwest corner of said Section 35 bears *South 75 degrees 43 minutes 03 seconds West* a distance of 185.07 feet and *North 14 degrees 16 minutes 57 seconds West* a distance of 3176.11 feet and the previous location of a 1/2-inch iron rod in a rock mound at the southwest corner of said Section 35 bears *South 75 degrees 43 minutes 03 seconds West* a distance of 185.07 feet and *South 14 degrees 16 minutes 57 seconds East* a distance of 2119.49 feet;

(1) THENCE *North 14 degrees 21 minutes 01 seconds West* a distance of 1127.76 feet to a point in a curve in the proposed southeast right-of-way line of Wadley Avenue, in the south line of a 27.25-acre tract of land conveyed to CWS Royale, SW, L.P., described in a special warranty deed with vendor's lien recorded in Instrument 2020-31839 of the Official Public Records of Midland County, Texas, for the northwest corner of this tract, whence a 5/8-inch iron rod with a plastic cap marked "KHA" found at the southwest corner of said 27.25-acre tract bears *South 72 degrees 02 minutes 05 seconds West* a chord distance of 89.32 feet;

(2) THENCE northeasterly, along the proposed southeast right-of-way line of said Wadley Avenue and the south line of said 27.25-acre tract, and a curve to the left, an arc distance of 919.77 feet, said curve having a radius of 1344.00 feet, a delta angle of *39 degrees 12 minutes 39 seconds*, a chord bearing of *North 50 degrees 31 minutes 31 seconds East*, and a chord distance of 901.93 feet to a 5/8-inch iron rod with a plastic cap marked "KHA" found at a point of intersection for a corner of this tract;

(3) THENCE *North 30 degrees 46 minutes 03 seconds East*, along the proposed southeast right-of-way line of said Wadley Avenue and the south line of said 27.25-acre tract, a distance of 7.15 feet to a 5/8-inch iron rod with a plastic cap marked "KHA" found at a point of intersection for a corner of this tract;

(4) THENCE *North 36 degrees 37 minutes 39 seconds East*, along the proposed southeast right-of-way line of said Wadley Avenue and the south line of said 27.25-acre tract, a distance of 151.02 feet to a 5/8-inch iron rod with a plastic cap marked "KHA" found at a point of intersection for a corner of this tract;

(5) THENCE *North 30 degrees 55 minutes 12 seconds East*, along the proposed southeast right-of-way line of said Wadley Avenue and the south line of said 27.25-acre tract, a distance of 547.07 feet to a 5/8-inch iron rod with a plastic cap marked "KHA" found at a point of intersection for a corner of this tract;

(6) THENCE *North 75 degrees 54 minutes 41 seconds East*, along the proposed southeast right-of-way line of said Wadley Avenue and the south line of said 27.25-acre tract, a distance of 70.75 feet to a 5/8-inch iron rod with a plastic cap marked "KHA" found at a point of intersection in the proposed southwest right-of-way line of State Highway 158 and the southwest line of said 27.25-acre tract, for the northeast corner of this tract;

(7) THENCE *South 59 degrees 05 minutes 24 seconds East*, along the proposed southwest right-of-way line of said State Highway 158 and the southwest line of said 27.25-acre tract, a distance of 2359.23 feet to a 5/8-inch iron rod with a plastic cap marked "KHA" found at a point of intersection for a corner of this tract;

(8) THENCE *North 30 degrees 54 minutes 36 seconds East* a distance of 32.48 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set in the existing southwest right-of-way line of State Highway 158, described in a deed recorded in Volume 329, Page 679 of the Deed Records of Midland County, Texas, at a point of intersection for a corner of this tract;

(9) THENCE *South 59 degrees 05 minutes 45 seconds East*, along the existing southwest right-of-way line of said State Highway 158, a distance of 619.52 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set in the northwest line of a 70-foot wide water pipeline easement conveyed to the Midland County Fresh Water Supply District No. 1, recorded in Instrument 2013-8956 of the Official Public Records of Midland County, Texas, for the southeast corner of this tract, said point having coordinates of NORTHING: 10,695,212.35 and EASTING: 1,725,004.78, Texas Coordinate System, Central Zone 4203, North American Datum of 1983, whence a concrete right-of-way monument found in the southwest right-of-way line of said State Highway 158 bears *South 59 degrees 05 minutes 45 seconds East* a distance of 1199.56 feet and a 5/8-inch iron rod found at the northeast corner of said Section 35 bears *North 75 degrees 42 minutes 58 seconds East* a distance of 1573.63 feet and *North 14 degrees 17 minutes 02 seconds West* a distance of 3305.23 feet;

(10) THENCE *South 30 degrees 55 minutes 12 seconds West*, along the northwest line of said 70-foot wide water pipeline easement, a distance of 705.22 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set at a point of curvature for a corner of this tract;

(11) THENCE southwesterly, along a curve to the right, an arc distance of 492.38 feet, said curve having a radius of 640.00 feet, a delta angle of *44 degrees 04 minutes 48 seconds*, a chord bearing of *South 52 degrees 57 minutes 36 seconds West*, and a chord distance of 480.32 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set at a point of tangency for a corner of this tract;

(12) THENCE *South 75 degrees 00 minutes 00 seconds West* a distance of 1543.23 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set at a point of intersection for the most southerly southwest corner of this tract;

(13) THENCE northwesterly, along a curve to the right, an arc distance of 269.08 feet, said curve having a radius of 640.00 feet, a delta angle of *24 degrees 05 minutes 21 seconds*, a chord bearing of *North 02 degrees 22 minutes 40 seconds West*, and a chord distance of 267.11 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set at a point of tangency for a corner of this tract;

(14) THENCE *North 09 degrees 40 minutes 01 seconds East* a distance of 162.07 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set at a point of curvature for a corner of this tract;

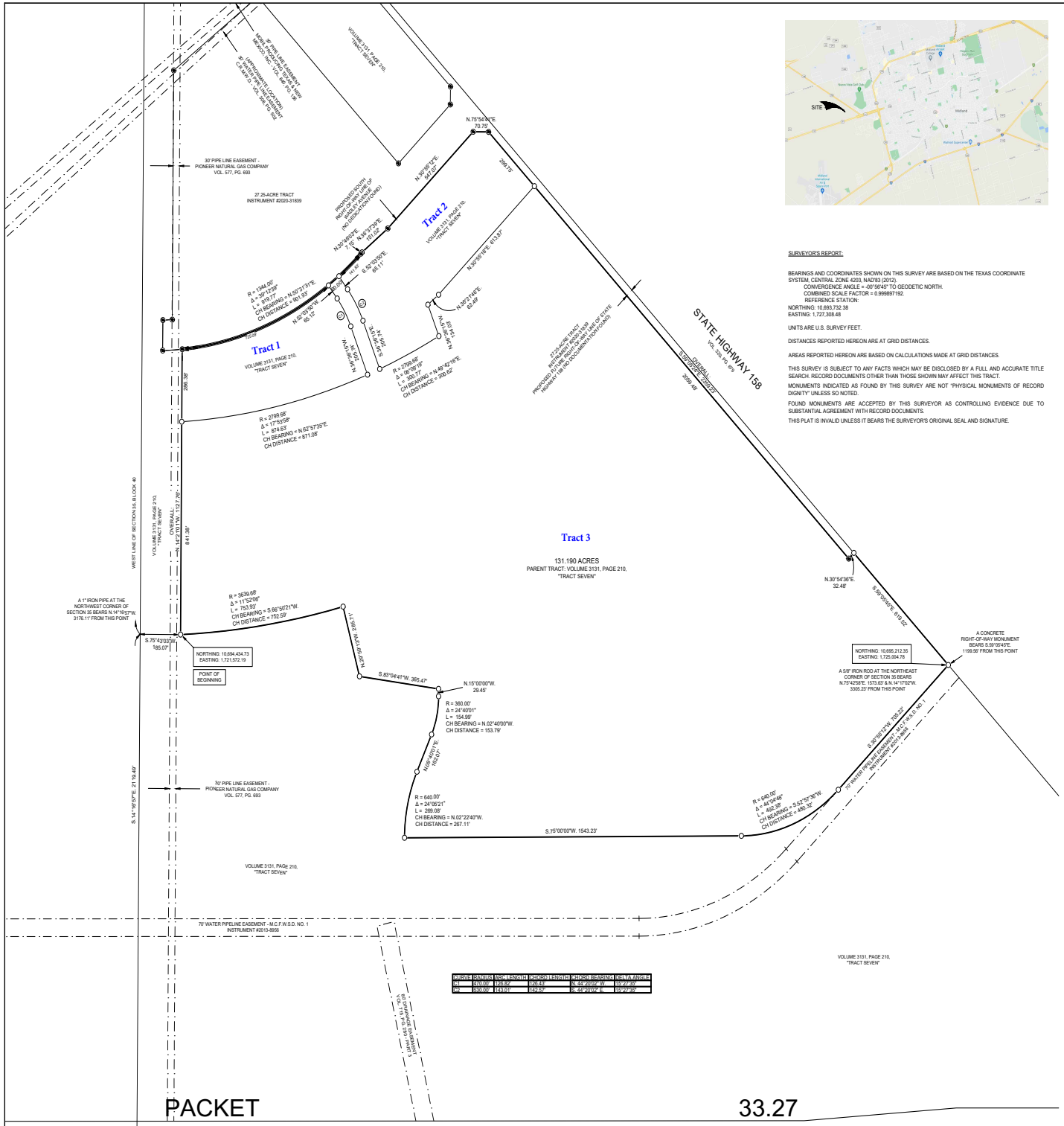
(15) THENCE northwesterly, along a curve to the left, an arc distance of 154.99 feet, said curve having a radius of 360.00 feet, a delta angle of *24 degrees 40 minutes 01 seconds*, a chord bearing of *North 02 degrees 40 minutes 00 seconds West*, and a chord distance of 153.79 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set at a point of tangency for a corner of this tract;

(16) THENCE *North 15 degrees 00 minutes 00 seconds West*, a distance of 29.45 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set at a point of intersection for an ell corner of this tract;

(17) THENCE *South 83 degrees 04 minutes 41 seconds West* a distance of 365.47 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set at a point of intersection for a corner of this tract;

(18) THENCE *North 29 degrees 59 minutes 13 seconds West* a distance of 285.71 feet to a 1/2-inch iron rod with a plastic cap marked "PSC RPLS 6453" set at a point of intersection for an ell corner of this tract;

(19) THENCE southwesterly, along a curve to the right, an arc distance of 753.93 feet, said curve having a radius of 3639.68 feet, a delta angle of *11 degrees 52 minutes 06 seconds*, a chord bearing of *South 66 degrees 50 minutes 21 seconds West*, and a chord distance of 752.59 feet to the **POINT OF BEGINNING**. Bearings and coordinates called in this description are based on the Texas Coordinate System, Central Zone 4203, North American Datum of 1983. Convergence to geodetic north is *-00 degrees 56 minutes 45 seconds* at a City of Midland Monument with coordinate values of NORTHING: 10,693,732.38 and EASTING: 1,727,308.48, U.S. Survey Feet. Distances called in this description are grid distances. Areas reported in this description are based on calculations made with grid distances.



CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	470.00'	126.82'	126.43'	S. 44°29'05" W.	15°27'49"
C2	530.00'	143.01'	142.57'	S. 44°29'05" E.	15°27'49"

SURVEYOR'S REPORT:

BEARINGS AND COORDINATES SHOWN ON THIS SURVEY ARE BASED ON THE TEXAS COORDINATE SYSTEM, CENTRAL ZONE 4203, NAD83 (2012).
CONVERGENCE ANGLE = -00°56'45" TO GEODETIC NORTH.
COMBINED SCALE FACTOR = 0.999897192.
REFERENCE STATION:
NORTHING: 10,693,732.38
EASTING: 1,727,308.48

UNITS ARE U.S. SURVEY FEET.

DISTANCES REPORTED HEREON ARE AT GRID DISTANCES.

AREAS REPORTED HEREON ARE BASED ON CALCULATIONS MADE AT GRID DISTANCES.

THIS SURVEY IS SUBJECT TO ANY FACTS WHICH MAY BE DISCLOSED BY A FULL AND ACCURATE TITLE SEARCH. RECORD DOCUMENTS OTHER THAN THOSE SHOWN MAY AFFECT THIS TRACT.

MONUMENTS INDICATED AS FOUND BY THIS SURVEY ARE NOT "PHYSICAL MONUMENTS OF RECORD DIGNITY" UNLESS SO NOTED.

FOUND MONUMENTS ARE ACCEPTED BY THIS SURVEYOR AS CONTROLLING EVIDENCE DUE TO SUBSTANTIAL AGREEMENT WITH RECORD DOCUMENTS.

THIS PLAT IS INVALID UNLESS IT BEARS THE SURVEYOR'S ORIGINAL SEAL AND SIGNATURE.

A PERIMETER SURVEY OF A 131.190-ACRE TRACT IN SECTION 35, BLOCK 40, T-1-S, T. & P. RAILROAD SURVEY,

MIDLAND COUNTY, TEXAS

PARENT TRACT: A 982.1540-ACRE TRACT OF LAND DESCRIBED AS "TRACT SEVEN" IN A WARRANTY DEED RECORDED IN VOLUME 3131, PAGE 210 OF THE OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY, TEXAS

NORTH

SCALE: 1" = 200'

● = FOUND 5/8" IRON ROD WITH A PLASTIC CAP "KHA"
○ = SET 1/2" IRON ROD WITH CAP "PSC RPLS 6453"

0 200' 400' 600' 800' 1000'

LEGAL DESCRIPTION:

A 131.190-ACRE TRACT OF LAND IN SECTION 35, BLOCK 40, T-1-S, T. & P. RAILROAD SURVEY, ABSTRACT NUMBER 378, MIDLAND COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 982.154-ACRE TRACT OF LAND CONVEYED TO CUMBERLAND AND WESTERN RESOURCES, LLC, DESCRIBED AS "TRACT SEVEN" IN A WARRANTY DEED RECORDED IN VOLUME 3131, PAGE 210 OF THE OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY, TEXAS, SAID 131.190-ACRE TRACT BEING FURTHER DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

(1) THENCE NORTH 14 DEGREES 21 MINUTES 01 SECONDS WEST A DISTANCE OF 1127.76 FEET TO A POINT IN A CURVE IN THE PROPOSED SOUTHEAST RIGHT-OF-WAY LINE OF WADLEY AVENUE, IN THE SOUTH LINE OF A 27.25-ACRE TRACT OF LAND CONVEYED TO CWS ROYALE, SW, L.P., DESCRIBED IN A SPECIAL WARRANTY DEED WITH VENDOR'S LIEN RECORDED IN INSTRUMENT 2020-31839 OF THE OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY, TEXAS, FOR THE NORTHWEST CORNER OF THIS TRACT, WHENCE A 5/8-INCH IRON ROD WITH A PLASTIC CAP MARKED "KHA" FOUND AT THE SOUTHWEST CORNER OF SAID 27.25-ACRE TRACT BEARS SOUTH 72 DEGREES 02 MINUTES 05 SECONDS WEST A CHORD DISTANCE OF 89.32 FEET;

(2) THENCE NORTHEASTERLY, ALONG THE PROPOSED SOUTHEAST RIGHT-OF-WAY LINE OF SAID WADLEY AVENUE AND THE SOUTH LINE OF SAID 27.25-ACRE TRACT, AND A CURVE TO THE LEFT, AN ARC DISTANCE OF 919.77 FEET, SAID CURVE HAVING A RADIUS OF 1344.00 FEET, A DELTA ANGLE OF 39 DEGREES 12 MINUTES 39 SECONDS, A CHORD BEARING OF NORTH 50 DEGREES 31 MINUTES 31 SECONDS EAST, AND A CHORD DISTANCE OF 901.93 FEET TO A 5/8-INCH IRON ROD WITH A PLASTIC CAP MARKED "KHA" FOUND AT A POINT OF INTERSECTION FOR A CORNER OF THIS TRACT;

(3) THENCE NORTH 30 DEGREES 46 MINUTES 03 SECONDS EAST, ALONG THE PROPOSED SOUTHEAST RIGHT-OF-WAY LINE OF SAID WADLEY AVENUE AND THE SOUTH LINE OF SAID 27.25-ACRE TRACT, A DISTANCE OF 7.15 FEET TO A 5/8-INCH IRON ROD WITH A PLASTIC CAP MARKED "KHA" FOUND AT A POINT OF INTERSECTION FOR A CORNER OF THIS TRACT;

(4) THENCE NORTH 36 DEGREES 37 MINUTES 39 SECONDS EAST, ALONG THE PROPOSED SOUTHEAST RIGHT-OF-WAY LINE OF SAID WADLEY AVENUE AND THE SOUTH LINE OF SAID 27.25-ACRE TRACT, A DISTANCE OF 151.02 FEET TO A 5/8-INCH IRON ROD WITH A PLASTIC CAP MARKED "KHA" FOUND AT A POINT OF INTERSECTION FOR A CORNER OF THIS TRACT;

(5) THENCE NORTH 30 DEGREES 55 MINUTES 12 SECONDS EAST, ALONG THE PROPOSED SOUTHEAST RIGHT-OF-WAY LINE OF SAID WADLEY AVENUE AND THE SOUTH LINE OF SAID 27.25-ACRE TRACT, A DISTANCE OF 547.07 FEET TO A 5/8-INCH IRON ROD WITH A PLASTIC CAP MARKED "KHA" FOUND AT A POINT OF INTERSECTION FOR A CORNER OF THIS TRACT;

(6) THENCE NORTH 75 DEGREES 54 MINUTES 41 SECONDS EAST, ALONG THE PROPOSED SOUTHEAST RIGHT-OF-WAY LINE OF SAID WADLEY AVENUE AND THE SOUTH LINE OF SAID 27.25-ACRE TRACT, A DISTANCE OF 70.75 FEET TO A 5/8-INCH IRON ROD WITH A PLASTIC CAP MARKED "KHA" FOUND AT A POINT OF INTERSECTION IN THE PROPOSED OUTHWEST RIGHT-OF-WAY LINE OF STATE HIGHWAY 158 AND THE SOUTHWEST LINE OF SAID 27.25-ACRE TRACT, FOR THE NORTHEAST CORNER OF THIS TRACT;

(7) THENCE SOUTH 59 DEGREES 05 MINUTES 24 SECONDS EAST, ALONG THE PROPOSED SOUTHWEST RIGHT-OF-WAY LINE OF SAID STATE HIGHWAY 158 AND THE SOUTHWEST LINE OF SAID 27.25-ACRE TRACT, A DISTANCE OF 2359.23 FEET TO A 5/8-INCH IRON ROD WITH A PLASTIC CAP MARKED "KHA" FOUND AT A POINT OF INTERSECTION FOR A CORNER OF THIS TRACT;

(8) THENCE NORTH 30 DEGREES 54 MINUTES 36 SECONDS EAST A DISTANCE OF 32.48 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET IN THE EXISTING SOUTHWEST RIGHT-OF-WAY LINE OF STATE HIGHWAY 158, DESCRIBED IN A DEED RECORDED IN VOLUME 329, PAGE 679 OF THE DEED RECORDS OF MIDLAND COUNTY, TEXAS, AT A POINT OF INTERSECTION FOR A CORNER OF THIS TRACT;

(9) THENCE SOUTH 59 DEGREES 05 MINUTES 45 SECONDS EAST, ALONG THE EXISTING SOUTHWEST RIGHT-OF-WAY LINE OF SAID STATE HIGHWAY 158, A DISTANCE OF 619.52 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET IN THE NORTHWEST LINE OF A 70-FOOT WIDE WATER PIPELINE EASEMENT CONVEYED TO THE MIDLAND COUNTY FRESH WATER SUPPLY DISTRICT NO. 1, RECORDED IN INSTRUMENT 2013-8956 OF THE OFFICIAL PUBLIC RECORDS OF MIDLAND COUNTY, TEXAS, FOR THE SOUTHEAST CORNER OF THIS TRACT, SAID POINT HAVING COORDINATES OF NORTHING: 10,695,212.35 AND EASTING: 1,725,004.78, TEXAS COORDINATE SYSTEM, CENTRAL ZONE 4203, NORTH AMERICAN DATUM OF 1983, WHENCE A CONCRETE RIGHT-OF-WAY MONUMENT FOUND IN THE SOUTHWEST RIGHT-OF-WAY LINE OF SAID STATE HIGHWAY 158 BEARS SOUTH 59 DEGREES 05 MINUTES 45 SECONDS EAST A DISTANCE OF 1199.56 FEET AND A 5/8-INCH IRON ROD FOUND AT THE NORTHEAST CORNER OF SAID SECTION 35 BEARS NORTH 75 DEGREES 42 MINUTES 58 SECONDS EAST A DISTANCE OF 1573.63 FEET AND NORTH 14 DEGREES 17 MINUTES 02 SECONDS WEST A DISTANCE OF 3305.23 FEET;

(10) THENCE SOUTH 30 DEGREES 55 MINUTES 12 SECONDS WEST, ALONG THE NORTHWEST LINE OF SAID 70-FOOT WIDE WATER PIPELINE EASEMENT, A DISTANCE OF 705.22 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF CURVATURE FOR A CORNER OF THIS TRACT;

(11) THENCE SOUTHWESTERLY, ALONG A CURVE TO THE RIGHT, AN ARC DISTANCE OF 492.38 FEET, SAID CURVE HAVING A RADIUS OF 640.00 FEET, A DELTA ANGLE OF 44 DEGREES 04 MINUTES 48 SECONDS, A CHORD BEARING OF SOUTH 52 DEGREES 57 MINUTES 36 SECONDS WEST, AND A CHORD DISTANCE OF 480.32 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF TANGENCY FOR A CORNER OF THIS TRACT;

(12) THENCE SOUTH 75 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 1543.23 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF INTERSECTION FOR THE MOST SOUTHERLY SOUTHWEST CORNER OF THIS TRACT;

(13) THENCE NORTHWESTERLY, ALONG A CURVE TO THE RIGHT, AN ARC DISTANCE OF 269.08 FEET, SAID CURVE HAVING A RADIUS OF 640.00 FEET, A DELTA ANGLE OF 24 DEGREES 05 MINUTES 21 SECONDS, A CHORD BEARING OF NORTH 02 DEGREES 22 MINUTES 40 SECONDS WEST, AND A CHORD DISTANCE OF 267.11 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF TANGENCY FOR A CORNER OF THIS TRACT;

(14) THENCE NORTH 09 DEGREES 40 MINUTES 01 SECONDS EAST A DISTANCE OF 162.07 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF CURVATURE FOR A CORNER OF THIS TRACT;

(15) THENCE NORTHWESTERLY, ALONG A CURVE TO THE LEFT, AN ARC DISTANCE OF 154.99 FEET, SAID CURVE HAVING A RADIUS OF 360.00 FEET, A DELTA ANGLE OF 24 DEGREES 40 MINUTES 01 SECONDS, A CHORD BEARING OF NORTH 02 DEGREES 40 MINUTES 00 SECONDS WEST, AND A CHORD DISTANCE OF 153.79 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF TANGENCY FOR A CORNER OF THIS TRACT;

(16) THENCE NORTH 15 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 29.45 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF INTERSECTION FOR AN ELL CORNER OF THIS TRACT;

(17) THENCE SOUTH 83 DEGREES 04 MINUTES 41 SECONDS WEST A DISTANCE OF 365.47 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF INTERSECTION FOR A CORNER OF THIS TRACT;

(18) THENCE NORTH 29 DEGREES 59 MINUTES 13 SECONDS WEST A DISTANCE OF 285.71 FEET TO A 1/2-INCH IRON ROD WITH A PLASTIC CAP MARKED "PSC RPLS 6453" SET AT A POINT OF INTERSECTION FOR AN ELL CORNER OF THIS TRACT;

(19) THENCE SOUTHWESTERLY, ALONG A CURVE TO THE RIGHT, AN ARC DISTANCE OF 753.93 FEET, SAID CURVE HAVING A RADIUS OF 3639.68 FEET, A DELTA ANGLE OF 11 DEGREES 52 MINUTES 06 SECONDS, A CHORD BEARING OF SOUTH 66 DEGREES 50 MINUTES 21 SECONDS WEST, AND A CHORD DISTANCE OF 752.59 FEET TO THE POINT OF BEGINNING. BEARINGS AND COORDINATES CALLED IN THIS DESCRIPTION ARE BASED ON THE TEXAS COORDINATE SYSTEM, CENTRAL ZONE 4203, NORTH AMERICAN DATUM OF 1983. CONVERGENCE TO GEODETIC NORTH IS -00 DEGREES 56 MINUTES 45 SECONDS AT A CITY OF MIDLAND MONUMENT WITH COORDINATE VALUES OF NORTHING: 10,693,732.38 AND EASTING: 1,727,308.48, U.S. SURVEY FEET. DISTANCES CALLED IN THIS DESCRIPTION ARE GRID DISTANCES. AREAS REPORTED IN THIS DESCRIPTION ARE BASED ON CALCULATIONS MADE WITH GRID DISTANCES.

THIS PLAT WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY AND THE INFORMATION HEREON REPRESENTS THE FINDINGS OF THIS SURVEY TO THE BEST OF MY KNOWLEDGE AND BELIEF.

SURVEYED: FEBRUARY 05, 2021

SAMUEL WYATT
R.P.L.S. 6453

August 24, 2021

Parkhill
Parkhill.com
TBPELS FIRM REGISTRATION NO. 10194091

PRELIMINARY PLAT
NORTHWEST PASSAGE ADDITION

BEING A PLAT OF A 117.035 ACRE TRACT IN SECTION 35, BLOCK 40, T-5, T.&P. RAILROAD SURVEY, MIDLAND COUNTY, TEXAS

100' 50' 0 100'
Original Scale: 1"=100'

LEGEND

- PLAT LIMITS
- EXISTING PLATTED LOTS & STREET R/W
- EXISTING EASEMENTS
- W — W — W — EXISTING WATER LINE
- S — S — S — EXISTING SEWER LINE
- OHE — OHE — EXISTING OVERHEAD POWERLINE (TO BE RELOCATED UNDERGROUND)
- EXISTING ELEVATION CONTOURS
- PROPOSED ROW LINE
- PROPOSED LOT LINE
- PROPOSED EASEMENT LINE
- W — W — W — PROPOSED WATER LINE
- S — S — S — PROPOSED SEWER LINE
- PROPOSED ROW CENTERLINE
- PROPOSED PAVING
- CITY LIMITS
- PHASING LINE
- CA/A PROPOSED COMMON AREA

NOTES:

1. SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION OF CITY ORDINANCE AND STATE LAW AND SUBJECT TO FINES AND WITHHOLDING OF UTILITIES AND BUILDING PERMITS.
2. APPROVAL OF A SITE PLAN BY THE CITY OF MIDLAND MAY BE REQUIRED BEFORE THESE LOTS MAY BE DEVELOPED OR BEFORE A BUILDING PERMIT MAY BE OBTAINED.
3. 1/2" IRON ROD WITH PLASTIC CAP SET AT EACH CORNER UNLESS OTHERWISE SPECIFIED.
4. INITIAL IMPACT FEES WILL BE ASSESSED DURING THE FINAL PLATTING PROCESS. IMPLEMENTATION AND COLLECTION OF IMPACT FEES WILL TAKE PLACE DURING THE BUILDING PERMIT PROCESS. ADDITIONAL IMPACT FEES OR INCREASES IN FEES MAY NOT BE ASSESSED AGAINST THE TRACT UNLESS THE NUMBER OF SERVICE UNITS TO BE DEVELOPED ON THE TRACT INCREASES.
5. BASED ON THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, FEDERAL INSURANCE ADMINISTRATION FLOOD HAZARD BOUNDARY MAP, COMMUNITY NUMBER 480477, SHEET NUMBER 48329C0080F, REVISED SEPTEMBER 16, 2005, THE SURVEYED PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA ACCORDING TO THE MAP. THE CURRENT FLOOD ZONE CLASSIFICATION FOR THE SURVEYED PROPERTY IS ZONE X.
6. RELATIVE TO THE EXISTING DRAINAGE EASEMENT: THE MAINTENANCE OF ANY STORMWATER FACILITY IN THIS EASEMENT IS THE RESPONSIBILITY OF THE PROPERTY OWNER. PROPERTY OWNER AGREES TO MAINTAIN THE FACILITY IN WORKING ORDER, WITH INSPECTIONS AND CORRECTIVE ACTION MADE AT LEAST ANNUALLY. REPORTS OF SUCH INSPECTIONS AND MAINTENANCE SHALL BE KEPT FOR INSPECTION BY THE CITY OF MIDLAND STORMWATER ADMINISTRATOR ON REQUEST, OR MAY BE FORWARDED TO THE CITY ENGINEER'S OFFICE.
7. RELATIVE TO THE EXISTING DRAINAGE EASEMENT: THE CITY OF MIDLAND SHALL HAVE THE RIGHT TO MITIGATE DEFICIENCIES IN THE FUNCTION OF THE STORMWATER FACILITY, AND TO BE REIMBURSED BY THE PROPERTY OWNER, IF THE CITY FINDS IT NECESSARY FOR PUBLIC HEALTH AND SAFETY.
8. RELATIVE TO THE EXISTING DRAINAGE EASEMENT: THE CITY OF MIDLAND AND ITS EMPLOYEES, CONTRACTORS, AGENTS, SUCCESSORS, AND ASSIGNS, SHALL HAVE THE FREE AND UNINTERRUPTED RIGHT OF PASSAGE IN, ON, UPON, OVER, UNDER, ACROSS, ALONG AND THROUGH THE PROPERTY DESCRIBED HEREIN FOR THE PURPOSE OF ESTABLISHING, LAYING, CONSTRUCTING, RECONSTRUCTING, INSTALLING, REALIGNING, MODIFYING, REPLACING, IMPROVING, ALTERING, OPERATING, MAINTAINING, ACCESSING, INSPECTING, REPAIRING, RELOCATING AND REMOVING SAID FACILITIES, INCLUDING BUT NOT LIMITED TO, THE RIGHT TO CUT AND TRIM BUSHES AND TREES, TOGETHER WITH THE RIGHT OF INGRESS, EGRESS AND REGRESS FOR SUCH PURPOSES IN, ON, UPON, OVER, UNDER, ACROSS, ALONG AND THROUGH THE PROPERTY DESCRIBED HEREIN.
9. RELATIVE TO THE EXISTING DRAINAGE EASEMENT: DEVELOPER MAY NOT USE ANY PART OF THE PROPERTY DESCRIBED HEREIN IF SUCH USE WILL DAMAGE, DESTROY, INJURE, AND/OR UNDULY INTERFERE WITH THE CITY OF MIDLAND'S USE OF THE PROPERTY. DEVELOPER EXPRESSLY COVENANTS AND AGREES FOR ITSELF, ITS LEGAL REPRESENTATIVES, SUCCESSORS AND/OR ASSIGNS, THAT NO BUILDING, ROADWAYS, OR CURBS AND GUTTERS OF ANY KIND WILL BE PLACED ON THE PROPERTY DESCRIBED HEREIN. WRITTEN PERMISSION FOR ABOVE GROUND APPURTENANCES MUST BE OBTAINED FROM THE CITY OF MIDLAND, PRIOR TO INSTALLATION.
10. THERE IS HEREBY IMPOSED A RESTRICTION, WHICH SHALL RUN WITH THE LAND, THAT LOT 1, BLOCK 1; LOTS 1–9, BLOCK 2; LOTS 1–21, BLOCK 6; AND COMMON AREA; C BACKING OR SIDING ON STATE HIGHWAY 158 SHALL NOT HAVE DIRECT DRIVEWAY ACCESS TO SAID HIGHWAY.
11. TOTAL SF3 LOT COUNT = 573 LOTS
    PHASE 1 = 129 LOTS
    PHASE 2 = 133 LOTS
    PHASE 3 = 170 LOTS
    PHASE 4 = 126 LOTS

Curve Table					
Curve #	Radius	Arc Length	Chord Length	Chord Bearing	Delta
C1	500.0	46.4'	46.4	S33° 35' 22.31"W	5°18'48"
C2	500.0	338.2'	331.8	S55° 37' 23.10"W	38°45'14"
C3	500.0	215.3'	213.6	N02° 39' 59.71"W	24°40'01"
C4	300.0	113.1'	112.4	N25° 48' 07.35"W	21°36'15"
C6	4619.7	280.8'	280.7	N35° 02' 45.67"E	3°28'56"
C7	4619.7	282.5'	282.5	N38° 32' 21.55"E	3°30'15"
C8	4619.7	274.5'	274.4	N41° 59' 36.30"E	3°24'14"
C9	4339.7	775.9'	774.8	N38° 34' 52.58"E	10°14'37"
C10	4339.7	278.3'	278.3	N45° 32' 25.97"E	3°40'30"
C11	4339.7	217.3'	217.3	N48° 48' 46.01"E	2°52'10"
C12	100.0	113.9'	107.8	N17° 37' 25.56"E	65°14'51"
C13	4059.7	586.6'	586.1	N39° 03' 34.67"E	8°16'42"
C14	4060.0	296.1'	296.0	N45° 17' 18.75"E	4°10'44"
C15	4059.7	461.4'	461.2	N50° 38' 03.40"E	6°30'45"
C18	3499.7	557.7'	557.1	N38° 38' 14.72"E	9°07'51"
C19	3499.7	622.6'	621.8	N48° 17' 58.14"E	10°11'34"
C20	3499.7	363.9'	363.8	N56° 22' 30.56"E	5°57'31"
C21	3499.7	672.2'	671.2	N64° 51' 26.01"E	11°00'20"
C22	3219.7	788.0'	786.1	N41° 21' 31.96"E	14°01'24"
C23	3219.7	617.2'	616.3	N53° 51' 44.78"E	10°59'02"

Curve Table					
Curve #	Radius	Arc Length	Chord Length	Chord Bearing	Delta
C24	3219.7	592.5'	591.7	N64° 37' 35.28"E	10°32'39"
C25	2939.7	162.1'	162.1	N33° 05' 42.14"E	3°09'37"
C26	2939.7	705.3'	703.6	N41° 32' 53.62"E	13°44'46"
C27	2939.7	255.2'	255.2	N50° 54' 31.06"E	4°58'28"
C28	2939.7	305.7'	305.6	N56° 22' 30.56"E	5°57'31"
C29	2939.7	512.8'	512.1	N64° 21' 05.42"E	9°59'39"
C30	2939.7	140.5'	140.5	N70° 43' 05.36"E	2°44'21"
C31	500.0	134.9'	134.5	N44° 20' 02.18"W	15°27'35"

Line #	Length	Direction
L1	22.0'	S78° 08' 09.54"W
L2	20.7'	N12° 35' 19.55"W
L3	20.4'	N12° 01' 04.08"W
L4	22.0'	S77° 56' 37.97"W
L5	20.8'	N12° 11' 06.93"W
L8	21.3'	N88° 29' 23.05"E
L11	21.3'	N88° 29' 02.84"E
L12	21.1'	S01° 30' 39.47"E
L15	21.3'	S02° 06' 55.23"W
L17	21.1'	S87° 52' 16.50"E
L20	21.8'	S77° 25' 19.41"W
L21	21.3'	S01° 36' 24.02"E
L24	21.3'	N87° 22' 34.02"W
L25	21.1'	N88° 24' 07.55"E
L26	21.3'	S01° 35' 44.38"E
L27	22.9'	S80° 48' 13.73"W
L29	20.2'	N11° 24' 08.59"W
L30	21.7'	N77° 19' 51.36"E
L31	20.7'	N12° 39' 01.72"W
L32	21.2'	S14° 04' 42.80"E
L33	21.2'	S75° 55' 17.20"W
L34	21.2'	S14° 04' 42.80"E

Line #	Length	Direction
L36	19.2'	N08° 56' 58.83"W
L37	21.5'	S60° 42' 33.65"E
L38	20.9'	S29° 06' 37.91"W
L39	21.2'	N90° 00' 00.00"W
L41	21.2'	S90° 00' 00.00"E
L42	21.2'	N30° 00' 00.00"E
L43	16.2'	S47° 39' 59.71"E
L44	24.8'	S19° 14' 54.43"W
L45	17.3'	N72° 05' 38.18"W
L46	21.1'	N81° 53' 26.11"W
L47	21.3'	N08° 06' 29.57"E
L48	21.3'	S81° 17' 58.98"E
L49	21.0'	S75° 45' 35.98"E
L50	21.1'	S14° 39' 50.47"W
L51	21.3'	S14° 01' 25.69"W
L52	21.3'	S75° 18' 54.07"E
L53	21.1'	N14° 41' 28.32"E
L54	21.1'	N75° 58' 56.70"W
L55	21.0'	S03° 26' 34.40"W
L56	21.2'	S87° 13' 50.70"E
L57	21.2'	S02° 45' 51.34"W
L58	21.5'	S86° 30' 43.88"E

Line #	Length	Direction
L59	21.3'	N13° 59' 33.47"E
L60	21.3'	N75° 17' 01.85"W
L61	21.2'	N30° 00' 00.00"E
L62	21.1'	S58° 45' 54.50"W
L63	22.5'	S27° 10' 03.12"W
L64	20.2'	S62° 06' 19.80"E
L65	20.0'	S62° 35' 28.61"E
L66	22.4'	N27° 28' 07.67"E
L67	20.1'	N62° 19' 43.68"W

PW #1
PLUGGED WELL: JOHNNIE #1
API:32931519
PLUGGED 8/20/2002

PW #2
PLUGGED WELL: KEEGAN #2
API: 32938419
PLUGGED 11/17/2017

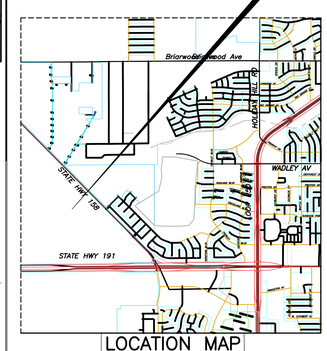
DEVELOPER:

D.R. HORTON – TEXAS, LTD
6751 N. Freeway
Fort Worth, Texas 76131
817–230–0800

ENGINEER:

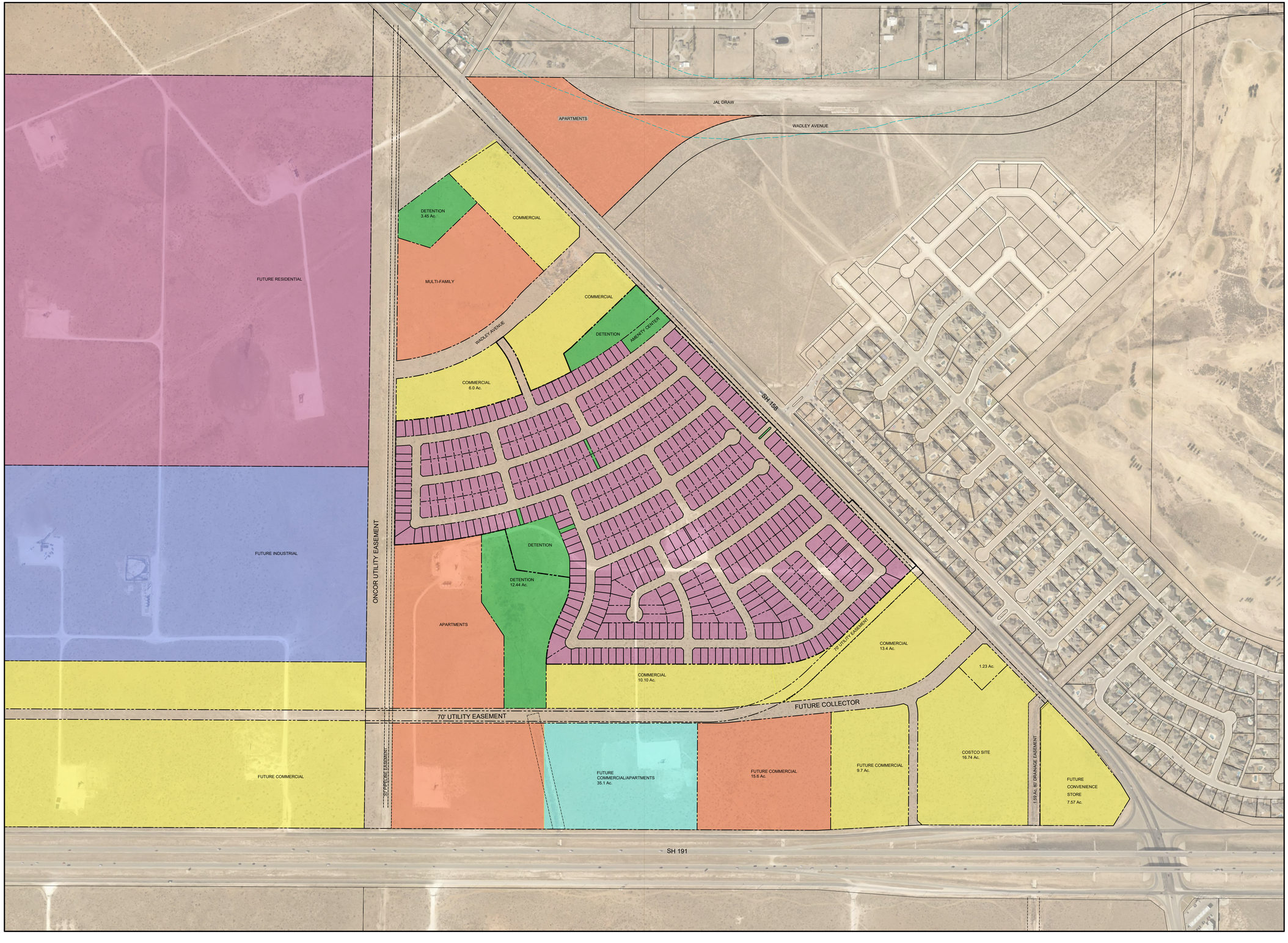
Parkhill
1700 W Wall St., #100
Midland, Texas 79701
432–697–1447

NORTHWEST PASSAGE ADDITION



LOCATION MAP

NORTHWEST PASSAGE ADDITION



Parkhill

Parkhill.com

DR Horton
Northwest Passage
Zoning

0 300' 600'

CLIENT
DR Horton

PROJECT NO.
4534.21

#	DATE	DESCRIPTION

Zoning

EX-01

PACKET
33.29
August 24, 2021

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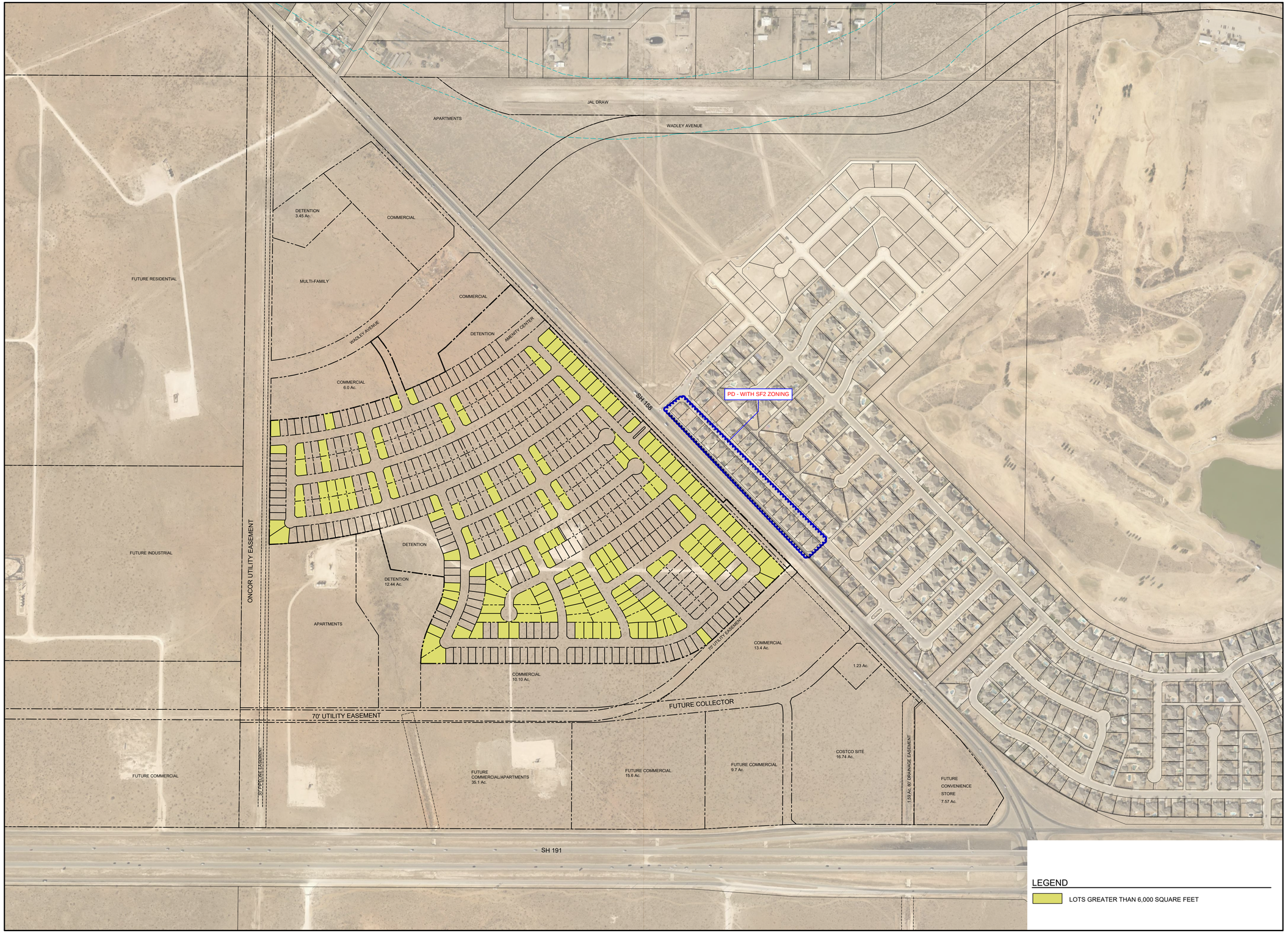

Parkhill

Parkhill.com

DR Horton
Northwest Passage

Landplan

0 300' 600'

CLIENT
DR Horton

PROJECT NO.
4531.21

#	DATE	DESCRIPTION

Landplan

EX-02

PACKET
33.30
August 24, 2021

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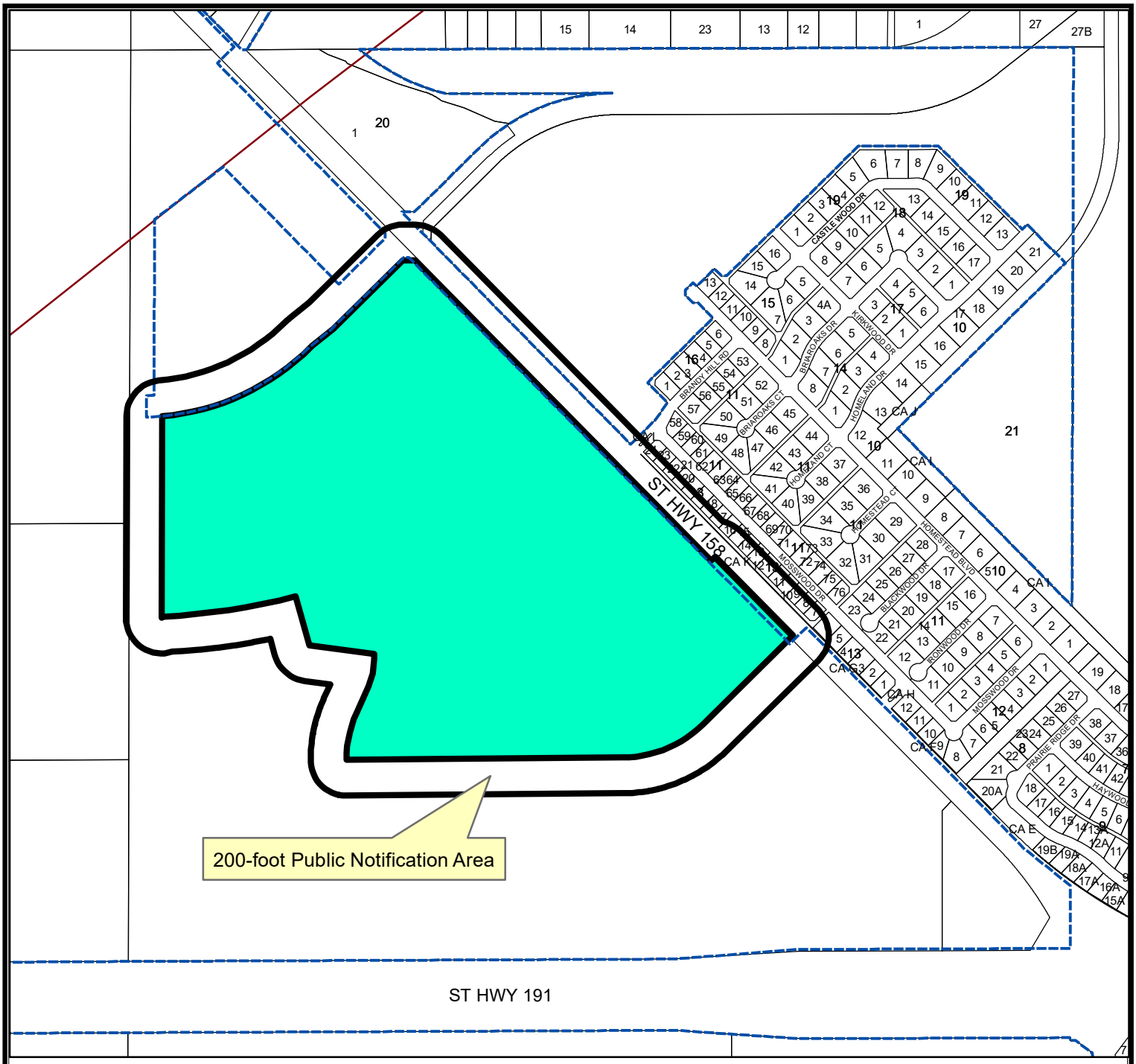


LOCATION MAP

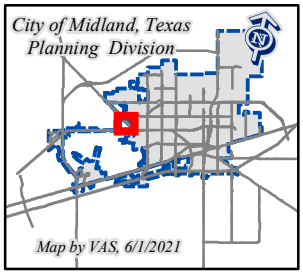
Z-21-0228 **Scale: 1" = 800'**

Consider a request for the initial zoning of a 131.190-acres tract of land located in Section 35, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas.

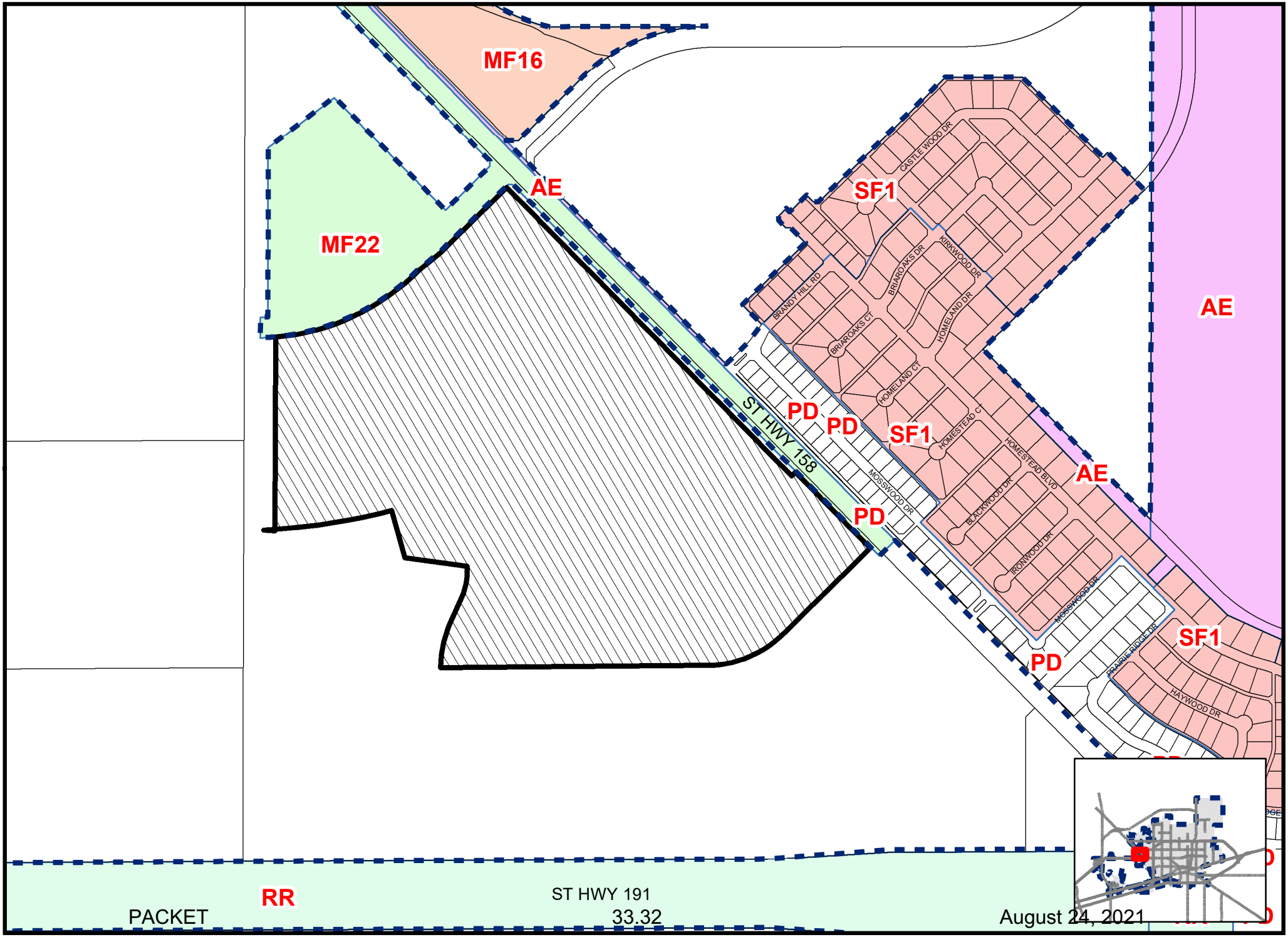
Generally located on the west side of State Highway 158, approximately 1,001 feet north of State Highway 191. (Extraterritorial Jurisdiction)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



August 24, 2021



Map By VAS, 6/10/2021

Z-21-0228

Scale: 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2020: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

RECEIVED
JUN 2 1 2021
BY: .....

MIDLAND
Planning Division

CUMBERLAND & WESTERN RESOURCES LLC
2200 LAPSLEY LN
BOWLING GREEN KY 42103

PUBLIC NOTICE

The **Planning and Zoning Commission** of the City of Midland, Texas, will hold a public hearing at **3:30 p.m.** on **Monday, June 21, 2021,** in the Council Chamber, City Hall, 300 N. Loraine, Midland, TX 79701 and via video conference, on a request by **D.R. Horton, Inc.,** for the **Initial Zoning** of the following described property:

LEGAL DESCRIPTION: A 131.190-acre tract of land located in Section 35, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas.

LOCATION: Generally located on the west side of State Highway 158, approximately 1,001 feet north of State Highway 191. (Extraterritorial Jurisdiction)

PROPOSED ZONING:

From: No Current Zoning
To: SF-3, Single-Family Dwelling District in part and LR, Local Retail District in part.

Not to be considered a part of the Public Notice: 1) See reverse side for location map; 2) In order to be considered as an official objection to this request a response **must be submitted by mail or delivered *in writing*** to the Planning Division at the address listed above. An official objection may be filed by completing this notice and returning it to the address listed above.

I object to this request X **Comments:** Request consideration of a minimum SF2 zoning to be more closely aligned with existing housing in the area.
Required Information:

Misty Clary — Property Owner's Signature
Misty Clary — Printed Name
6805 Mosswood Dr. — Property Address (**No P. O. Boxes**)

If any further information is desired, please contact the Planning Division at 685-7400. Si ud. desea más información en Español sobre esta cuestión, llame al : 685-7400.

Notices Mailed: 25
Date Mailed: June 11, 2021
Case Number: Z-21-0228
Case Name: D.R. Horton Annexation
VAS Planner's Initials

Cristina Odenborg Burns
Planning Division Manager
Department of Development Services

The meeting facility is accessible to disabled persons. A wheelchair entry ramp is located at the southeast entrance to City Hall. A parking space designated for use by disabled persons is available near the southeast entrance doors. Any disabled person needing special accommodations or hearing impaired persons wishing to have an interpreter should request services through the Administrative Services Department at least 48 hours prior to the scheduled meeting by contacting Compliance Coordinator for the City of Midland, at (432) 685-7251. If communication via TDD is required, please call 1-800-735-2989.

Video Conference information can be found on the City of Midland's website:
http://www.midlandtexas.gov/9671/PrimeGov-Meetings

RECEIVED
JUN 2 2 2021

BY: .....

MIDLAND
Planning Division

RATTLER MIDSTREAM LLC
500 W TEXAS AVE
MIDLAND TX 79701

PUBLIC NOTICE

The **Planning and Zoning Commission** of the City of Midland, Texas, will hold a public hearing at **3:30 p.m.** on **Monday, June 21, 2021,** in the Council Chamber, City Hall, 300 N. Loraine, Midland, TX 79701 and via video conference, on a request by **D.R. Horton, Inc.,** for the **Initial Zoning** of the following described property:

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LOCATION: Generally located on the west side of State Highway 158, approximately 1,001 feet north of State Highway 191. (Extraterritorial Jurisdiction)

PROPOSED ZONING:

From: No Current Zoning
To: SF-3, Single-Family Dwelling District in part and LR, Local Retail District in part.

Not to be considered a part of the Public Notice: 1) See reverse side for location map; 2) In order to be considered as an official objection to this request a response **must be submitted by mail or delivered *in writing*** to the Planning Division at the address listed above. An official objection may be filed by completing this notice and returning it to the address listed above.

I object to this request ✓ **Comments:** Not in agreement to re-zone

Required Information:

Traci Thompson — Property Owner's Signature

Traci Thompson — Printed Name

6703 Mosswood Dr. Midland, Tx 79707 — Property Address (**No P. O. Boxes**)

If any further information is desired, please contact the Planning Division at 685-7400. Si ud. desea más información en Español sobre esta cuestión, llame al : 685-7400.

Notices Mailed: 25
Date Mailed: June 11, 2021
Case Number: Z-21-0228
Case Name: D.R. Horton Annexation
VAS Planner's Initials

Cristina Odenborg Burns
Planning Division Manager
Department of Development Services

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Video Conference information can be found on the City of Midland's website:
http://www.midlandtexas.gov/9671/PrimeGov-Meetings









City Council Meeting

Item Number: 34

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Jamie Radcliff, Budget Manager

Subject: GATHER PUBLIC INPUT ON THE PROPOSED 2021-2022 BUDGET; AND CONSIDER AN ORDINANCE OF THE CITY OF MIDLAND PROVIDING FUNDS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2021, AND ENDING SEPTEMBER 30, 2022, BY APPROVING THE BUDGET FOR SAID PERIOD AND APPROPRIATING AND SETTING ASIDE THE NECESSARY FUNDS OUT OF THE GENERAL AND OTHER REVENUES AND UNAPPROPRIATED FUND BALANCE OF THE CITY OF MIDLAND FOR SAID FISCAL YEAR FOR THE MAINTENANCE AND OPERATION OF THE VARIOUS DEPARTMENTS AND FOR VARIOUS ACTIVITIES AND IMPROVEMENTS TO THE CITY; AND ORDERING PUBLICATION (FINANCE)

Purpose:

Compliance with the Texas Local Government Code requires a public hearing on the proposed budget more than 15 days after the proposed budget is filed with the city Secretary. The budget was filed with the City Secretary on July 30th, 2021.

Recommended City Council Action:

Approve

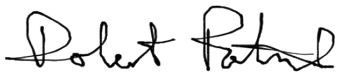
Fiscal Impact:

The proposed budget is submitted as the City of Midland's general operating plan for the fiscal year beginning October 1, 2021 and ending September 30, 2022.

Discussion:

The City Council established a Proposed Tax Rate of 0.367189 cents on August 10, 2021. At this tax rate the General Fund will have a budgeted appropriation of $137,666,537 for FY22.

The other major funds will have total budgeted appropriations of $210,281,489.



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MIDLAND PROVIDING FUNDS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2021, AND ENDING SEPTEMBER 30, 2022, BY APPROVING THE BUDGET FOR SAID PERIOD AND APPROPRIATING AND SETTING ASIDE THE NECESSARY FUNDS OUT OF THE GENERAL AND OTHER REVENUES AND UNAPPROPRIATED FUND BALANCE OF THE CITY OF MIDLAND FOR SAID FISCAL YEAR FOR THE MAINTENANCE AND OPERATION OF THE VARIOUS DEPARTMENTS AND FOR VARIOUS ACTIVITIES AND IMPROVEMENTS TO THE CITY; AND ORDERING PUBLICATION

WHEREAS, as required by Article IV, Section 14, of the City Charter, the City Manager has prepared and submitted to the City Council a Budget Estimate of expenditures and revenues of all City departments, activities, and offices for the year beginning October 1, 2021, and ending September 30, 2022; and

WHEREAS, said Budget has been filed with the City Secretary of the City of Midland, Texas, as required; and

WHEREAS, notices of a public hearing upon said Budget have been duly and legally made; and

WHEREAS, said public hearing has been held and full and final consideration given said Budget;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That for the purpose of providing the funds necessary and proposed to be expended in the Budget of the City of Midland for the fiscal year beginning October 1, 2021, and ending September 30, 2022, the Budget prepared by the City Manager and submitted to the City Council for its consideration and approval is hereby approved, and the available resources and revenues of the City of Midland as set forth in said Budget for said fiscal year, are hereby appropriated and set aside for the maintenance and operation of the various departments of the Government of the City of Midland, together with the various

activities and improvements as set forth in said Budget; and the appropriations shall be strictly applied for the uses and purposes in the respective departments as provided for in said Budget.

SECTION TWO. That the said Budget for the fiscal year beginning October 1, 2021, and ending September 30, 2022, approved herein shall be attached to and made a part of this ordinance the same as if copied in full herein, said Budget being on file in the City Secretary's office referenced by the number and date of this Ordinance.

SECTION THREE. That expenditures during the fiscal year beginning October 1, 2021, and ending September 30, 2022, shall be made in accordance with the summary Budget approved by this ordinance unless otherwise authorized by a duly enacted resolution or ordinance of the City of Midland and subject to the following provisions and conditions, to wit:

1. That no expenditure may be made without Council approval which shall increase the total appropriation for any one Fund.
2. That the City Manager may make transfers to and between departments and divisions unless such transfers would increase the total appropriation within a Fund.
3. That department managers are hereby authorized to approve transfers of amounts between line items within their departments if such transfers do not significantly change the work program contemplated in the approved Budget.

SECTION FOUR. During each year while there is any liability by reason of the City's Personnel Policies or Employment Agreements, the City Council shall compute and ascertain the rate and amount of ad valorem tax, based on the latest approved tax rolls with full allowance being made for tax collection, which will be sufficient to raise the money required to pay any sums which may be or become due during any such year, in no instance to be less than two percent (2%) of such obligation, together with all interest thereon, because of the obligations assumed by the City's Personnel Policies or Employment

Agreements. Said rate and amount of ad valorem tax will be ordered to be levied against all taxable property in the City for each year while any liability exists by reason of the obligations undertaken by the City's Personnel Policies or Employment Agreements, and said ad valorem tax shall be assessed and collected each year until all of the obligations incurred in the City's Personnel Policies or Employment Agreements shall have been discharged and all liability discharged.

SECTION FIVE. For the purpose of this ordinance, certain words as used herein are defined as follows:

1. The term "agency" wherever used in the said Budget shall mean the same and be synonymous with the term "department" as used in the Charter, ordinances, resolutions, and other official documents and policies of the City of Midland, Texas.
2. The term "organization" wherever used in the said Budget shall mean the same and be synonymous with the term "division" as used in the Charter, ordinances, resolutions and other official documents and policies of the City of Midland, Texas.

SECTION SIX. All departments of the City required to be established by the City Charter, state law, or federal law are deemed to be created.

SECTION SEVEN. That all transfers from the Water and Sewer Fund and Sanitation Fund are made in compliance with Sections 1502.057, 1502.058 and 1502.059 of the Texas Government Code.

SECTION EIGHT. That the City Manager shall give notice of water rate increases to appropriate individuals and entities as required by state law.

SECTION NINE. That the City Manager is hereby authorized and directed to execute contracts for grants of Hotel/Motel Tax funds to the extent that said grants are included in the Budget.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Christy Weakland, Interim Director of Finance

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

NOTICE OF PUBLIC HEARING
2021-2022
CITY OF MIDLAND
ANNUAL OPERATING BUDGET

Notice is hereby given that the Mayor and City Council will conduct a Public Hearing at 10:00 A.M. on Tuesday, August 24, 2021 in the City Hall Council Chamber located at 300 North Loraine, Midland, Texas.

THIS BUDGET WILL RAISE MORE TOTAL PROPERTY TAXES THAN LAST YEAR'S BUDGET BY $2,655,225 OR 4.4%, AND OF THAT AMOUNT, $1,448,981 IS TAX REVENUE TO BE RAISED FROM NEW PROPERTY ADDED TO THE TAX ROLL THIS YEAR.

The Public Hearing is for the purpose of allowing the public and other interested groups to make comments regarding the 2021-2022 City of Midland Budget.

FY22 SUMMARY - REVENUE & EXPENDITURES

Fund Department	FY 2020 Actuals	FY 2021 Budget	FY 2022 Dept Requests	FY22 Proposed Budget Review vs Adjusted Budget Variance
GENERAL FUND (001)				
Total Revenue:	**$ 159,201,645**	**$ 135,391,704**	**$ 137,666,537**	$ 2,274,833
Total General Fund Expenditures	**$ 154,826,366**	**$ 135,391,703**	**$ 137,666,537**	**$ 2,274,834**
Total Surplus/(Deficit)	**$ 4,375,279**	**$ 1**	**$ 0**	**$ 0**
WATER & SEWER FUND (300)				
Total Revenues:	$ 105,239,297	$ 77,966,600	$ 101,719,564	$ 23,752,964
Total Expenditures:	$ 98,143,579	$ 95,852,730	$ 101,719,564	$ 5,866,834
Total Surplus/(Deficit)	$ 7,095,718	$ (17,886,130)	$ -	$ 17,886,130
DRAINAGE FUND (400)				
Total Revenues:	$ 2,390,659	$ 2,400,500	$ 2,405,000	$ 4,500
Total Expenditures:	$ 460,978	$ 328,840	$ 2,405,000	$ 2,076,160
Total Surplus/(Deficit)	$ 1,929,681	$ 2,071,660	$ -	$ (2,071,660)
SANITATION FUND (430)				
Total Revenues:	$ 21,041,006	$ 18,924,640	$ 20,661,772	$ 1,737,132
Total Expenditures:	$ 23,755,992	$ 19,893,254	$ 20,661,772	$ 768,518
Total Surplus/(Deficit)	$ (2,714,986)	$ (968,614)	$ -	$ 968,614
AIRPORT FUND (500)				
Total Revenues:	$ 17,092,692	$ 17,818,348	$ 15,488,000	$ (2,330,348)
Total Expenditures:	$ 21,787,319	$ 15,010,141	$ 10,645,530	$ (4,364,611)
Total Surplus/(Deficit)	$ (4,694,627)	$ 2,808,207	$ 4,842,470	$ 2,034,263
GARAGE FUND (750)				
Total Revenues:	$ 19,353,583	$ 20,836,178	$ 23,175,216	$ 2,339,038
Total Expenditures:	$ 14,411,768	$ 15,685,516	$ 19,580,176	$ 3,894,659
Total Surplus/(Deficit)	$ 4,941,815	$ 5,150,662	$ 3,595,040	$ (1,555,622)
TECHNOLOGY FUND (770)				
Total Revenues:	$ 1,185,603	$ 1,172,460	$ 2,167,134	$ 994,674
Total Expenditures:	$ 1,502,722	$ 2,417,134	$ 2,167,134	$ (250,000)
Total Surplus/(Deficit)	$ (317,119)	$ (1,244,674)	$ -	$ 1,244,674
RISK FUNDS (701-702)				
Total Revenues:	$ 16,530,372	$ 22,203,463	$ 17,614,360	$ (4,589,103)
Total Expenditures:	$ 12,617,425	$ 18,886,615	$ 17,614,360	$ (1,272,255)
Total Surplus/(Deficit)	$ 3,912,947	$ 3,316,848	$ -	$ (3,316,848)
HOTEL MOTEL FUND (090)				
Total Revenues:	$ 5,734,725	$ 4,050,000	$ 5,962,320	$ 1,912,320
Total Expenditures:	$ 6,849,108	$ 6,342,096	$ 6,112,320	$ (229,776)
Total Surplus/(Deficit)	$ (1,114,383)	$ (2,292,096)	$ (150,000)	$ 2,142,096
SPECIAL REVENUE FUNDS				
Total Revenues:	$ 5,656,576	$ 3,460,534	$ 10,021,709	$ 6,561,175
Total Expenditures:	$ 10,609,692	$ 11,173,416	$ 10,021,709	$ (1,151,707)
Total Surplus/(Deficit)	$ (4,953,116)	$ (7,712,882)	$ -	$ 7,712,882
DEBT SERVICE FUNDS				
Total Revenues:	$ 15,328,893	$ 17,976,337	$ 19,353,924	$ 1,377,587
Total Expenditures:	$ 13,848,244	$ 17,959,733	$ 19,353,924	$ 1,394,191
Total Surplus/(Deficit)	$ 1,480,649	$ 16,604	$ -	$ (16,604)

***NOTE: The Financial Policies updated for the FY 2022 proprosed budget discontinued the practice of budgeting capital contra accounts, which negate capital expenditures, and consequently, reduce the total budget by the capital expenses. The Garage, for example, had an actual budget for FY 2021 of $22.9 million, including capital expenditures.**

City Council Meeting

Item Number: 35

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Jamie Radcliff, Budget Manager

Subject: TAX RATE INCREASE FOR FISCAL YEAR 2021-2022; AND CONSIDER AN ORDINANCE FIXING THE TAX LEVY FOR THE CITY OF MIDLAND, TEXAS, FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2021, AND ENDING ON SEPTEMBER 30, 2022 (FINANCE)

Purpose:

The purpose of this item is to provide notification to the public and to allow a public forum for citizen input on the tax increase.

Recommended City Council Action:

Approve

Fiscal Impact:

The proposed Ad Valorem Tax Rate of 0.367189 per $100 valuation for the fiscal year 2021-2022 operating budget will generate approximately $63,192,505 in revenue for the General Fund.

Discussion:

The proposed rate of 0.367189 is composed of a maintenance and operations rate (0.310841 per $100 valuation) and a debt service levy (0.056348 per $100 valuation).

This budget will raise more total property taxes than last year’s budget by $2,655,225 or 4.4%, and of that amount, $1,448,981 is tax revenue to be raised from new property added to the tax roll this year.

Attached are the Chief Appraiser's 2021 Certified Estimates of Taxable Value for the City of Midland, the "Notice of Public Hearing on Tax Increase," and the "Notice of Tax Rates."



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE FIXING THE TAX LEVY FOR THE CITY OF MIDLAND, TEXAS, FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2021, AND ENDING ON SEPTEMBER 30, 2022

WHEREAS, the Midland City Council voted to propose a tax rate of $0.367189 for each one hundred dollar valuation of taxable property for the fiscal year October 1, 2021, to September 30, 2022; and

WHEREAS, the Midland City Council finds and determines that the City of Midland has fully and timely complied with all notice, hearing and other legal requirements relative to the adoption of this ordinance; and

WHEREAS, THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE; AND

WHEREAS, THE TAX RATE WILL EFFECTIVELY BE RAISED BY 3.50 PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A $100,000.00 HOME BY APPROXIMATELY $11.00.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That to pay interest and principal on outstanding bonds as they mature, a tax levy of $0.056348 on each $100.00 valuation of all taxable property in the City of Midland, Texas is hereby made and levied for the year 2021 to be credited to the Interest and Sinking Fund of the City.

SECTION TWO. That to raise funds to help defray current General expenses of the City, a levy of $0.310841 on each $100.00 valuation of all taxable property within the City is hereby made and levied for the year 2021. The collections from these levies are to be apportioned and deposited as follows:

Interest and Sinking Fund	$0.056348
General Fund	$0.310841
TOTAL TAX LEVY FOR ALL PURPOSES	$0.367189

SECTION THREE. That the apportionment of taxes collected for the 2011 through 2019 tax years shall be apportioned in the same ratio as the taxes for those same years collected prior to the delinquency date and that the apportionment of taxes collected for 2010 and prior years shall be apportioned in accordance with the schedule for 2010 taxes.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, with the motion being stated as "I move that the property tax rate be increased by the adoption of a tax rate of $0.367189, which is effectively a 2.07 percent increase in the tax rate", by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, with the motion being stated as "I move that the property tax rate be increased by the adoption of a tax rate of $0.367189, which is effectively a 2.07 percent increase in the tax rate", seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Christy Weakland, Interim Director of Finance

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

2021 CHIEF APPRAISER'S CERTIFIED ESTIMATE
CITY OF MIDLAND

GROSS VALUE	$18,677,118,711
LOSS DUE TO AGRICULTURAL USE	($49,429,470)
CONSTITUTIONAL EXEMPT PROPERTY	($689,112,138)
DISABLED VETERAN EXEMPTION	($5,783,500)
DISABLED VETERAN EXEMPTION FROZEN	$0
DISABLED VETERAN EXEMPTION (100%)	($47,524,636)
GENERAL HOMESTEAD EXEMPTION	$0
GENERAL HOMESTEAD EXEMPTION FROZEN	$0
HOMESTEAD EXEMPTION (LOCAL OPTION)	$0
HOMESTEAD EXEMPTION FROZEN (LOCAL OPTION)	$0
HOMESTEAD EXEMPTION (LOCAL PERCENT OPTION)	$0
HOMESTEAD EXEMPTION (LOCAL PERCENT OPTION) FROZEN	$0
OVER 65 EXEMPTION	$0
FROZEN OVER 65 EXEMPTION	$0
OVER 65 EXEMPTION (LOCAL OPTION)	($59,987,361)
OVER 65 EXEMPTION FROZEN (LOCAL OPTION)	$0
DISABLED EXEMPTION	$0
DISABLED EXEMPTION FROZEN	$0
DISABLED EXEMPTION (LOCAL OPTION)	$0
DISABLED EXEMPTION (LOCAL OPTION) FROZEN	$0
ABATEMENTS	$0
POLLUTION CONTROL	($23,950)
FREEPORT EXEMPTION	($2,965,315)
MINIMUM VALUE LOSS (MINERALS & PERSONAL PROPERTY	($383,910)
PARTIAL YEAR EXEMPTION/ LEASED VEHICLES & OTHER	($1,485,482)
10% CAP LOSS	($226,056,219)
TOTAL TAXABLE VALUE FOR 2021	$17,594,366,730
LESS VALUE STILL UNDER PROTEST	$2,109,978,957
ESTIMATED VALUE THAT WILL BE CERTIFIED BY ARB	($1,708,130,733)
CERTIFIED ESTIMATE TAXABLE VALUE FOR 2021	$17,192,518,506

I, Jerry M. Bundick, Chief Appraiser for the Midland Central Appraisal District, do solemnly swear or affirm that I have made, or caused to be made, a diligent effort to ascertain all property in the City of Midland subject to appraisal by me and that I have included in the certified estimate, the market and taxable values of property that I am aware of at an appraised value determined as required by law.



Jerry M. Bundick
Sworn to and subscribed before me the 24th day of July, 2021

CHIEF APPRAISER'S CERTIFIED ESTIMATE
CITY OF MIDLAND

	REAL ESTATE	P P	P&A MIN	P&A PP	TOTALS
GROSS VALUE	$16,062,910,951	$1,144,656,540	$1,055,683,110	$413,868,110	$18,677,118,711
LOSS DUE TO AGRICULTURAL USE	($49,429,470)	$0	$0	$0	($49,429,470)
CONSTITUTIONAL EXEMPT PROPERTY	($681,595,988)	($3,675,030)	($3,841,120)	$0	($689,112,138)
DISABLED VETERAN EXEMPTION	($5,771,500)	($12,000)	$0	$0	($5,783,500)
DISABLED VETERAN EXEMPTION FROZEN	$0	$0	$0	$0	$0
DISABLED VETERAN EXEMPTION (100%)	($47,495,996)	($28,640)	$0	$0	($47,524,636)
GENERAL HOMESTEAD EXEMPTION	$0	$0	$0	$0	$0
GENERAL HOMESTEAD EXEMPTION FROZEN	$0	$0	$0	$0	$0
HOMESTEAD EXEMPTION (LOCAL OPTION)	$0	$0	$0	$0	$0
HOMESTEAD EXEMPTION FROZEN (LOCAL OPTION)	$0	$0	$0	$0	$0
HOMESTEAD EXEMPTION (LOCAL PERCENT OPTION)	$0	$0	$0	$0	$0
HOMESTEAD EXEMPTION (LOCAL PERCENT OPTION) FROZEN	$0	$0	$0	$0	$0
OVER 65 EXEMPTION	$0	$0	$0	$0	$0
FROZEN OVER 65 EXEMPTION	$0	$0	$0	$0	$0
OVER 65 EXEMPTION (LOCAL OPTION)	($59,796,694)	($190,667)	$0	$0	($59,987,361)
OVER 65 EXEMPTION FROZEN (LOCAL OPTION)	$0	$0	$0	$0	$0
DISABLED EXEMPTION	$0	$0	$0	$0	$0
DISABLED EXEMPTION FROZEN	$0	$0	$0	$0	$0
DISABLED EXEMPTION (LOCAL OPTION)	$0	$0	$0	$0	$0
DISABLED EXEMPTION (LOCAL OPTION) FROZEN	$0	$0	$0	$0	$0
ABATEMENTS	$0	$0	$0	$0	$0
POLLUTION CONTROL	$0	$0	$0	($23,950)	($23,950)
FREEPORT EXEMPTION	$0	($241,635)	$0	($2,723,680)	($2,965,315)
MINIMUM VALUE LOSS (MINERALS & PERSONAL PROPERTY	$0	($32,700)	($351,210)	$0	($383,910)
PARTIAL YEAR EXEMPTION/ LEASED VEHICLES & OTHER	($1,324,902)	($160,580)	$0	$0	($1,485,482)
10% CAP LOSS	($226,056,219)	$0	$0	$0	($226,056,219)
TOTAL TAXABLE VALUE FOR 2021	$14,991,440,182	$1,140,315,288	$1,051,490,780	$411,120,480	$17,594,366,730
LESS VALUE STILL UNDER PROTEST	$2,076,290,957	$33,688,000	$0	$0	$2,109,978,957
ESTIMATED VALUE THAT WILL BE CERTIFIED BY ARB	($1,677,643,093)	($30,487,640)	$0	$0	($1,708,130,733)
CERTIFIED ESTIMATE TAXABLE VALUE FOR 2021	$14,592,792,318	$1,137,114,928	$1,051,490,780	$411,120,480	$17,192,518,506

I, Jerry M. Bundick, Chief Appraiser for the Midland Central Appraisal District, do solemnly swear or affirm that I have made, or caused to be made, a diligent effort to ascertain all property in the City of Midland subject to appraisal by me and that I have included in the certified estimate, the market and taxable values of property that I am aware of at an appraised value determined as required by law.

Jerry M. Bundick

Jerry M. Bundick
Sworn to and subscribed before me the 24th day of July, 2021

August 24, 2021 35.7 PACKET

Notice About 2021 Tax Rates

Property Tax Rates in **CITY OF MIDLAND**

This notice concerns the 2021 property tax rates for CITY OF MIDLAND

This notice provide information about two tax rates used in adopting the current tax year's tax rate. The no-new-revenue tax rate would Impose the same amount of taxes as last year if you compare properties taxed in both years. In most cases, the voter-approval tax rate is the highest tax rate a taxing unit can adopt without holding an election. In each case, these rates are calculated by dividing the total amount of taxes by the current taxable value with adjustments as required by state law. The rates are given per $100 of property value.

This year's no-new-revenue tax rate..... **$** 0.359758 / $100

This year's voter-approval tax rate ..... **$** 0.367190 / $100

To see the full calculations, please visit midlandcounty.truthintax.com for a copy of the Tax Rate Calculation Worksheet

Unencumbered Fund Balances

The following estimated balances will be left in the taxing unit's accounts at the end of the fiscal year. These balances are not encumbered by corresponding debt obligations.

Type of Fund	Balance
Debt Service Fund	$300,000

Current Year Debt Service

The following acounts are for long-term debts that are secured by property taxes. These amounts will be paid from upcoming property tax revenues (or additional sales tax revenues, if applicable).

Description of Debt	Principal or Contract Payment to be Paid From Property Taxes	Interest to be Paid From Property Taxes	Other Amounts to be Paid	Total Payments
2018 B GO FUND	$115,375	$365,000	$0	$480,375
2018 A GO	$958,337	$570,000	$0	$1,528,337
2019 GO REF	$186,750	$470,000	$0	$656,750
2019 GO	$938,950	$590,000	$0	$1,528,950
2019 CO	$326,450	$250,000	$0	$576,450
2020 CO	$308,675	$235,000	$0	$543,675
2020 GO	$873,200	$530,000	$0	$1,403,200
2020 GO REF OF 2014 BOND	$236,854	$358,448	$0	$595,302
2021 GO REF OF 2012 BOND	$318,450	$550,000	$0	$868,450
2021 CO BOND	$600,000	$915,901	$0	$1,515,901

(expand as needed)

Total required for 2021 debt service.....	$9,697,390
- Amount *(if any)* paid from funds listed in unencumbered funds.....	$0
- Amount *(if any)* paid from other resources.....	$0
- Excess collections last year.....	$0
= Total to be paid from taxes in 2021	$9,697,390
+ Amount added in anticipation that the taxing unit will collect only 100 % of its taxes in 2021	0
= Total Debt Levy	$9,697,390

This notice contains a summary of the no-new-revenue and voter-approval calculation as certified by Jamie Radcliff, Budget Manager, August 2, 2021.

(designated individual's name and position) (date)

Form developed by: Texas Comptroller of Public Accounts, Property Tax Assistance Division

comptroller.texas.gov/taxes/property-tax

50-212 • 08-20/18

NOTICE OF PUBLIC HEARING ON TAX INCREASE

A tax rate of 0.367189 per $100 valuation has been proposed by the governing body of City of Midland.

PROPOSED TAX RATE	$0.367189 per $100
NO-NEW REVENUE TAX RATE	$0.359758 per $100
VOTER-APPROVAL TAX RATE	$0.367190 per $100
DE MINIMIS RATE	$0.359583 per $100

The no-new-revenue tax rate is the tax rate for the 2021 tax year that will raise the same amount of property tax revenue for City of Midland from the same properties in both the 2020 tax year and the 2021 tax year.

The voter-approval tax rate is the highest tax rate that City of Midland may adopt without holding an election to seek voter approval of the rate, unless the de minimis rate for City of Midland exceeds the voter-approval tax rate for City of Midland.

The de minimis rate is the rate equal to the sum of the no-new-revenue maintenance and operations rate for City of Midland, the rate that will raise $500,000, and the current debt rate for City of Midland.

The proposed tax rate is greater than the no-new-revenue tax rate. This means that City of Midland is proposing to increase property taxes for the 2021 tax year.

A public hearing on the proposed tax rate will be held on August 24, 2021 at 10:00 AM at Midland City Council Chambers.

The proposed tax rate is not greater than the voter-approval tax rate. As a result, City of Midland is not required to hold an election at which voters may accept or reject the proposed tax rate. However, you may express your support for or opposition to the proposed tax rate by contacting the City Council of the City of Midland at their offices or by attending the public meeting mentioned above.

YOUR TAXES OWED UNDER ANY OF THE ABOVE RATES CAN BE CALCULATED AS FOLLOWS:

property tax amount=(tax rate) X (taxable value of your property)/100

The members of the governing body voted on the proposed tax increase as follows:

FOR: Payton, Robnett, Dufford, Norman, Ladd, Blong

AGAINST: Trost

PRESENT and not voting: None

ABSENT: None

The 86th Texas Legislature modified the manner in which the voter-approval tax rate is calculated to limit the rate of growth of property taxes in the state.

The following table compares the taxes imposed on the average residence homestead by City of Midland last year to the taxes proposed to be imposed on the average residence homestead by City of Midland this year:

	2020	2021	Change
Total Tax Rate (per $100 of value)	$0.358928	$0.367189	*increase of* $0.008261 or 2.30%
Average homestead taxable value	$272,361	$288,698	*increase of* 5.99%
Tax on average homestead	$978	$1,060	*increase of* $82 OR 8.43%
Total tax levy on all properties	$60,537,279	$63,192,504	*increase of* $2,655,225 OR 4.39%

For assistance with tax calculations, please contact the tax assessor for City of Midland at 432-685-7214 or jradcliff@midlandtexas.gov, or visit www.midlandtexas.gov for more information.

City Council Meeting

Item Number: 36

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Kelly Martinez, Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 3, BLOCK 3, MOODY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM LI, LIGHT INDUSTRIAL DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MADISON STREET, APPROXIMATELY 146 FEET SOUTH OF SOUTH STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Jose Chavez, is requesting to rezone the property located at 507 N. Madison Street to allow for the construction of a residential home.

Recommended City Council Action:

Approve

Fiscal Impact:

This request does not require any City funds.

Current Zoning:

LI, Light Industrial District

Surrounding Zoning and Land Use:

The properties to the north, east, and west are zoned LI, Light Industrial District, and the

locations of vacant land, the City's fuel station, and a residential home. The property to the south is zoned SF-3, Single-Family Dwelling District and the location of a residential home.

Analysis:

The applicant, Jose Chavez, is requesting to rezone the property from LI, Light Industrial District to SF-3, Single-Family Dwelling District, to allow for the construction of a residential home. Under the previous zoning code, the current zoning district would have allowed for the construction of single-family homes. Under the new Zoning Code adopted in 2019, residential uses became more specific to single-family zoning districts. The property meets the minimum lot size requirements for the SF-3, Single-Family Dwelling District.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections

Building: (Approved)

No issues. A demolition permit will be required for the removal of existing structure. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Engineering: (Approved)

No objection to zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Code: (Approved)

No Oil or Gas wells identified within 500 ft. permitted well radius or in the 135 ft. non-permitted well radius of location.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Planning:

This request is in compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 3 An Integrated Land Use Vision, “Future Land Use Map” as it designates this area for urban-medium. This designation calls for a mix of uses that include single-family homes and neighborhood and community commercial. This request also fits with the characteristics of the surrounding area.

This request was approved at the August 2, 2021 Planning and Zoning Commission meeting.

Therefore, staff recommends approval of this zone change from LI, Light Industrial District to SF-3, Single-Family Dwelling District, subject to condition A.

Conditions:

A. **That the use and development of this property shall conform to the regulations of the SF-3, Single-Family Dwelling District.**

Letters of Objection:

Staff has not received any letters of objection as of August 18, 2021.

Attachments:

Application
Maps

Robert Patrick

City Manager’s Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 3, BLOCK 3, MOODY ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM LI, LIGHT INDUSTRIAL DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MADISON STREET, APPROXIMATELY 146 FEET SOUTH OF SOUTH STREET); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 3, Block 3, Moody Addition, City and County of Midland, Texas (the "Property") to SF-3, Single-Family Dwelling District, as set out hereinafter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from LI, Light Industrial District to SF-3, Single-Family Dwelling District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances

inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: 2-21-0249

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Jose Chavez		Phone (575) 694-3413 Email ferre_chavez@ymail.com	
Address 507 N Madison	City Midland	State TX	Zip 79701

Property Owner Printed Name: Jose Chavez		Phone (575) 694-3413 Email ferre_chavez@ymail.com	
Address 1611 La mesa Rd	City Midland	State TX	Zip 79701

Representative *(if different from Applicant or Property Owner)* Firm: Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 507 N Madison

Legal Description
Lot: Block: Subdivision:

Current Zoning: LI

Proposed Zone: SF-3
(List by tracts if more than one district is requested)

Reason for Zone Change Request: Casa nueva

Present Use of Property: Vacino

Proposed Use of Property: Casa nueva

How would this zone change affect the public health, safety and welfare?

Describe how conditions affecting the property have changed since present zoning designation:

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature): [signature]	Date: 6-30-21
Applicant (printed):	
Property Owner (signature): [signature]	Date: 6-30-21
Property Owner (printed) :	

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appear_____who, being by me duly sworn, upon oath says: That (s)he is the owner of _____or authorized by_____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

_____
Authorized Agent (*signature*)

Subscribed and sworn to before me, this_____day of_____, 20____, to certify which witness my hand and seal of office.

_____

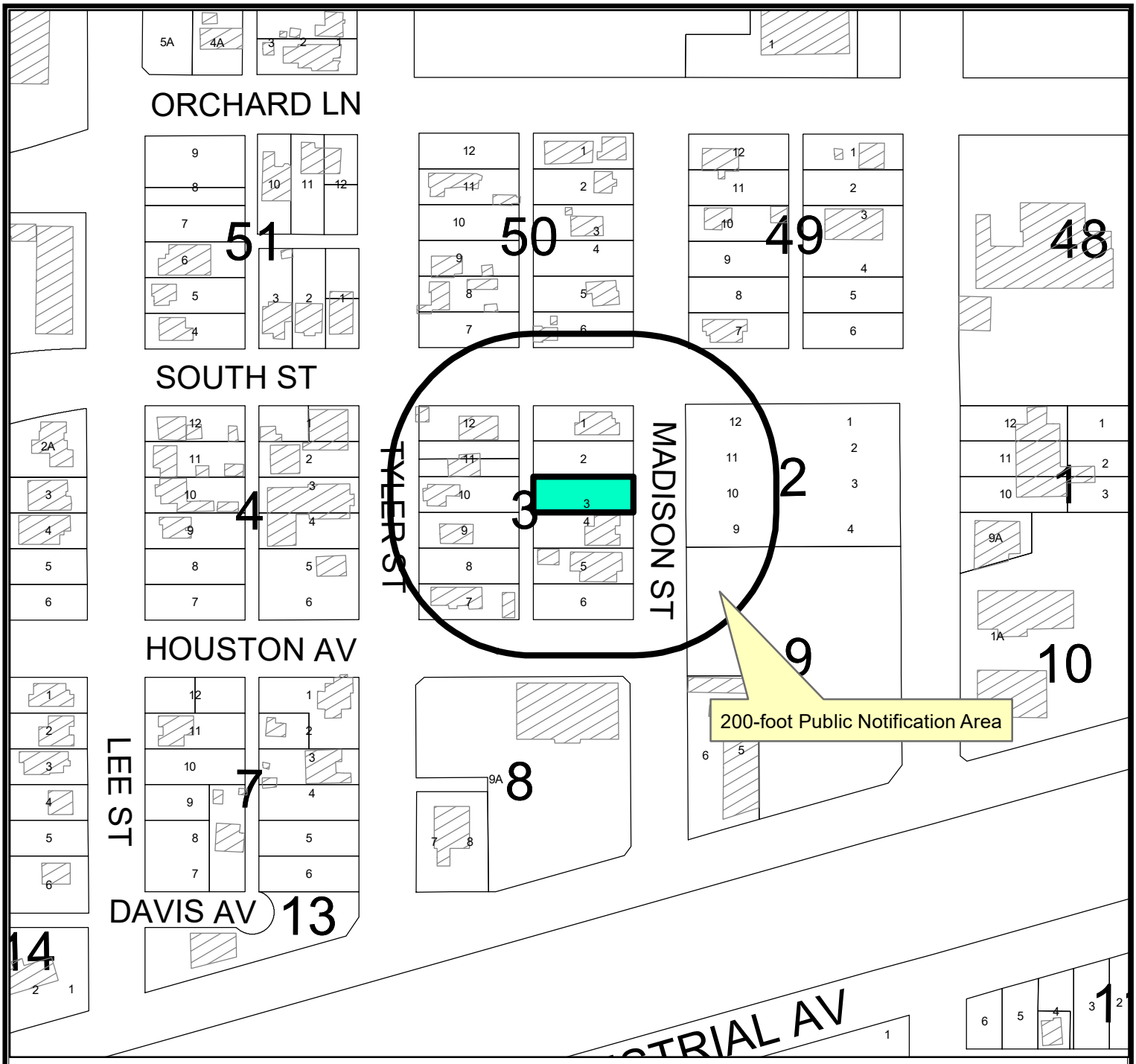
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☑ Property Owner Authorization
☑ Application Fee
Check # Credit
☐ Dimensioned Site Plan N/A
☐ Plans in Digital Format (PDF/JPEG) N/A

Received By: Joseph Marynak
Date: RECEIVED JUN 30 2021

Application will not be considered for scheduling until reviewed by a planner



LOCATION MAP

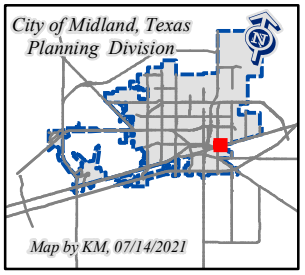
Z-21-0249 **Scale: 1" = 200'**

Consider a request by Jose Chavez for a zone change from LI, Light Industrial District to SF-3, Single-Family Dwelling District on Lot 3, Block 3, Moody Addition, City and County of Midland, Texas.

Generally located on the west side of N. Madison Street, approximately 146-feet south of South Street. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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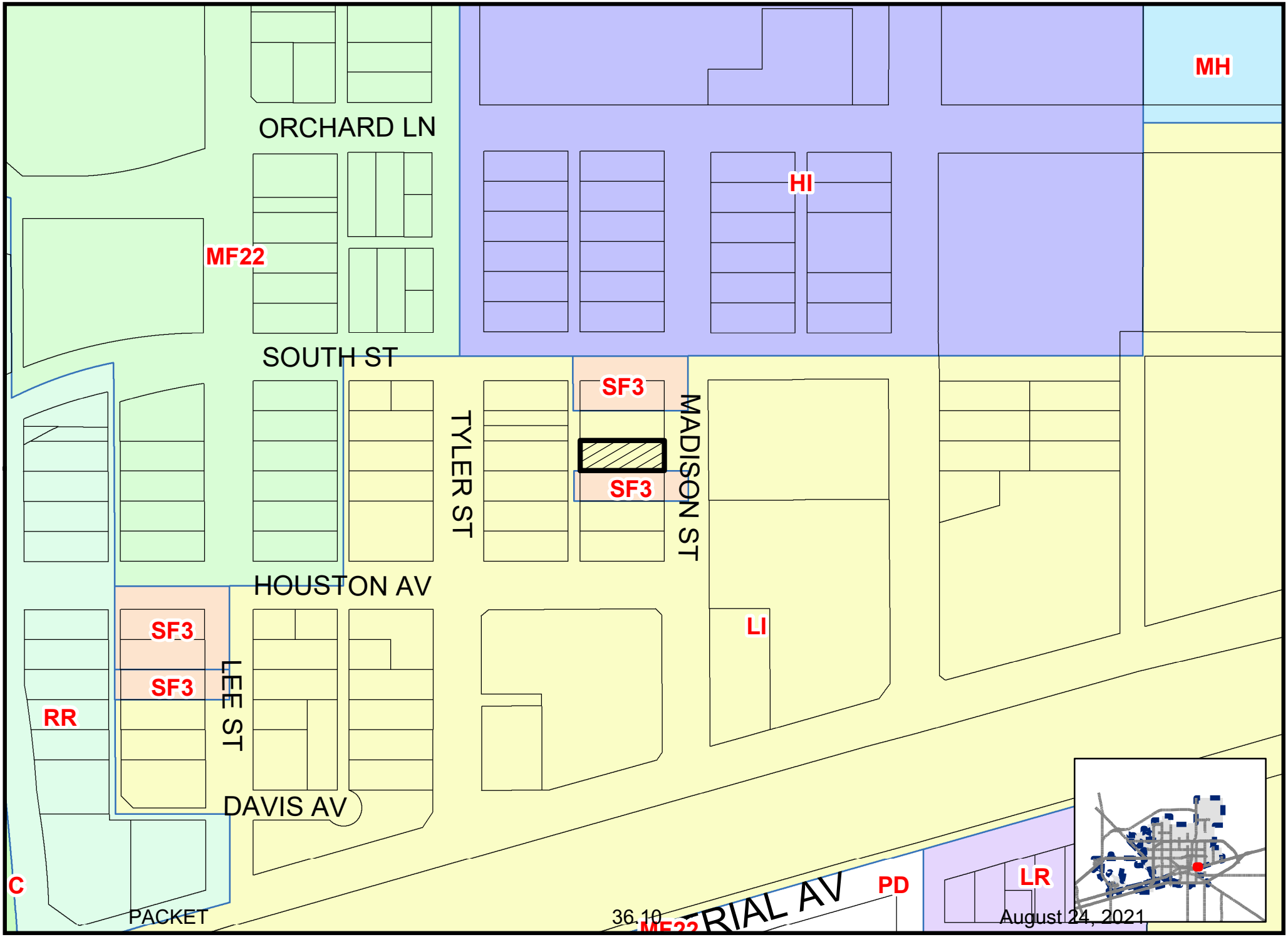
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By KM, 07/12/2021

Z-21-0249

Scale: 1" = 200'

ZONING MAP

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STOP







City Council Meeting

Item Number: 37

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Valerie A. Sherman, Senior Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 2, BLOCK 2, WALLACE HEIGHTS ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE SOUTH SIDE OF SINCLAIR AVENUE, APPROXIMATELY 290 FEET EAST OF NORTH LOOP 250 WEST); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Manor Park Inc., is requesting an amendment to their approved site plan on Lot 2, Block 2, Wallace Heights Addition, Section 9, City and County of Midland, Texas.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the city.

Discussion:

Surrounding Zoning and Land Use:

The property to the north is zoned PD, Planned District for a Housing Development. The

properties to the east are zoned SF-1, Single-Family Dwelling District and O1, Office District. The properties to the south across Andrews Highway are zoned RR, Regional Retail District, and LR Local Retail District. The properties to the west are zoned RR, Regional Retail District and PD, Planned District for a Transitional District.

Analysis:

The applicant, Manor Park, Inc., is requesting to amend their site plan to allow a restaurant with a Specific Use Designation With Term at 5323 Sinclair Avenue in Manor Park South. The site plan, attached hereto as Exhibit A, shows a planned development of sixty-seven (67) single-family residences and a restaurant building of approximately 7,701 square feet. The restaurant located at 5323 Sinclair Avenue, will dedicate 4,774 square feet to the dining area, bistro, serving kitchen, activity rooms, art studio, games/cards room, lobby, and north and south patios, and will be used as the alcohol serviceable area. Additionally, the remaining square footage will be used as office space, main kitchen, and storage rooms.

A total of 41 shared parking spaces are proposed, of which 4 will be accessible spaces.

In conclusion, other than the new use of restaurant, the proposed development has remained the same.

This proposed project has been circulated to and reviewed by respective City departments for internal review and their comments, conditions, and requirements are as follows:

Building: (Approved)

No Objections. Existing building being used for Alcohol sales inside the Manor Park complex.

Engineering: (Approved)

No objection to zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Fire: (Approved)

No objections.

Oil and Gas: (Approved)

No Oil and Gas issues.

Planning:

This request has been recommended for approval at the August 2, 2021 Planning and Zoning Commission meeting.

Staff recommends approval of the zone change from a PD, Planned Development District for a Housing Development to amended PD, Planned Development District for a Housing Development, subject to conditions A through F.

Conditions:

A. That the property shall significantly conform to the site plan attached hereto as Exhibit “A”.

B. That the use and development of this property shall conform to the regulations of the MF-16, Multiple Family Dwelling District, except as stated below.

C. That a restaurant may be located in the community building. The sale of alcoholic beverages for on-premises consumption shall be permitted therein only if a Specific Use Designation With Term permitting such alcoholic beverage sales is in effect. If a Specific Use Designation With Term permitting the sale of alcoholic beverages for on-premises consumption is in effect, such alcoholic beverage sales shall conform to the terms and conditions of the ordinance granting the Specific Use Designation With term.

D. That the landscaping shown in Exhibit “A” shall be considered illustrative. That the landscaping shall conform to the regulations set forth in Title XI, Chapter 9 of the City Code.

E. That the minimum number of required parking spaces shall be shown on Exhibit "A.

F. That the fencing shall significantly conform to Exhibit “A.

Letters of Objection:

As of August 11, 2021, staff has not received any letters of objection.

Attachments:

Site Plan (Exhibit A)
Application
Maps

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 2, BLOCK 2, WALLACE HEIGHTS ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE SOUTH SIDE OF SINCLAIR AVENUE, APPROXIMATELY 290 FEET EAST OF NORTH LOOP 250 WEST); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 2, Block 2, Wallace Heights Addition, Section 9, City and County of Midland, Texas (the "Property") to an amended PD, Planned Development District for a Housing Development and adopting a site plan therefor, as set out hereinafter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from PD, Planned Development District for a Housing Development to an amended PD, Planned Development District for a Housing Development.

SECTION TWO. That the base zoning district to which the use and development of the Property shall conform, except as modified by Section Three of this ordinance, is the MF-16, Multiple-Family Dwelling District.

SECTION THREE. That a site plan, which is attached hereto as Exhibit "A" and incorporated herein for all purposes, is hereby adopted, and the use and development of the Property shall be subject to the following conditions and restrictions:

A. That the Property shall significantly conform to the site plan attached hereto as Exhibit "A".

B. That a restaurant may be located in the community building. The sale of alcoholic beverages for on-premises consumption shall be permitted therein only if a Specific Use Designation With Term permitting such alcoholic beverage sales is in effect. If a Specific Use Designation With Term permitting the sale of alcoholic beverages for on-premises consumption is in effect, such alcoholic beverage sales shall conform to the terms and conditions of the ordinance granting the Specific Use Designation With Term.

C. That the landscaping shown in Exhibit "A" shall be considered illustrative. The landscaping shall conform to the regulations set forth in Title XI, Chapter 9 of the City Code.

D. That the minimum number of required parking spaces shall be as shown in Exhibit "A".

E. That the fencing shall significantly conform to Exhibit "A".

SECTION FOUR. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FIVE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION SIX. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more

sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SEVEN. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION EIGHT. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

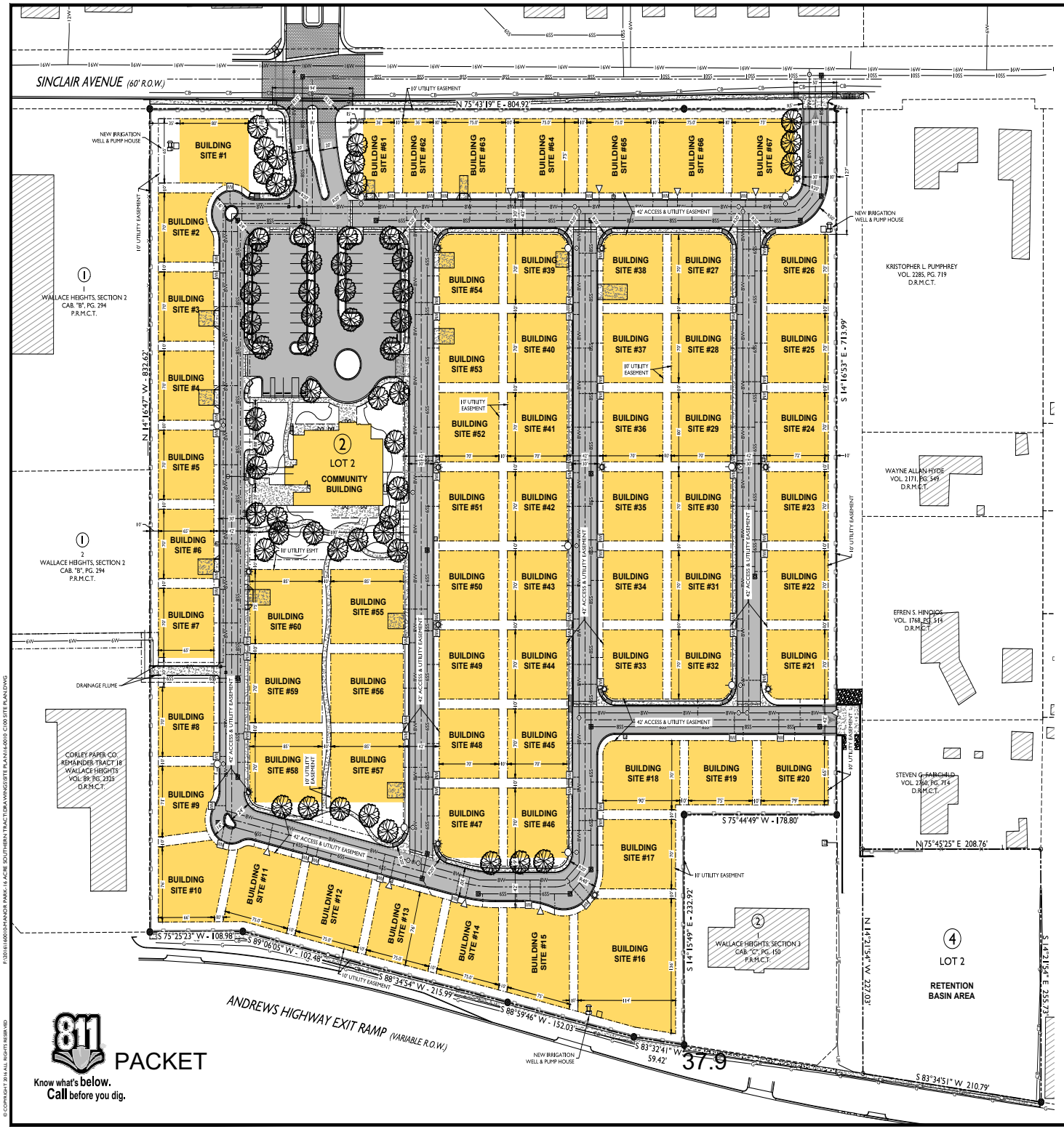
_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

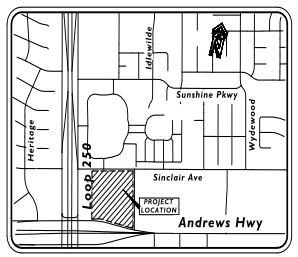
_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney



0' 50' 100' 150'
SCALE 1" = 50'



LOCATION MAP

LEGEND

- DENOTES FOUND MONUMENT AS NOTED
- DENOTES SET 1/2" IRON ROD
- DENOTES FIRE HYDRANT
- DENOTES WATER VALVE
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- THE DEVELOPMENT WILL BE DEVELOPED AS AN EXPANSION OF MANOR PARK, WITH 67 NEW SINGLE FAMILY RESIDENCES AND A COMMUNITY BUILDING OF APPROXIMATELY 7,000 S.F..

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- INTERNAL SITE CIRCULATION THROUGH 30-WIDE PRIVATE ACCESS ROADS.

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- THE REMAINDER OF THE DEVELOPMENT WILL BE CONSIDERED RESIDENTIAL. LANDSCAPING WILL BE INSTALLED AT EACH RESIDENCE AT THE TIME OF CONSTRUCTION.

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811 Know what's below. Call before you dig.

PACKET

37.9

August 24, 2021

MAVERICK ENGINEERING
1909 West Wall Street, Suite "K"
Midland, Texas 79701
Tel: (432) 262-0993 Fax: (432) 262-0989
www.Maverick-Eng.com
TBPE#: F-15089

BY	DATE

REVISIONS
1 02/24/2021 EXPANDED SITES

DRAWN BY: CB
CHECKED BY: PRH
APPROVED BY: PRH
DATE: 02/24/2021
JOB: 16-0010

SITE PLAN
MANOR PARK SOUTH
LOT 2, BLOCK 2, WALLACE HEIGHTS, SECTION 9
CITY AND COUNTY OF MIDLAND, TEXAS

SHEET C100 OF 01

F:\2016\16-0010\MANOR PARK - 16 ACRE SOUTHERN TRACT\DRAWINGS\SITE PLAN\16-0010 C100 SITE PLAN.DWG
© COPYRIGHT 2016 ALL RIGHTS RESERVED

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: _____

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Jay Hobbs		Phone (325) 668-8097 Email JHOBBS@MANORPARKINC.ORG	
Address 2208 N Loop 250 West	City Midland	State TX	Zip 79707

Property Owner Printed Name: Alan Hale, Executive Director		Phone (432) 967-3905 Email ahale@manorparkinc.org	
Address 2208 N. Loop 250 W	City Midland	State TX	Zip 79707

Representative *(if different from Applicant or Property Owner)* Firm: Manor Park Inc Printed Name: Jay Hobbs		Phone ( ) Email	
Address 208 N Loop 250 West	City Midland	State TX	Zip 79707

Street Address: 5323 SINCLAIR AVE

Legal Description
Lot: 2 Block: 2 Subdivision: WALLACE HEIGHTS ADDITION, SECTION 9

Current Zoning: PD-HD	**Proposed Zone:** PD-HD *(List by tracts if more than one district is requested)*

Reason for Zone Change Request: TO MODIFY ZONING TO ALLOW A COMMUNITY CENTER/RESTURANT FOR AN SUD IN MANOR PARK SOUTH.

Present Use of Property: UNDER-DEVELOPMENT (SENIOR & ASSISTED HOUSING)

Proposed Use of Property: SENIOR & ASSISTANT HOUSING

How would this zone change affect the public health, safety and welfare? NO AFFECT

Describe how conditions affecting the property have changed since present zoning designation: NO CHANGE. PROJECT UNDER CONSTRUCTION

Submittal and Fees
Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature):	Date: July 21, 2021
Applicant (printed): Jay Hobbs	
Property Owner (signature):	Date: July 21, 2021
Property Owner (printed) : Alan Hale	

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appear Jay Hobbs who, being by me duly sworn, upon oath says: That (s)he is the owner of _____ or authorized by Alan Hale, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Authorized Agent (*signature*)

Subscribed and sworn to before me, this 21 day of July, 2021, to certify which witness my hand and seal of office.

Nancy Angela Ervin
My Commission Expires
12/06/2023
ID No. 8870404

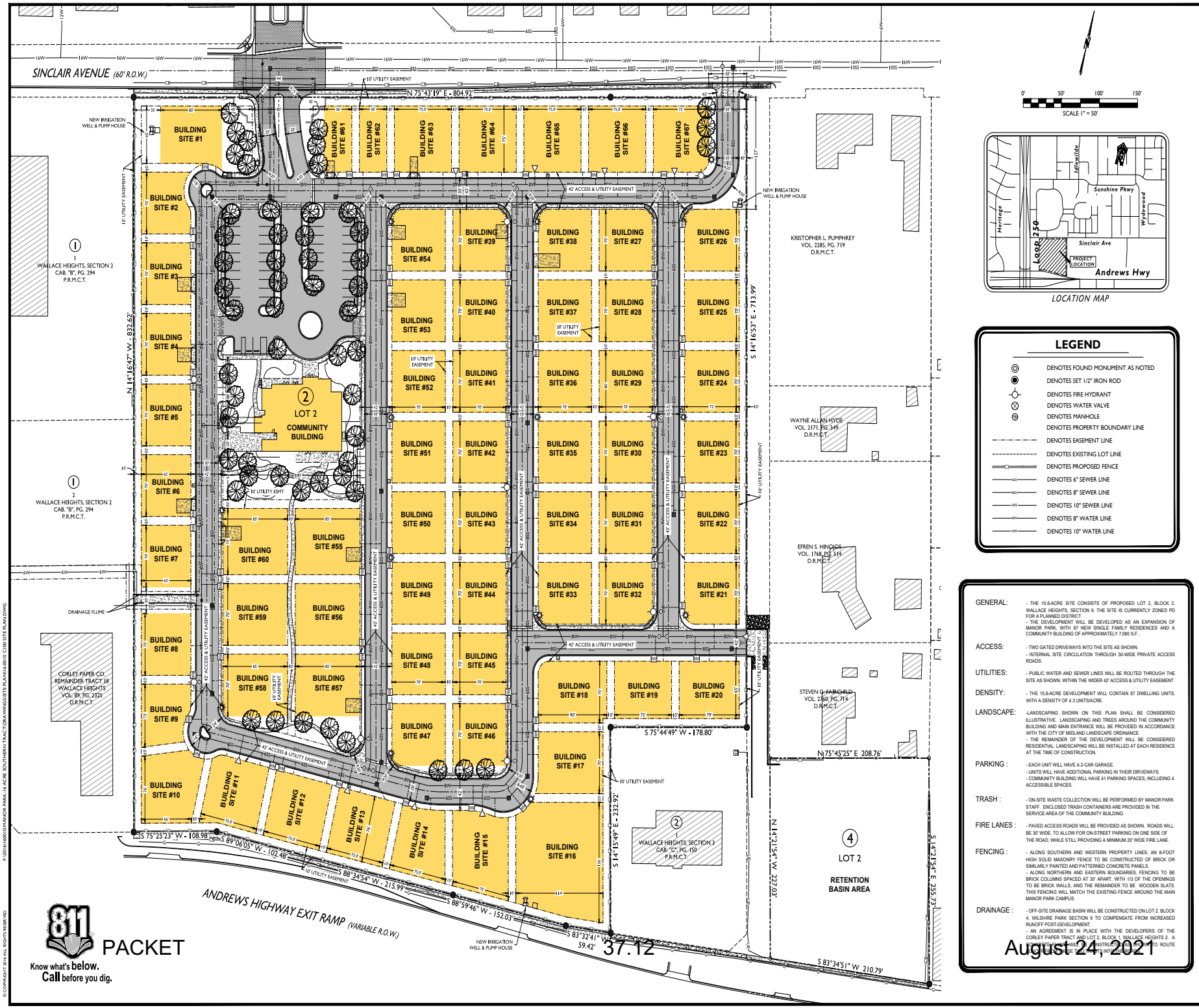
Nancy Angela Ervin

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
☐ Property Owner Authorization	☐ Dimensioned Site Plan
☐ Application Fee	☐ Plans in Digital Format (PDF/JPEG)
Check #_____	
Received By:	Date:

****Application will not be considered for scheduling until reviewed by a planner.****

Exhibit A



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SCALE 1" = 50'

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811 Know what's below. Call before you dig.

PACKET

37.12

August 24, 2021

MAVERICK ENGINEERING
1909 West Wall Street, Suite "K"
Midland, Texas 79701
Tel: (432) 262-0993 Fax: (432) 262-0989
www.Maverick-Eng.com
TBPE#: F-15089

BY	DATE

REVISIONS
△ 02/24/2021 EXPANDED SITES

DRAWN BY: CB
CHECKED BY: PRH
APPROVED BY: PRH
DATE: 02/24/2021
JOB: 16-0010

SITE PLAN
MANOR PARK SOUTH
LOT 2, BLOCK 2, WALLACE HEIGHTS, SECTION 9
CITY AND COUNTY OF MIDLAND, TEXAS

SHEET C100 OF 01

F:\2016\16-0010-MANOR PARK-16 ACRE SOUTHERN TRACT\DRAWINGS\SITE PLAN\16-0010 C100 SITE PLAN.DWG

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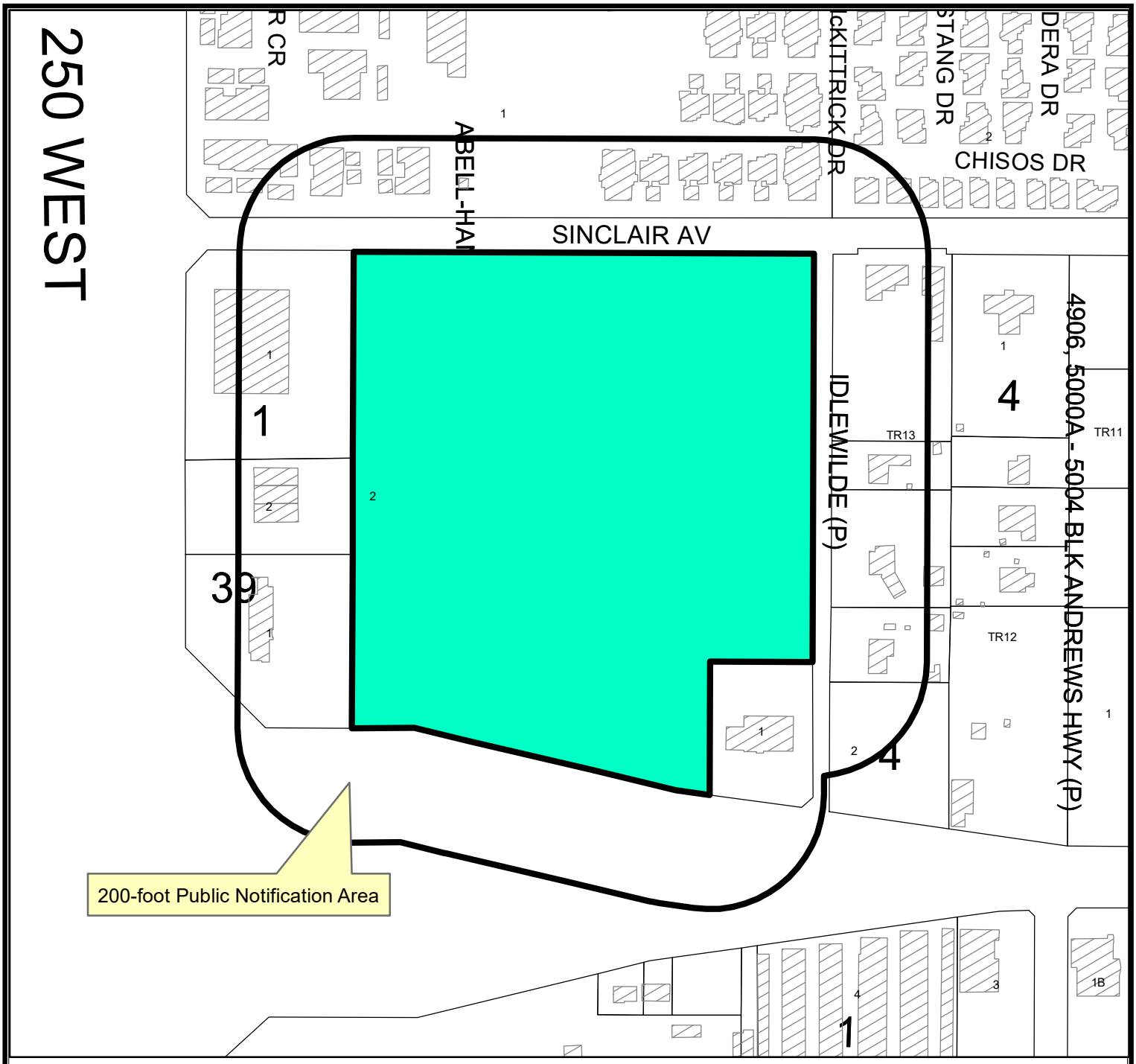


LOCATION MAP

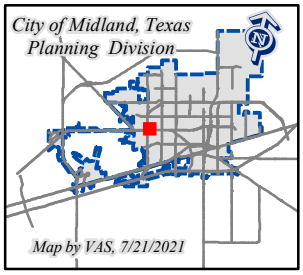
Z-21-0254 **Scale: 1" = 250'**

Consider a request by Manor Park, Inc., for a zone change from PD, Planned Development District for a Housing Development to Amended PD, Planned Development District for a Housing Development on Lot 2, Block 2, Wallace Heights Addition, Section 9, City and County of Midland, Texas.

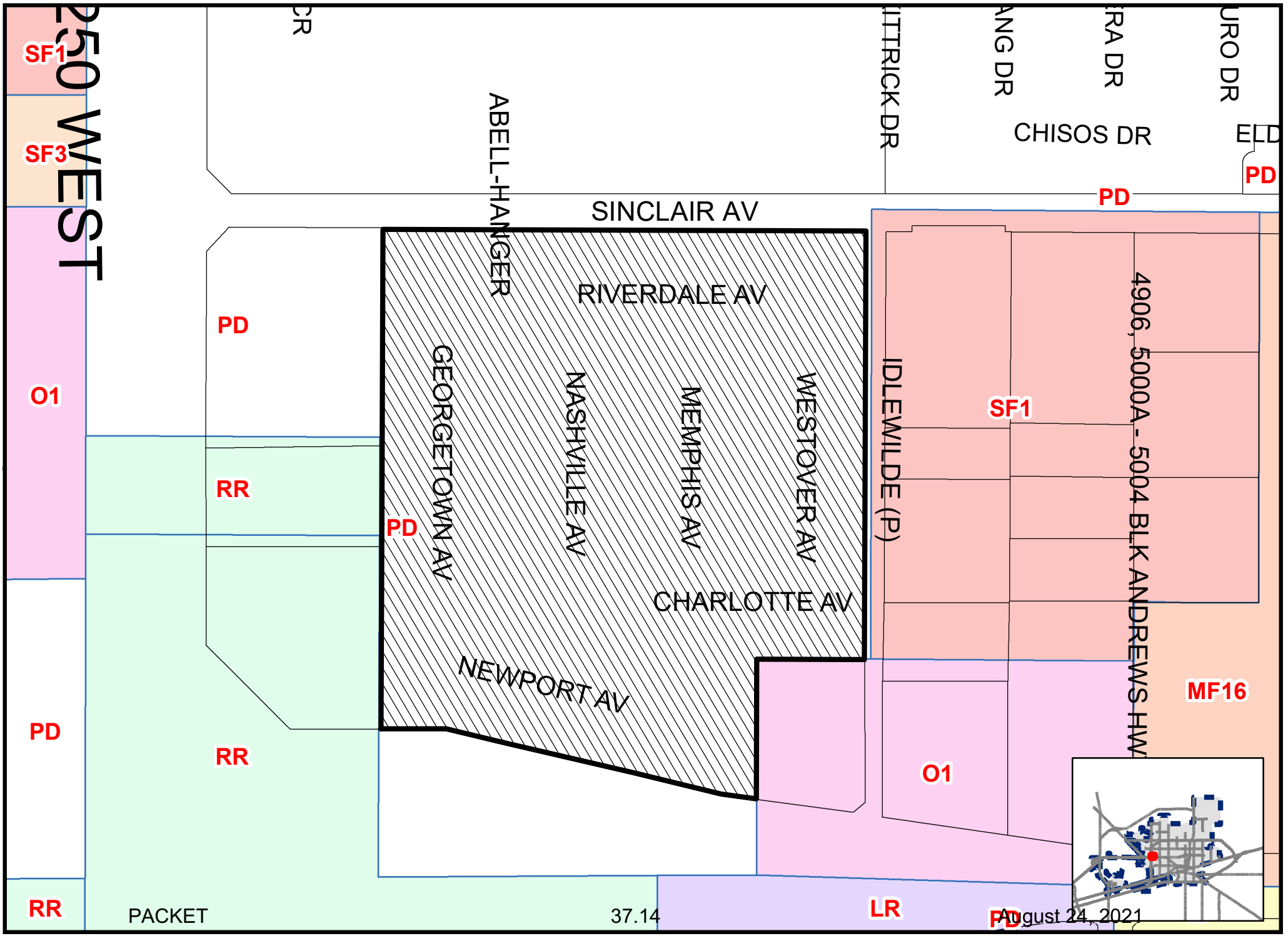
Generally located on the south side of Sinclair Avenue, approximately 290 feet east of N. Loop 250 West. (Council District 4)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



August 24, 2021



Map By VAS, 7/21/2021

Z-21-0254

Scale: 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2021: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

ORDINANCE NO. 10177

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 2, BLOCK 2, WALLACE HEIGHTS ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE SOUTH SIDE OF SINCLAIR AVENUE, APPROXIMATELY 290 FEET EAST OF NORTH LOOP 250 WEST); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 2, Block 2, Wallace Heights Addition, Section 9, City and County of Midland, Texas (the "Property") to an amended PD, Planned Development District for a Housing Development and adopting a site plan therefor, as set out hereinafter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from PD, Planned Development District for a Housing Development to an amended PD, Planned Development District for a Housing Development.

SECTION TWO. That the base zoning district to which the use and development of the Property shall conform, except as modified by Section Three of this ordinance, is the MF-16, Multiple-Family Dwelling District.

SECTION THREE. That a site plan, which is attached hereto as Exhibit "A" and incorporated herein for all purposes, is hereby adopted, and the use and development of the Property shall be subject to the following conditions and restrictions:

A. That the Property shall significantly conform to the site plan attached hereto as Exhibit "A".

B. That the landscaping shown in Exhibit "A" shall be considered illustrative. The landscaping shall conform to the regulations set forth in Title XI, Chapter 9 of the City Code.

C. That the minimum number of required parking spaces shall be as shown in Exhibit "A".

D. That the fencing shall significantly conform to Exhibit "A".

SECTION FOUR. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FIVE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION SIX. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SEVEN. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION EIGHT. The City Secretary is hereby authorized and directed to publish

the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the 27th day of April, A.D., 2021; and passed to second reading on motion of Council member Trost, seconded by Council member Dufford, by the following vote:

Council members voting "AYE": Blong, Trost, Robnett, Dufford, Ladd, Norman

Council members voting "NAY": None

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member Norman, seconded by Council member Blong, on the 11th day of May, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE": Blong, Robnett, Payton, Dufford, Ladd, Norman

Council members voting "NAY": None

PASSED AND APPROVED THIS 11th day of May, A.D., 2021.

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

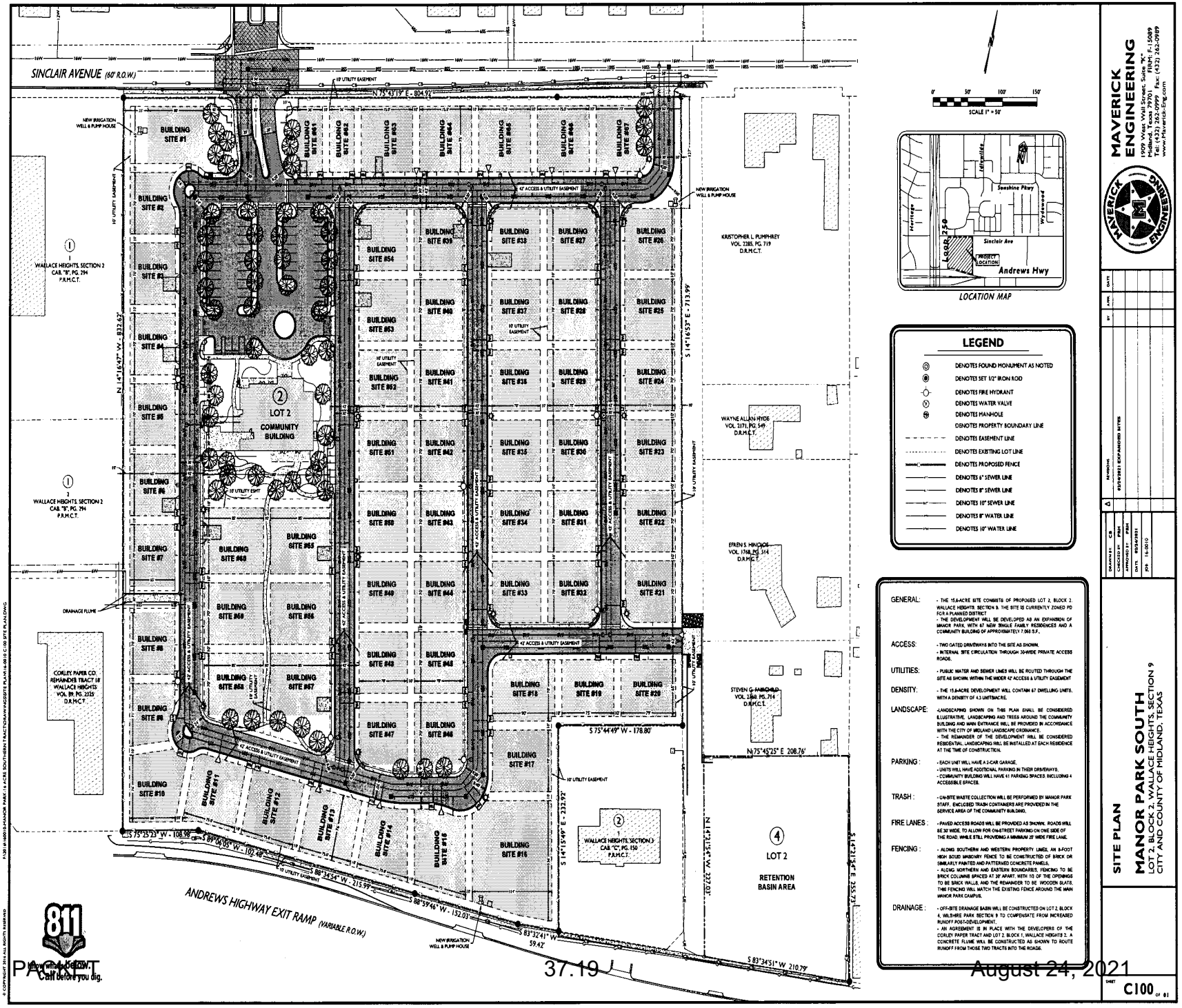
APPROVED AS TO CONTENT
AND COMPLETENESS:

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

Exhibit A



SCALE 1" = 50'

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811 Know what's below. Call before you dig.

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MAVERICK ENGINEERING
1909 West Wall Street, Suite "K"
Midland, Texas 79701
Tel: (432) 262-0999 Fax: (432) 262-0989
www.maverick-eng.com

NO.	REVISIONS	DATE
1	07/29/2021 EXPANDED SITES	

DRAWN BY: CB
CHECKED BY: PBH
SCALE: 1" = 50'
DATE: 05/24/2021
JOB: 16-0010

SITE PLAN

MANOR PARK SOUTH
LOT 2, BLOCK 2, WALLACE HEIGHTS, SECTION 9
CITY AND COUNTY OF MIDLAND, TEXAS

SHEET C100 OF 01

10177 ☑ APPROVED

City Council Meeting

Item Number: 11

Meeting Date: April 27, 2021

To: City Council / City Manager

From: Valerie A. Sherman, Senior Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 2, BLOCK 2, WALLACE HEIGHTS ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE SOUTH SIDE OF SINCLAIR AVENUE, APPROXIMATELY 290 FEET EAST OF NORTH LOOP 250 WEST); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Purpose:

The applicant, Manor Park, Inc., is requesting to amend their site plan to modify the building area site along Sinclair Avenue and Andrews Highway frontage. The property is located at 5323 Sinclair Avenue and is the location of Manor Park South.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the city.

Discussion:

Surrounding Zoning and Land Use:

The property to the north is zoned PD, Planned District for a Housing Development. The properties to the east are zoned SF-1, Single-Family Dwelling District and O1, Office District. The properties to the south across Andrews Highway are zoned RR, Regional Retail District, and LR Local Retail District. The properties to the west are zoned RR, Regional Retail District and PD, Planned District for a Transitional District.

Analysis:

The site plan, attached hereto as Exhibit A, shows a modification of the lot area for Building Sites #63 through # 67 along Sinclair Avenue, from 36 feet to 75 feet to make seven lots; and to modify the lot area for Building Sites #11 through # 15 along Andrews Highway, from 35 feet to 75 feet to make five lots. No additional changes or modifications of the property are being proposed.

This proposed project has been circulated to and reviewed by respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Engineering: (Approved)

No objection to zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Code: (Approved)

No Oil or Gas wells identified within 500 ft. permitted well radius or in the 135 ft. non-permitted well radius of location on plat.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Planning:

Per the Future Land Use map, this location is designated as Urban Medium; which calls for a mix of housing types including single-family housings, multi-family housing, commercial, and mixed-use; therefore, this zone change complies with the Future Land Use plan.

This request has been recommended for approval by a unanimous vote at the April 5, 2021 Planning and Zoning Commission meeting.

Staff recommends approval of the zone change from a PD, Planned District for a Housing Development to amended PD, Planned Development District for a Housing Development, subject to conditions A and E.

Conditions:

A. **That the use and development of this property shall conform to the regulations of the MF-16, Multiple Family Dwelling District.**

B. **That this property shall conform to the site plan, which is attached hereto and incorporated herein as Exhibit A.**

C. **That the landscaping shall conform to the regulations set forth in Title XI, Chapter 9 of the City Code.**

D. **That the minimum number of required parking spaces shall be shown on Exhibit "A.**

E. **That the fencing shall significantly conform to Exhibit "A.**

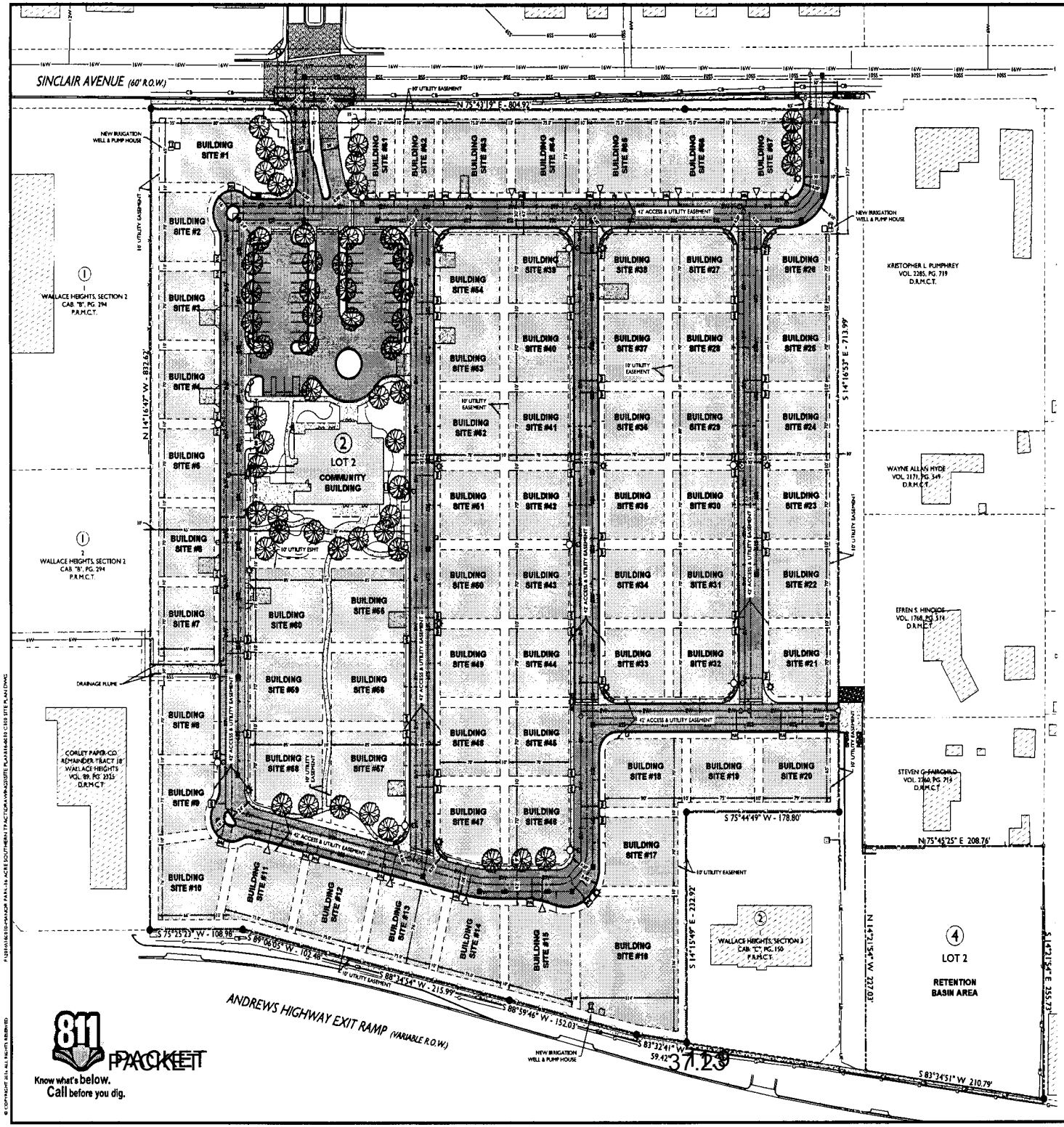
Letters of Objection:

Staff has not received any objections as of April 23, 2021.

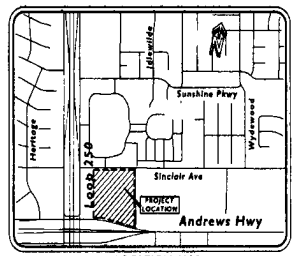
Attachments:

Site Plan (Exhibit A)
Application
Maps
Ordinance No. 9586

Robert Patrick



0' 50' 100' 150'
SCALE 1" = 50'



LOCATION MAP

LEGEND

- DENOTES FOUND MONUMENT AS NOTED
- DENOTES SET 1/2" IRON ROD
- DENOTES FIRE HYDRANT
- DENOTES WATER VALVE
- DENOTES MANHOLE
- DENOTES PROPERTY BOUNDARY LINE
- DENOTES EASEMENT LINE
- DENOTES EXISTING LOT LINE
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- DENOTES 6" SEWER LINE
- DENOTES 8" SEWER LINE
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- DENOTES 10" WATER LINE

GENERAL: - THE 15.6-ACRE SITE CONSISTS OF PROPOSED LOT 2, BLOCK 2, WALLACE HEIGHTS, SECTION 9. THE SITE IS CURRENTLY ZONED PD FOR A PLANNED DISTRICT.
- THE DEVELOPMENT WILL BE DEVELOPED AS AN EXPANSION OF MANOR PARK, WITH 67 NEW SINGLE FAMILY RESIDENCES AND A COMMUNITY BUILDING OF APPROXIMATELY 7,000 S.F.

ACCESS: - TWO GATED DRIVEWAYS INTO THE SITE AS SHOWN.
- INTERNAL SITE CIRCULATION THROUGH 30-WIDE PRIVATE ACCESS ROADS.

UTILITIES: - PUBLIC WATER AND SEWER LINES WILL BE ROUTED THROUGH THE SITE AS SHOWN, WITHIN THE WIDER 42' ACCESS & UTILITY EASEMENT.

DENSITY: - THE 15.6-ACRE DEVELOPMENT WILL CONTAIN 67 DWELLING UNITS, WITH A DENSITY OF 4.3 UNITS/ACRE.

LANDSCAPE: -LANDSCAPING SHOWN ON THIS PLAN SHALL BE CONSIDERED ILLUSTRATIVE. LANDSCAPING AND TREES AROUND THE COMMUNITY BUILDING AND MAIN ENTRANCE WILL BE PROVIDED IN ACCORDANCE WITH THE CITY OF MIDLAND LANDSCAPE ORDINANCE.
- THE REMAINDER OF THE DEVELOPMENT WILL BE CONSIDERED RESIDENTIAL. LANDSCAPING WILL BE INSTALLED AT EACH RESIDENCE AT THE TIME OF CONSTRUCTION.

PARKING: - EACH UNIT WILL HAVE A 2-CAR GARAGE
- UNITS WILL HAVE ADDITIONAL PARKING IN THEIR DRIVEWAYS.
- COMMUNITY BUILDING WILL HAVE 41 PARKING SPACES, INCLUDING 4 ACCESSIBLE SPACES.

TRASH: - ON-SITE WASTE COLLECTION WILL BE PERFORMED BY MANOR PARK STAFF. ENCLOSED TRASH CONTAINERS ARE PROVIDED IN THE SERVICE AREA OF THE COMMUNITY BUILDING.

FIRE LANES: - PAVED ACCESS ROADS WILL BE PROVIDED AS SHOWN. ROADS WILL BE 30' WIDE, TO ALLOW FOR ON-STREET PARKING ON ONE SIDE OF THE ROAD, WHILE STILL PROVIDING A MINIMUM 20' WIDE FIRE LANE.

FENCING: - ALONG SOUTHERN AND WESTERN PROPERTY LINES, AN 8-FOOT HIGH SOLID MASONRY FENCE TO BE CONSTRUCTED OF BRICK OR SIMILARLY PAINTED AND PATTERNED CONCRETE PANELS.
- ALONG NORTHERN AND EASTERN BOUNDARIES, FENCING TO BE BRICK COLUMNS SPACED AT 30' APART, WITH 1/3 OF THE OPENINGS TO BE BRICK WALLS, AND THE REMAINDER TO BE WOODEN SLATS. THIS FENCING WILL MATCH THE EXISTING FENCE AROUND THE MAIN MANOR PARK CAMPUS.

DRAINAGE: - OFF-SITE DRAINAGE BASIN WILL BE CONSTRUCTED ON LOT 2, BLOCK 4, WILSHIRE PARK SECTION 9 TO COMPENSATE FROM INCREASED RUNOFF POST-DEVELOPMENT.
- AN AGREEMENT IS IN PLACE WITH THE DEVELOPERS OF THE CORLEY PAPER TRACT AND LOT 2, BLOCK 1, WALLACE HEIGHTS 2. A CONCRETE CHANNEL WILL BE CONSTRUCTED ON THIS LOT TO ROUTE

811 PACKETT
Know what's below. Call before you dig.

37.23

August 24, 2021

MAVERICK ENGINEERING
1909 West Wall Street, Suite "K"
Midland, Texas 79701 TBPE F-15989
Tel: (432) 262-0999 Fax: (432) 262-0989
www.Maverick-Eng.com

NO.	REVISIONS	BY	APPR.	DATE
1	REVISED 1 EXPANDED SITES			

DRAWN BY: CB
CHECKED BY: PBM
APPROVED BY: PBM
DATE: 02/24/2021
JOB: 16-0910

SITE PLAN

MANOR PARK SOUTH

LOT 2, BLOCK 2, WALLACE HEIGHTS, SECTION 9
CITY AND COUNTY OF MIDLAND, TEXAS

SHEET C100 OF 01

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MIDLAND
Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: _____

Case Number: Z-21-0222

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Manor Park, Inc.		Phone ( ) Email	
Address 2208 N. Loop 250 West	City Midland	State TX	Zip 79707

Property Owner Printed Name: " "		Phone ( ) Email	
Address	City	State	Zip

Representative *(if different from Applicant or Property Owner)* Firm: Maverick Engineering Printed Name: Andrew Mellen, PE		Phone (432-) 262-0999 Email amellen@maverick-eng.com	
Address 1909 W. Wall St. Ste, K	City Midland	State TX	Zip 79701

Street Address: 5323 Sinclair Avenue

Legal Description
Lot: 2 Block: 2 Subdivision: Wallace Heights Addition, Section 9

Current Zoning: PD-HD	**Proposed Zone:** PD-HD *(List by tracts if more than one district is requested)*

Reason for Zone Change Request: Modify area of building sites along Sinclair Ave. & Andrews Hwy frontages

Present Use of Property: Under-development (senior & assisted housing)

Proposed Use of Property: Senior & assisted housing

How would this zone change affect the public health, safety and welfare?
No affect.

Describe how conditions affecting the property have changed since present zoning designation: No change. Project under construction.

Submittal and Fees
Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature):	Date:
Applicant (printed): Manor Park, Inc.	
Property Owner (signature): Alan Hale	Date: 2-24-21
Property Owner (printed): ALAN HALE	

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Andrew L. Mellen, PE who, being by me duly swom, upon oath says: That (s)he is authorized by Manor Park, Inc., the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Andrew L. Mellen
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 24th day of February, 2021, to certify which witness my hand and seal of office.

Kelsey Ann Stine

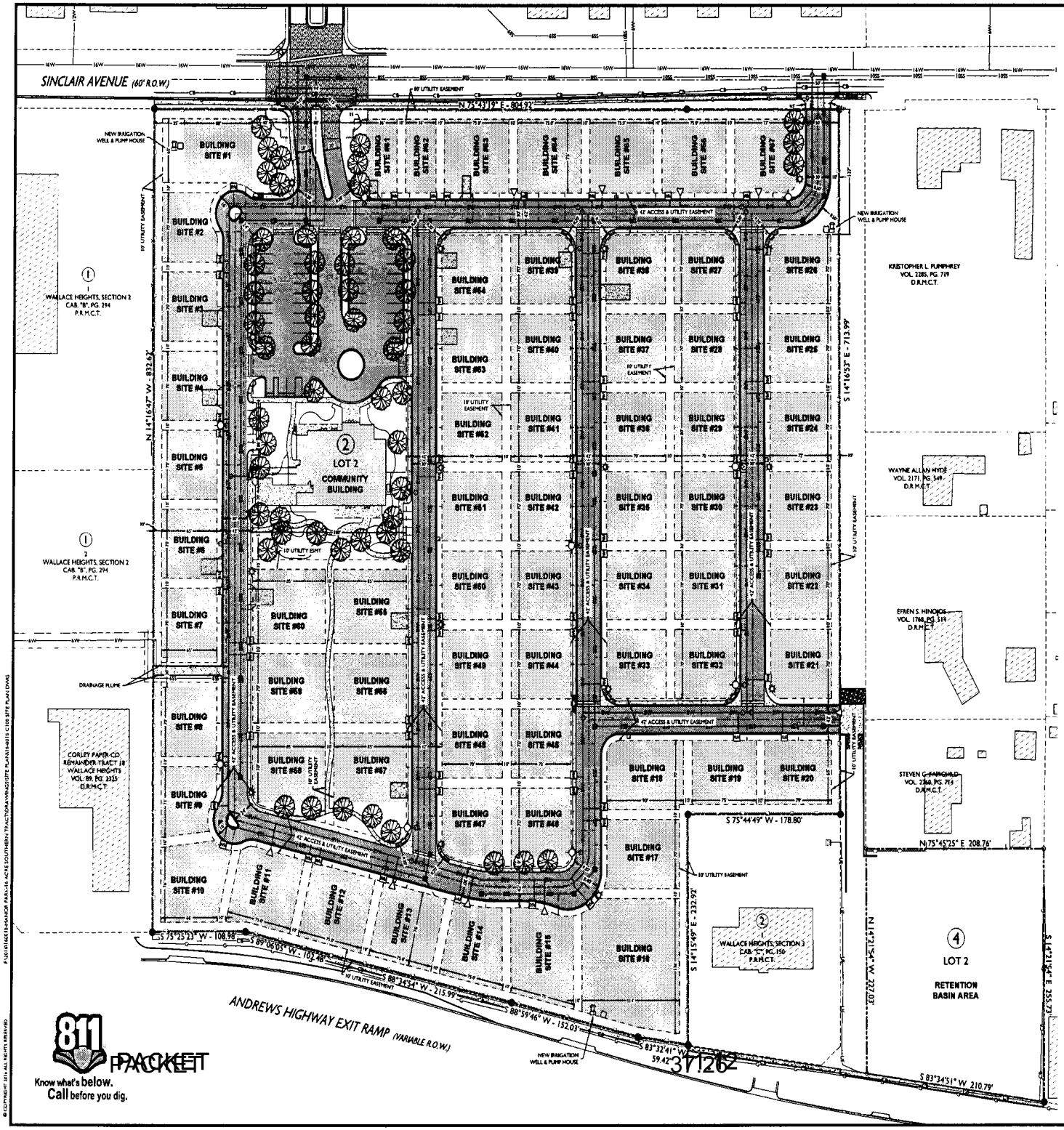
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

NOTARY PUBLIC STATE OF TEXAS
Kelsey Ann Stine
My Commission Expires
02/19/2022
ID No. 131456366

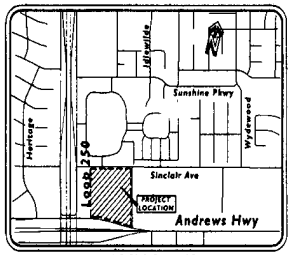
FOR OFFICE USE ONLY

- ☑ Property Owner Authorization
- ☑ Application Fee
- Check # 3353
- ☑ Dimensioned Site Plan
- ☑ Plans in Digital Format (PDF/JPEG)
- Received By: Joseph Marquez
- Date: RECEIVED FEB 24 2021 BY:

****Application will not be considered for scheduling until reviewed by a planner.****



SCALE 1" = 50'



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811 PACKETT
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37126

August 24, 2021

MAVERICK ENGINEERING
1909 West Wall Street, Suite "K"
Midland, Texas 79701 FIRM # F-15089
Tel: (432) 262-0999 Fax: (432) 262-0989
www.Maverick-Eng.com

NO.	DESCRIPTION	BY	APP'D	DATE
1	ADDING 8.2 ACRES EXPANDED SITES			

DRAWN BY: CB
CHECKED BY: FNH
APPROVED BY: FNH
DATE: 8/24/2021
JOB: 16-6018

SITE PLAN

MANOR PARK SOUTH

LOT 2, BLOCK 2, WALLACE HEIGHTS, SECTION 9
CITY AND COUNTY OF MIDLAND, TEXAS

SHEET C100 OF 01

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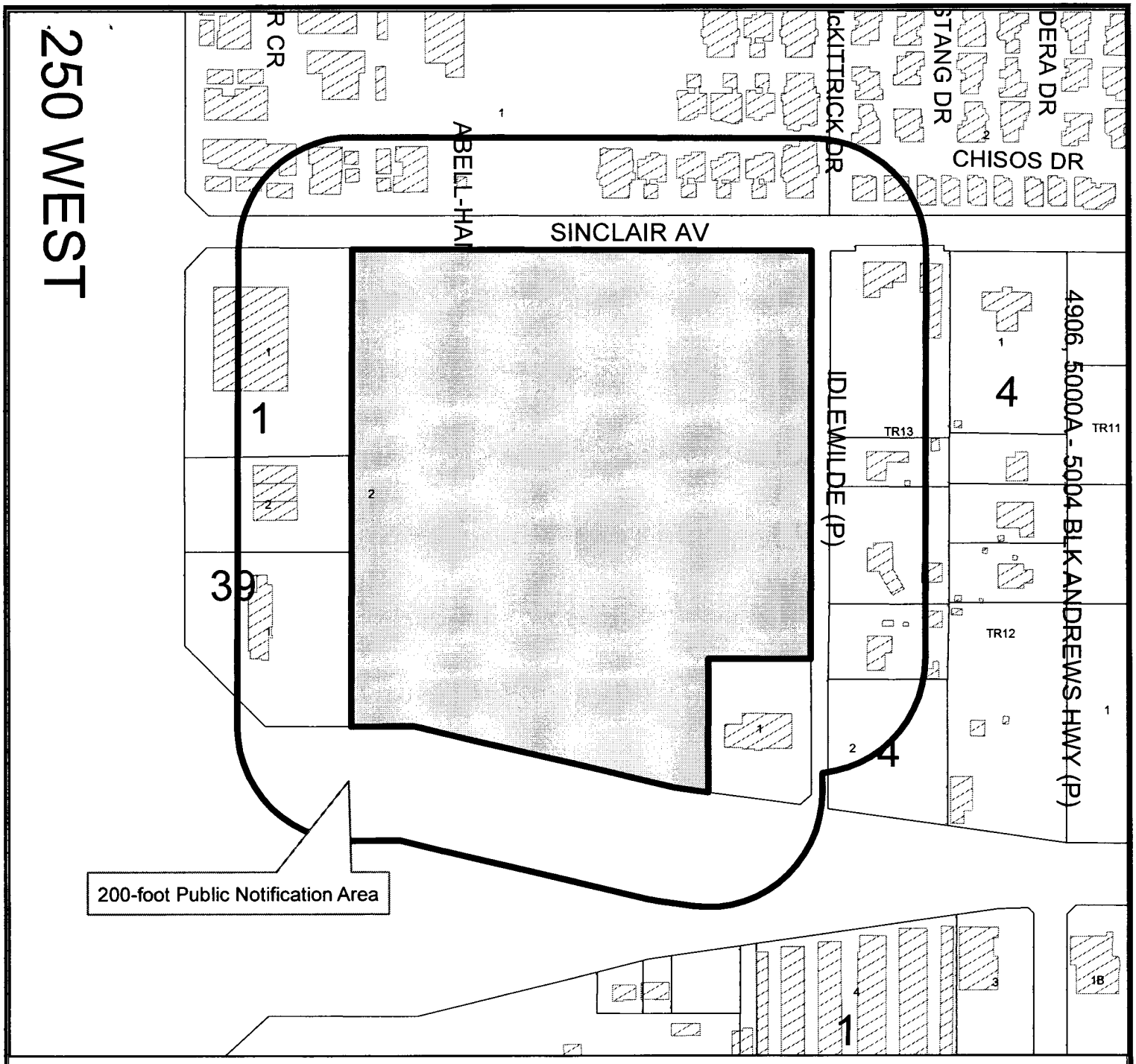
P:\2016\6018-MANOR PARK\16 ACRE SOUTHERN TRACT\MXD\SITE PLAN\16-6018 C100 SITE PLAN.DWG



LOCATION MAP

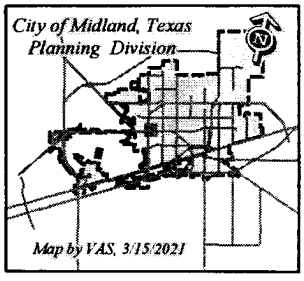
Z-21-0222 **Scale: 1" = 250'**

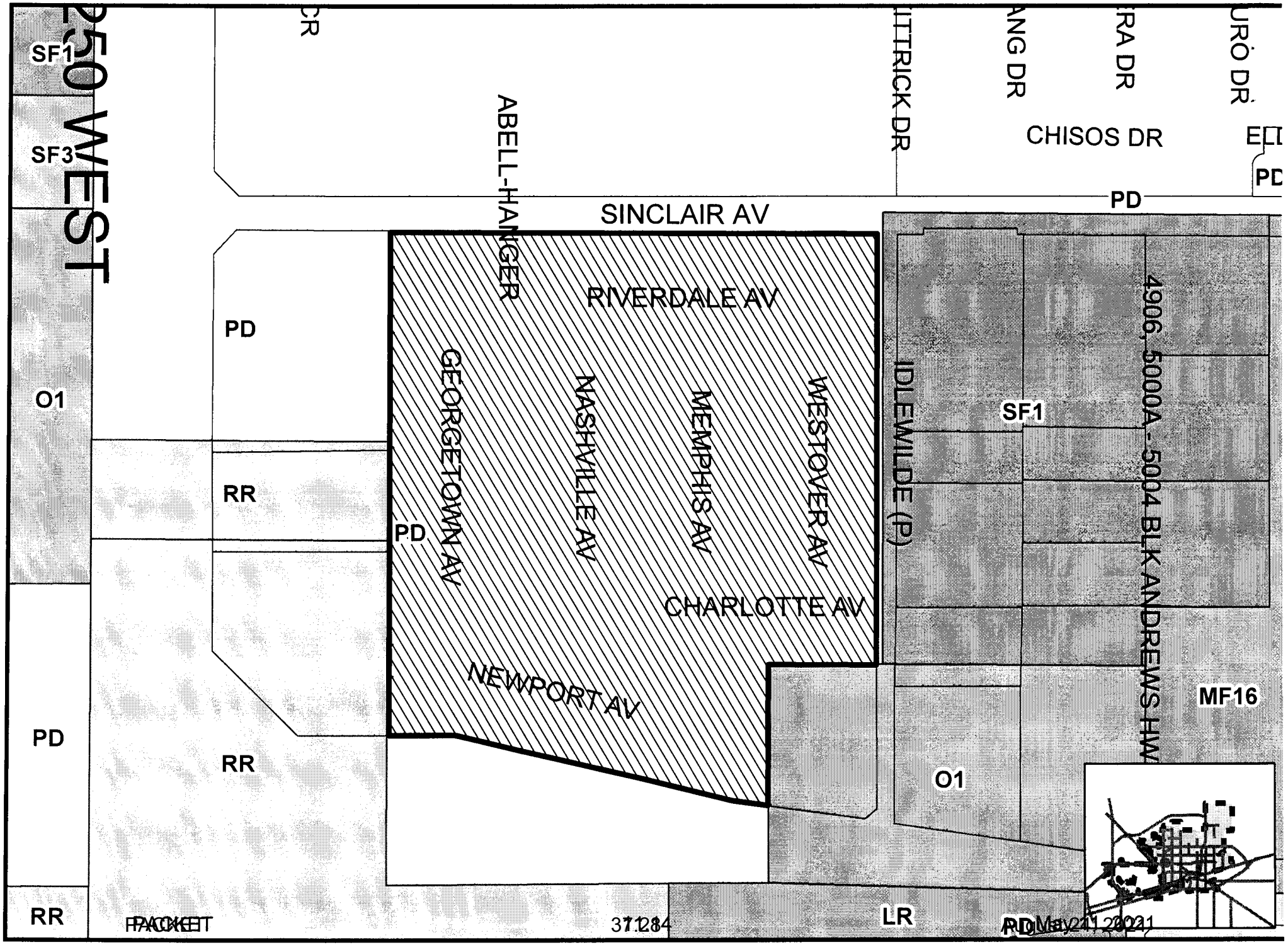
Consider a request by Manor Park, Inc., for a zone change from PD, Planned District for a Housing Development to Amended PD, Planned Development District for a Housing Development on Lot 2, Block 2, Wallace Heights Addition, Section 9, City and County of Midland, Texas.

Generally located on the south side of Sinclair Avenue, approximately 900 feet east of N. Loop 250 West. (Council District 4)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS





Map By VAS, 3/15/2021

Z-21-0222

Scale: 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2021: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA

ORDINANCE NO. 9586

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING TRACTS 14, 15, 16, AND 17, WALLACE HEIGHTS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH ARE PRESENTLY ZONED 1F-1, ONE-FAMILY DWELLING DISTRICT, IN PART, MF-1, MULTIPLE-FAMILY DWELLING DISTRICT, IN PART, MF-2, MULTIPLE-FAMILY DWELLING DISTRICT, IN PART, AND TH, TOWNHOUSE DWELLING DISTRICT, IN PART, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE SOUTH SIDE OF SINCLAIR AVENUE, APPROXIMATELY 290 FEET EAST OF NORTH LOOP 250 WEST); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of "Planned Districts" under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a PD, Planned District for a Housing Development, as set out hereinafter and subject to the conditions and restrictions set out hereinafter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned 1F-1, One-Family Dwelling District, in part, MF-1, Multiple-Family Dwelling District, in part, MF-2, Multiple-Family Dwelling District, in part, and TH, Townhouse Dwelling District, in part,

and it shall be used as a PD, Planned District for a Housing Development, said property being described as follows:

Tracts 14, 15, 16, and 17, Wallace Heights Addition, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

A. That the use and development of the property shall conform to the regulations of the MF-1, Multiple-Family Dwelling District, except as otherwise stated below.

B. That the use and development of the property shall significantly conform to the site plan, which is attached hereto and incorporated herein as Exhibit "A".

C. That the landscaping of the property shall significantly conform to the landscape notes in Exhibit "A".

D. That the internal landscaping of the property may be installed in phases as construction progresses.

E. That the fencing shall significantly conform to Exhibit "A"

F. That there shall be no fewer parking spaces on the property than the number of parking spaces shown in Exhibit "A".

G. That all lighting shall significantly conform to the standards set forth in the City Code.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of

Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the 26th day of July, A.D., 2016; and passed to second reading on motion of Council member Love, seconded by Council member Lacy, by the following vote:

Council members voting "AYE": Love, Sparks, Morales, Dufford, Lacy, Robnett

Council members voting "NAY": None

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member Hotchkiss, seconded by Council member Lacy, on the 9th day of August, A.D., 2016, at a regular meeting of the City Council:

Council members voting "AYE": Hotchkiss, Love, Sparks, Morales, Dufford, Lacy, Robnett

Council members voting "NAY": None

PASSED AND APPROVED THIS 9th day of August, A.D., 2016.

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Frank Salvato, Assistant City Manager

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

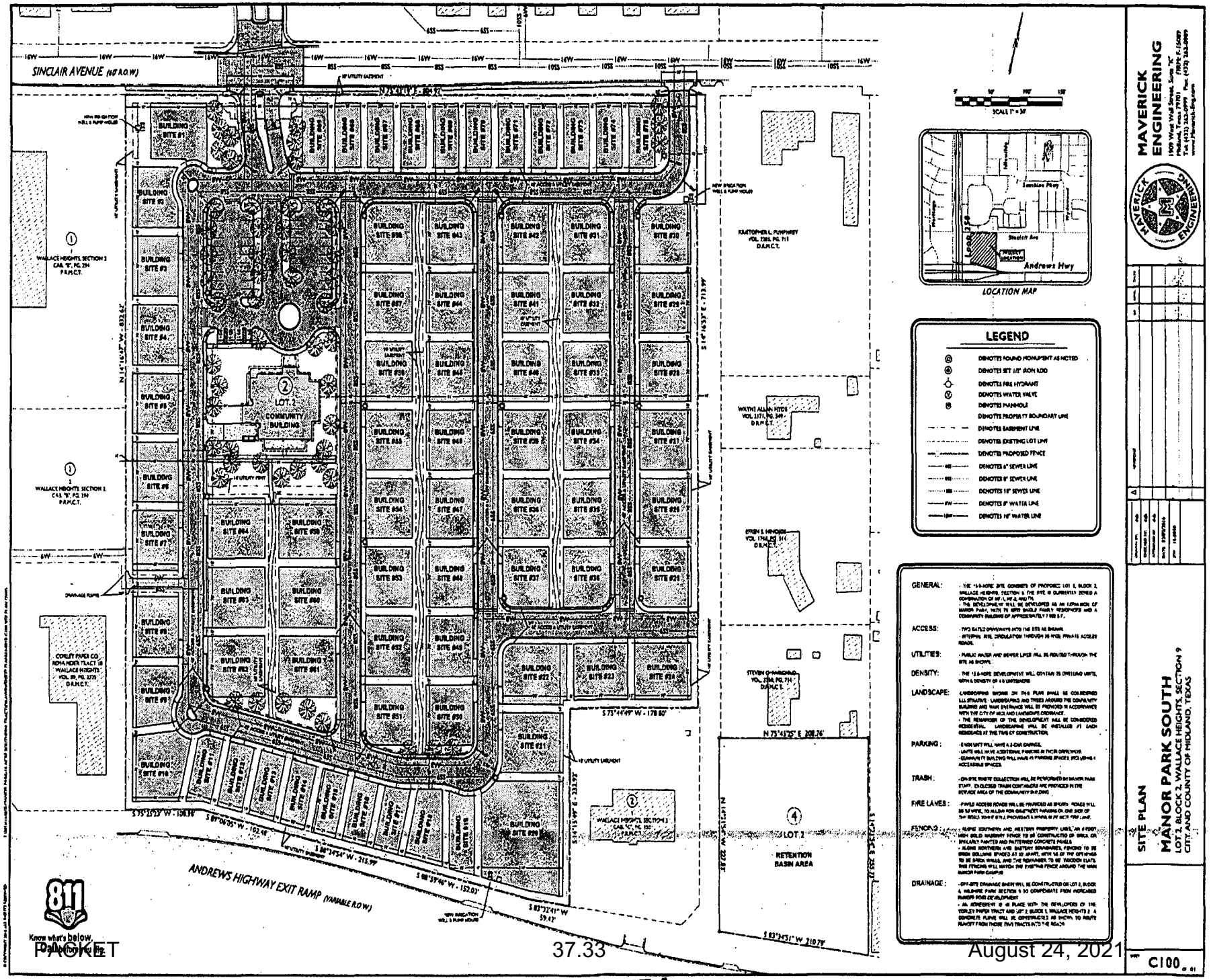

SINCLAIR AVENUE (60' R.O.W.)
ANDREWS HIGHWAY EXIT RAMP (VARIABLE R.O.W.)
LOT 2 COMMUNITY BUILDING
LOT 2 RETENTION BASIN AREA
LOCATION MAP
Andrews Hwy
LEGEND
GENERAL:
ACCESS:
UTILITIES:
DENSITY:
LANDSCAPE:
PARKING:
TRASH:
FIRE LANES:
FENCING:
DRAINAGE:
MAVERICK ENGINEERING
SITE PLAN
MANOR PARK SOUTH
LOT 2, BLOCK 2, WALLACE HEIGHTS, SECTION 9
CITY AND COUNTY OF MIDLAND, TEXAS
C100

EXHIBIT A

9586

City Council Agenda

APPROVED

Approved for Agenda:
fsalvato
City Manager's Office

MEETING DATE: August 9, 2016

TO: City Council / City Manager

FROM: Geoff Solomonson, Planner

SUBJECT: Consider an ordinance on second reading on a request by Manor Park for a Zone Change from 1F-1, One-Family Dwelling District, in part, MF-1, Multiple-Family Dwelling District, in part, TH, Townhouse Dwelling District, in part, and MF-2, Multiple-Family Dwelling District, in part, to PD, Planned District for a Housing Development, on Tracts 14, 15, 16, and 17, Wallace Heights Addition, City and County of Midland, Texas. (Generally located on Sinclair Avenue, approximately 290-feet east of N. Loop 250 West. – Council District 4)

Purpose:

Consider an ordinance on second reading on a request by Manor Park for a Zone Change from 1F-1, One-Family Dwelling District, in part, MF-1, Multiple-Family Dwelling District, in part, TH, Townhouse Dwelling District, in part, and MF-2, Multiple-Family Dwelling District, in part, to PD, Planned District for a Housing Development, to allow for a future expansion of the Manor Park Retirement Community.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No City funds are required to process this request.

Discussion:

Current Zoning:

1F-1, One-Family Dwelling District, in part, MF-1, Multiple Family Dwelling District, in part, TH, Townhouse Dwelling District, in part, and MF-2, Multiple Family Dwelling District, in part.

Surrounding Zoning and Land Use:

The property is located near the intersection of N. Loop 250 West and Andrews Highway and is currently undeveloped. The zoning to the north, across Sinclair Avenue, is a PD, Planned District for a Housing Development (Ordinance No. 8126), with an underlying zoning of MF-1, Multiple-Family Dwelling District, and is the location of Manor Park Retirement Community. The properties to the east are zoned 1F-1, One-Family Dwelling District, and O1, Office District, and contain single-family residences within the 1F-1, One-Family Dwelling District, and an office building within the O1, Office District.

To the south are properties zoned LR-1, Local Retail District, and LR-2, Local Retail District, which are mainly undeveloped with a few single-family residences. Zoning to the west is LR-2, Local Retail District, in part, and a PD, Planned District for a Transition District (Ordinance No. 6739). Tracker Boat Center is located in the PD, Planned District for a Transition District.

Analysis:

The parcels proposed for rezoning were originally platted as Wallace Heights Addition in 1946, with the intent of 1F-1, One-Family Dwelling District, for single-family residential. In 1980, the properties were rezoned to MF-1, Multiple-Family Dwelling District, in part, TH, Townhouse Dwelling District, in part, and MF-2, Multiple-Family Dwelling District, in part, by Ordinance No. 5613.

PD, Planned District for a Housing Development, with an underlying zoning of MF-1, Multiple-Family Dwelling District, is an appropriate application of a zone change to match the current Manor Park Retirement Community campus, as the expansion is a large housing development. This Zone Change is in process along with the re-platting of the property as Wallace Heights, Section 9.

Exhibit A, provided by the applicant, shows the proposed site plan for an expansion of the Manor Park Retirement Community. Seventy Five (75) building sites are proposed as an expansion to the south from the adjacent Manor Park Retirement Community campus. Each site can have up to 2 units for a maximum density of 4.8 dwelling units per acre. The PD, Planned District for a Housing Development, with an underlying zoning of MF-1, Multiple-Family Dwelling District, allows for a maximum of 16 dwelling units per acre according to the Midland City Zoning Ordinance Chapter 11-1-6, Zoning district classification; use and development regulations.

This proposed development would generate approximately 15 morning peak hour (7 a.m. to 9 a.m.) trips and 20 evening peak hour (4 p.m. to 6 p.m.) trips based on Senior Adult Housing from the Trip Generation Manual by the Institute of Transportation Engineers.

Landscaping on the site meets Midland City Zoning Ordinance Chapter 11-9, Landscape Regulations of 1 tree per 30 feet of street frontage and 1 tree per 15 parking spaces.
Landscaping around the community building and main entrance will be provided in accordance with the City of Midland Landscape Ordinance. The remainder of the landscaping of the development will be considered residential and will be installed at each residence at the time of construction.

The site will have a primary access point and another emergency access point with gates both along Sinclair Avenue.

Staff recommends approval of a Zone Change from 1F-1, One-Family Dwelling District, in part, MF-1, Multiple-Family Dwelling District, in part, TH, Townhouse Dwelling District, in part, and MF-2, Multiple-Family Dwelling District, in part, to PD, Planned District for a Housing Development, subject to conditions A through G.

Conditions:

A. That the use and development of this property shall significantly conform to the regulations of the MF-1, Multiple-Family Dwelling District, except as otherwise stated below.

B. That the use and development of the property shall significantly conform to the attached site plan, Exhibit "A."

C. That the landscaping shall significantly conform to the Exhibit "A" Landscaping Notes.

D. That the landscaping internal to the site may be installed in phases as construction progresses.

E. That the fencing shall significantly conform to Exhibit "A."

F. That the minimum number of required parking spaces shall be shown on Exhibit "A."

G. That all lighting shall significantly conform to the standards set forth in the Midland City Code.

Letters of Objection:

As of July 22, 2016, staff has received no letters of objection.

Attachments:

Application
Maps
Proposed Site Plan (Exhibit A)
Ordinance No. 8126

Case Number: Z-16-0016

MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

I. APPLICATION

Applicant:

Manor Park Inc, Alan Hale, Executive Director (Name) | 432-689-9898 (Phone)

2208 N Loop 250 West, Midland, TX 79707 (Address) | ahale@manorparkinc.org (Email)

Property Owner:

_____ (Name) | _____ (Phone)

_____ (Address) | _____ (Email)

Representative (*please see affidavit on page 2*):

Andrew Hobby, P.E. - Maverick Engineering (Name) | 432-262-0999 (Phone)

1909 West Wall St. Ste K, Midland, TX 79701 (Address) | ahobby@maverick-eng.com (Email)

Street address: _____

Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal, each district must be described separately):

Tracts 17, 16, 15, and the North 4 Acres of Tract 14, Wallace Heights Addition, City and County of Midland, Texas.

Present Zone: MF-1, MF-2, TH Proposed Zone: PD-HD

(List by tracts if more than one district is requested)

Reason for Zone Change Request: Development of site for future phase of Manor Park.

Present Use of Property: Undeveloped

Proposed Use of Property: Senior housing community

How would this zone change affect the public health, safety and welfare?

NA

Describe how conditions affecting the property have changed since present zoning designation:

NA

II. APPLICATION FEES:

Single, standard zone change: **$400**, Multiple, standard zone change: add **$100** per additional district.
Single PD zone change: **$550**, Multiple PD proposal: add **$100** per district.

Total: $ 550.00

III. SITE PLAN SUBMITTALS *(if applicable)*:

5 FOLDED copies of the PD site plan: x
Site Plan in digital format (PDF & JPEG): x

VI. Signature

Property Owner (signature): _____ Date: _____

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Andrew Hobby who, being by me duly sworn, upon oath says: That (s)he is authorized by Alan Hale, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Authorized Agent (signature)

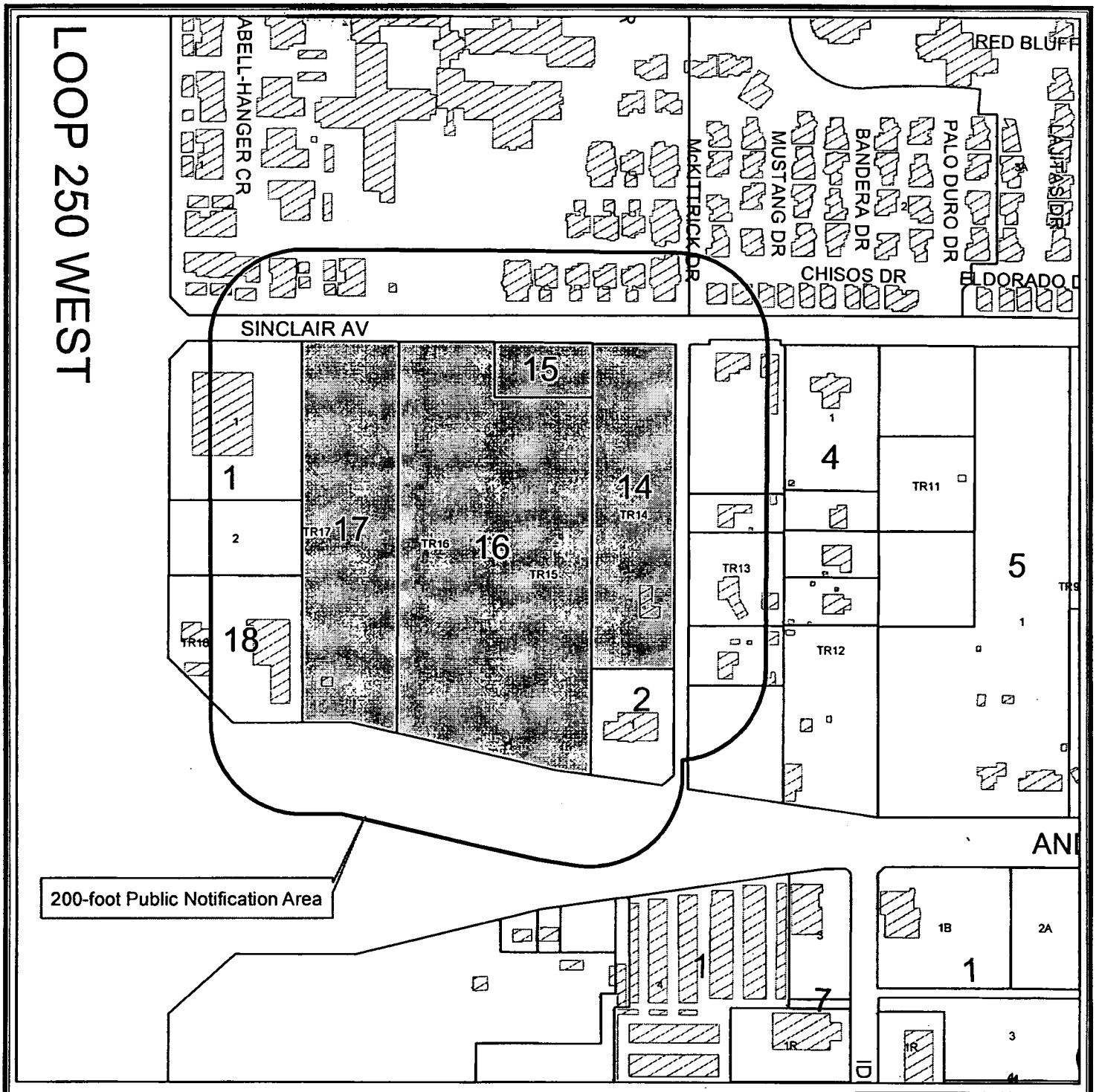
Subscribed and sworn to before me, this 10th day of June, 20 16, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY
Rec'd By: _____ Date: _____
Assigned: _____
For: _____ On: _____

PALADIN HUCKABA
Notary Public, State of Texas
Comm. Expires 08-26-2019
Notary ID 13034715-0

****Application will not be considered for scheduling until reviewed by a planner.****



LOCATION MAP

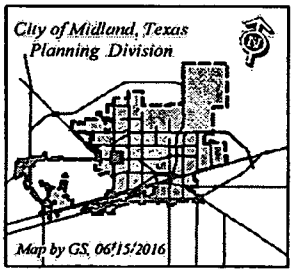
Z - 16 - 0016 **Scale: 1" = 300'**

Consider a request for a Zone Change from 1F-1, One-Family Dwelling District, in part, MF-1, Multiple-Family Dwelling District, in part, TH, Townhouse Dwelling District, in part, and MF-2, Multiple-Family Dwelling District, in part, to PD, Planned Development for a Housing Development on Tracts 14, 15, 16, and 17, Wallace Heights Addition, City and County of Midland, Texas.

Generally located on Sinclair Avenue approximately 290-feet east of N. Loop 250 W. (Council District 4)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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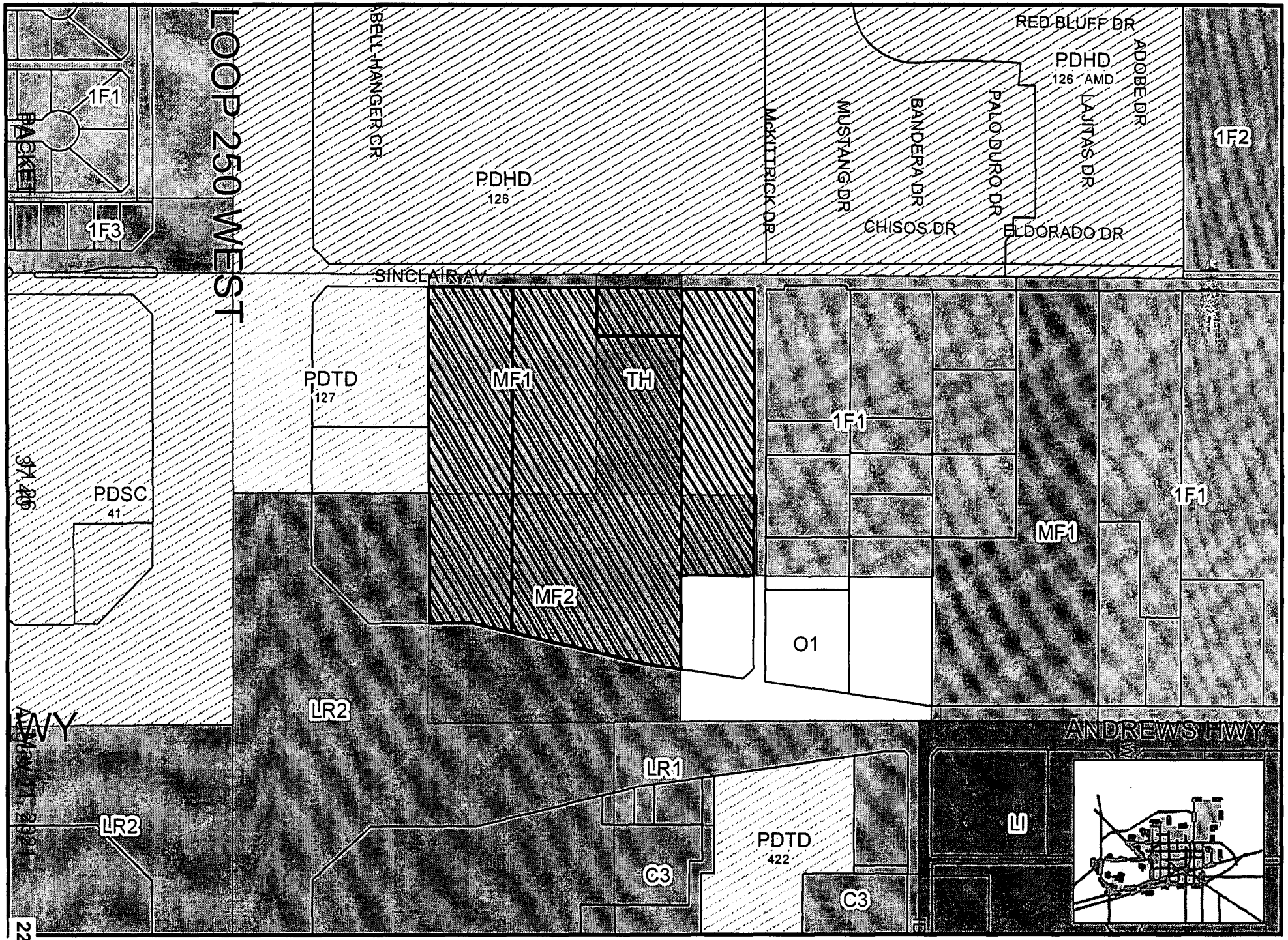

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up By GS, 06/15/2016

Z - 16 - 0016

Scale: 1" = 300'

ZONING MAP

© CITY OF MIDLAND - 2016: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLEY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

ORDINANCE NO. 8126

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1, BLOCK 1, TRINITY TOWERS MANOR, SECTION 1; AND A 25.71-ACRE TRACT OUT OF SECTION 19, BLOCK 39, T-1-S, T & P RAILROAD COMPANY SURVEY, MIDLAND COUNTY, TEXAS WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT AND 1F-3, ONE-FAMILY DWELLING DISTRICT TO BE USED AS PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; AND EXPRESSLY REPEALING ORDINANCE NO. 6213; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of "Planned Districts" under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a PD, Planned District for a Housing Development set out hereinafter and subject to the conditions and restrictions set out hereinafter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned PD, Planned District for a Housing Development and 1F-3, One-Family Dwelling District, and it shall be used as a PD, Planned District for a Housing Development, subject to the special conditions and

restrictions hereinafter set out, said property being described as follows:

Lot 1, Block 1, Trinity Towers Manor, Section 1; and a 25.71-acre tract out of Section 19, Block 39, T-1-S, T & P Railroad Company Survey, Midland County, Texas. (As further described on the attached metes and bounds description, Exhibit "A", incorporated herein by reference.)

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

A. That the use and development of this property shall conform to the regulations of the MF-1, Multiple-Family Dwelling District, except as otherwise stated below.

B. That the use and development of this property shall conform to the conditions shown on the attached site plan, Exhibit "B", in all respects.

C. That the maximum building height for Lot 1, Block 1, Trinity Towers Manor, Section 1 shall not exceed 65 feet or four stories. The maximum building height for Lot 2, Block 2 shall be 80 feet, or five stories.

D. That the indicated six-foot tall screening fence around the east 25 acres of this property may be installed in phases. The landscaping indicated along Sinclair Avenue may also be installed in phases, concurrently with the fence construction.

E. That the landscaping internal to the site may be installed in phases as construction progresses, provided that a minimum of 15 percent of each developing area is landscaped, and that the total landscaping once all construction is complete is 15 percent. All landscaping shall be irrigated with an automatic sprinkler system, and shall be maintained in a healthy, growing condition.

F. That the minimum number of required parking spaces shall be as shown on Exhibit "B."

G. That all fixtures for security lighting within the eastern 25 acres shall not be mounted higher than 20 feet above natural grade.

H. That Ordinance 6213 is repealed.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that

covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict, and Ordinance no. 6213 is hereby expressly repealed..

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the 27th day of August, A.D., 2002; and passed to second reading on motion of Council member Simpson, seconded by Council member Bradford, by the following vote:

Council members voting "AYE": Simpson, Bradford, Perry, Morgan, Dingus, Canon and Dufford

Council members voting "NAY": None

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member Simpson, seconded by Council member Dufford, on the 10th day of September, A.D., 2002, at a regular

meeting of the City Council:

Council members voting "AYE": Simpson, Dufford, Perry, Morgan, Dingus, Canon and Bradford

Council members voting "NAY": None

PASSED AND APPROVED THIS 10th day of September, A.D., 2002.

Michael J. Canon, Mayor

ATTEST:

Kaylah J. McCord, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CERTIFICATE

THE STATE OF TEXAS

COUNTY OF MIDLAND

00C 23786 VOL 2077 PG 755

ZONING FOR TRINTY TOWER MANOR, SECTION 2

LEGAL DESCRIPTION FOR A 25.71 ACRE TRACT LOCATED IN SECTION 19, BLOCK 39, T-1-S, T. & P. RR. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

Boundary being further described by metes and bounds as follows:

BEGINNING at the Southwest corner of this tract in the center of Sinclair Avenue, from whence a 5/8" iron rod found, as set by the City of Midland, Engineering Department, at the Southeast corner of Lot 1, Block 1, Trinity Tower Manor, as recorded in Cabinet D, Page 76, Plat Records of Midland County, Texas and the Northwest corner of said 0.271 Acre right of way dedication in Volume 1185, Page 543, bears N15°15'02"W, a distance of 34.18 feet, also from said point of beginning, the Southwest corner of said Section 19, Block 39, T-1-S, based on calls of the 10.0 Acre Tract recorded in Volume 961, Page 1, bears S74°45'W, a distance of 1202.3 feet and S15°15'E, a distance of 1113.00 feet;

THENCE N15°15'02"W with and projections of the East line of said Lot 1, Block 1, and the West boundary line of said 10.0 Acre tract, at 1062.94 feet pass the Northwest corner of said 10.0 Acre Tract, continuing for a total distance of 1072.94 feet to the Northwest corner of this tract in the center of an existing alley, from whence a ½" iron rod found at the Northeast corner of said Lot 1, Block 1, bears N15°15'02"W a distance of 472.87 feet;

THENCE N74°48'58"E with the center of an existing alley, a distance of 1044.56 feet to the Northeast corner of this tract, from whence the Northeast corner of a 5.0 Acre Tract as described in Volume 649, Page 288, Deed Records bears S15°11'17"E, a distance of 10.00 feet;

THENCE S15°11'17"E with and projections of the West boundary line of Wydewood Estates, Section 4, as recorded in Cabinet C, Page 47, Plat Records of Midland County, at 1042.64 feet pass a 5/8" iron rod found at the Northeast corner of said 0.058 Acre dedicated for right of way as described in Volume 1221, Page 485, Official Records of Midland County, continuing for a total distance of 1072.70 feet to the Southeast corner of this tract, in the center of Sinclair Avenue;

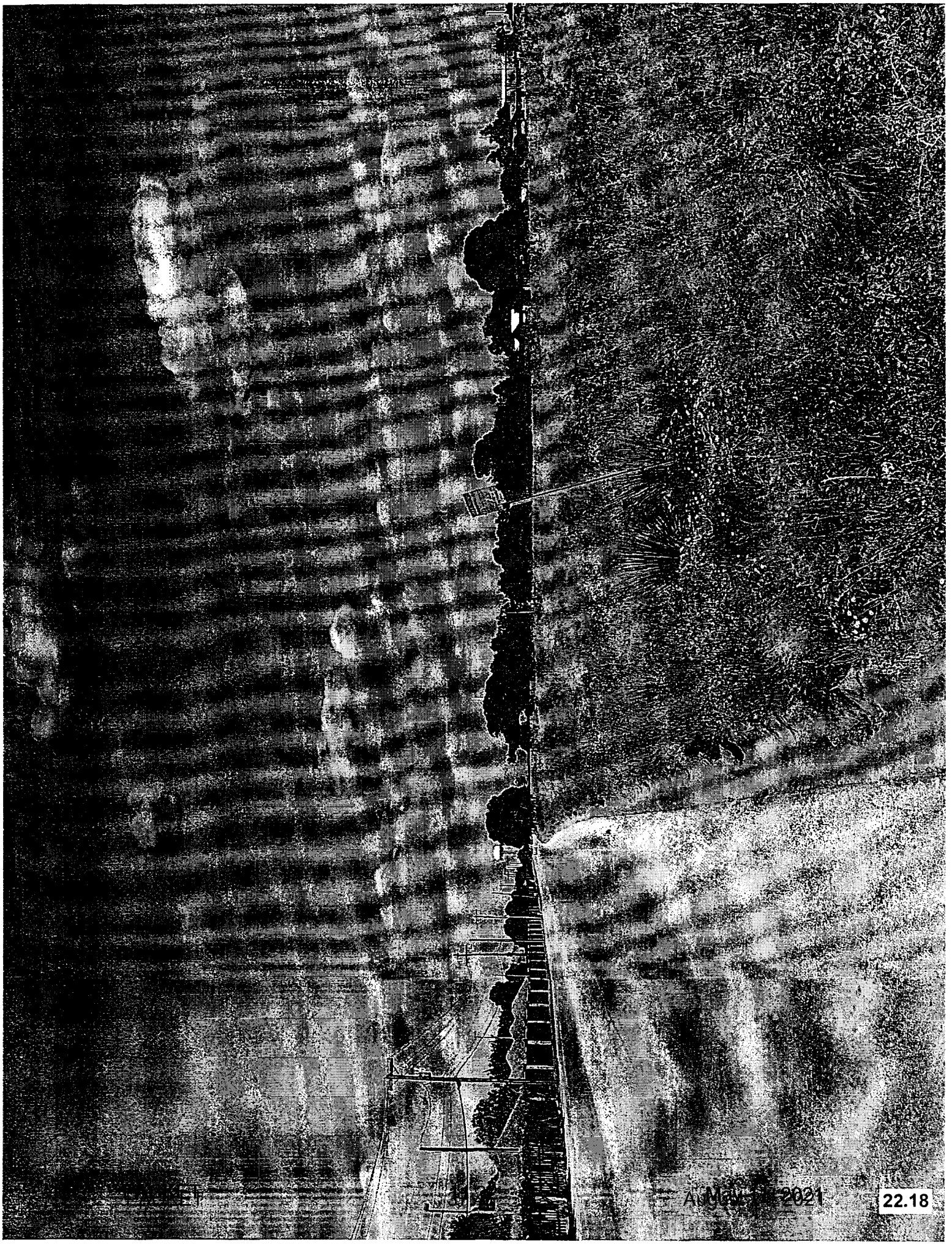
THENCE S74° 48'10"W with the center of Sinclair Avenue, a distance 1043.40 feet to the Place of Beginning.

I, J. Stan Piper, Professional Land Surveyor, do hereby certify that this legal description is based on an actual survey made by me or under my supervision, and that the same is true and correct to the best of my knowledge and belief as surveyed on the ground at various dates through June 5, 2002.

J. Stan Piper
Professional Land Surveyor

Prepared for:
Parkhill, Smith, and Cooper, Inc.
Attn.: Mr. Jay Edwards
5214 Thomason
Midland, TX 79703
(915) 697-1447

PIPER SURVEYING CO., BOX 60432, MIDLAND, TX 79711, (915) 550-7810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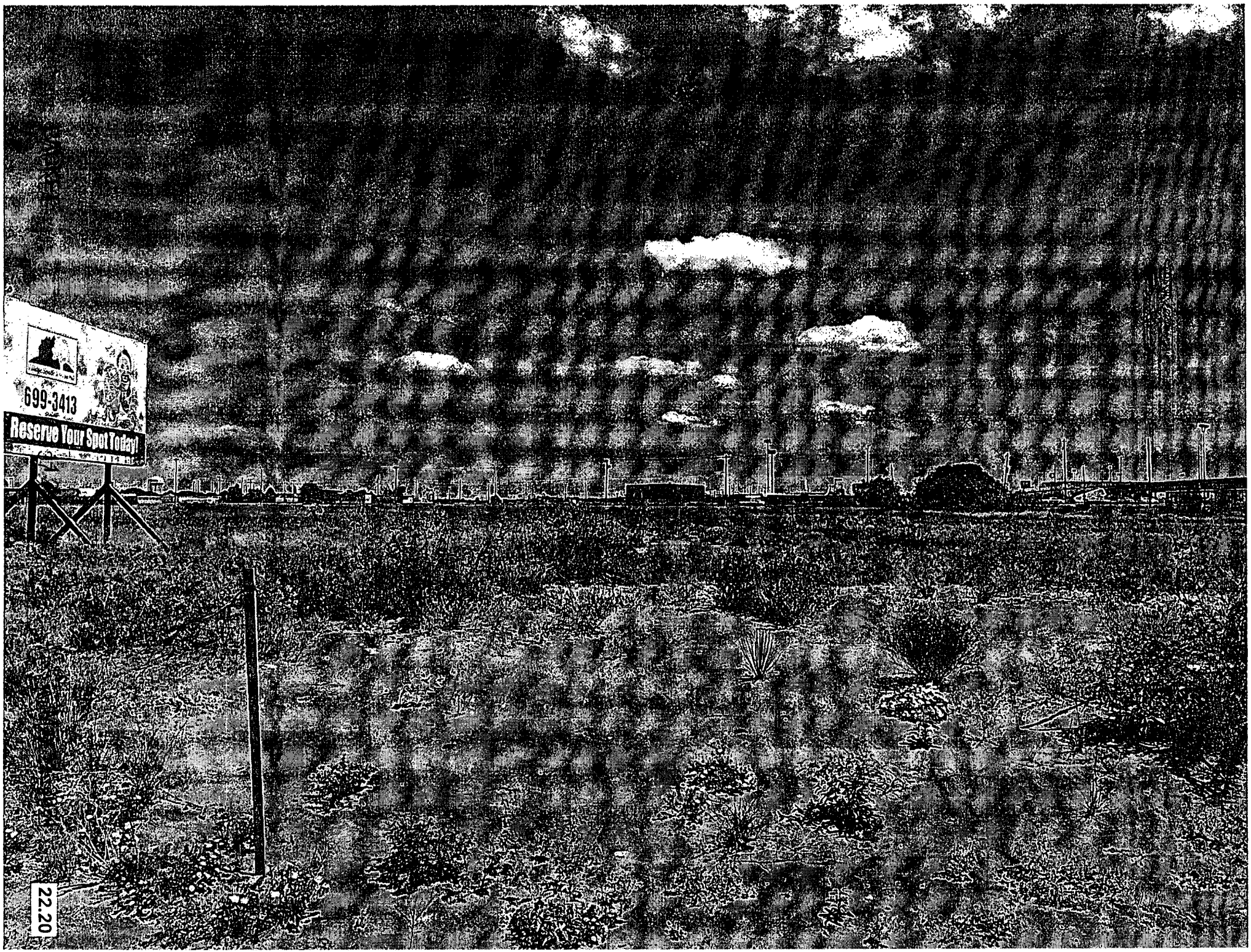

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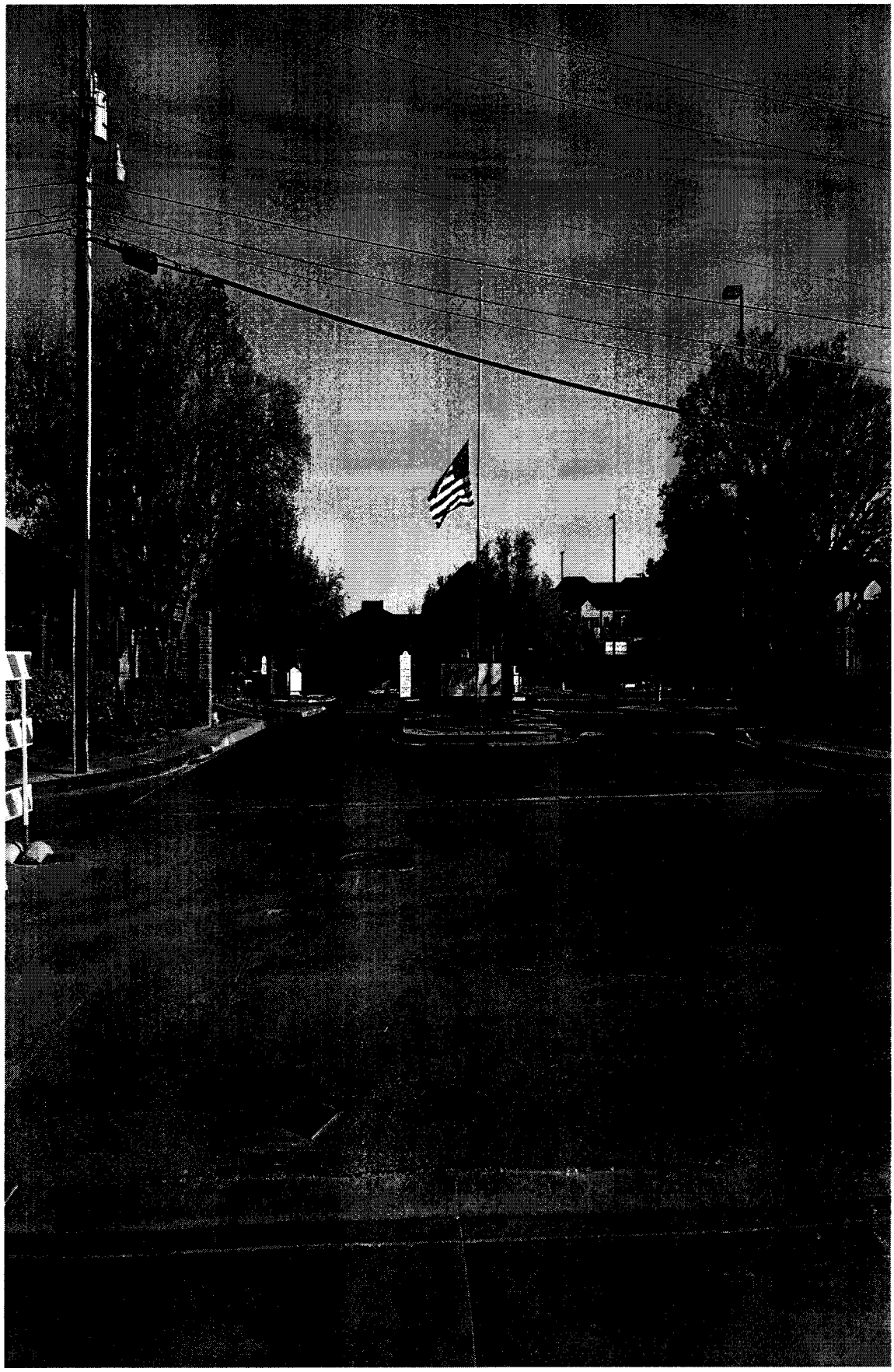
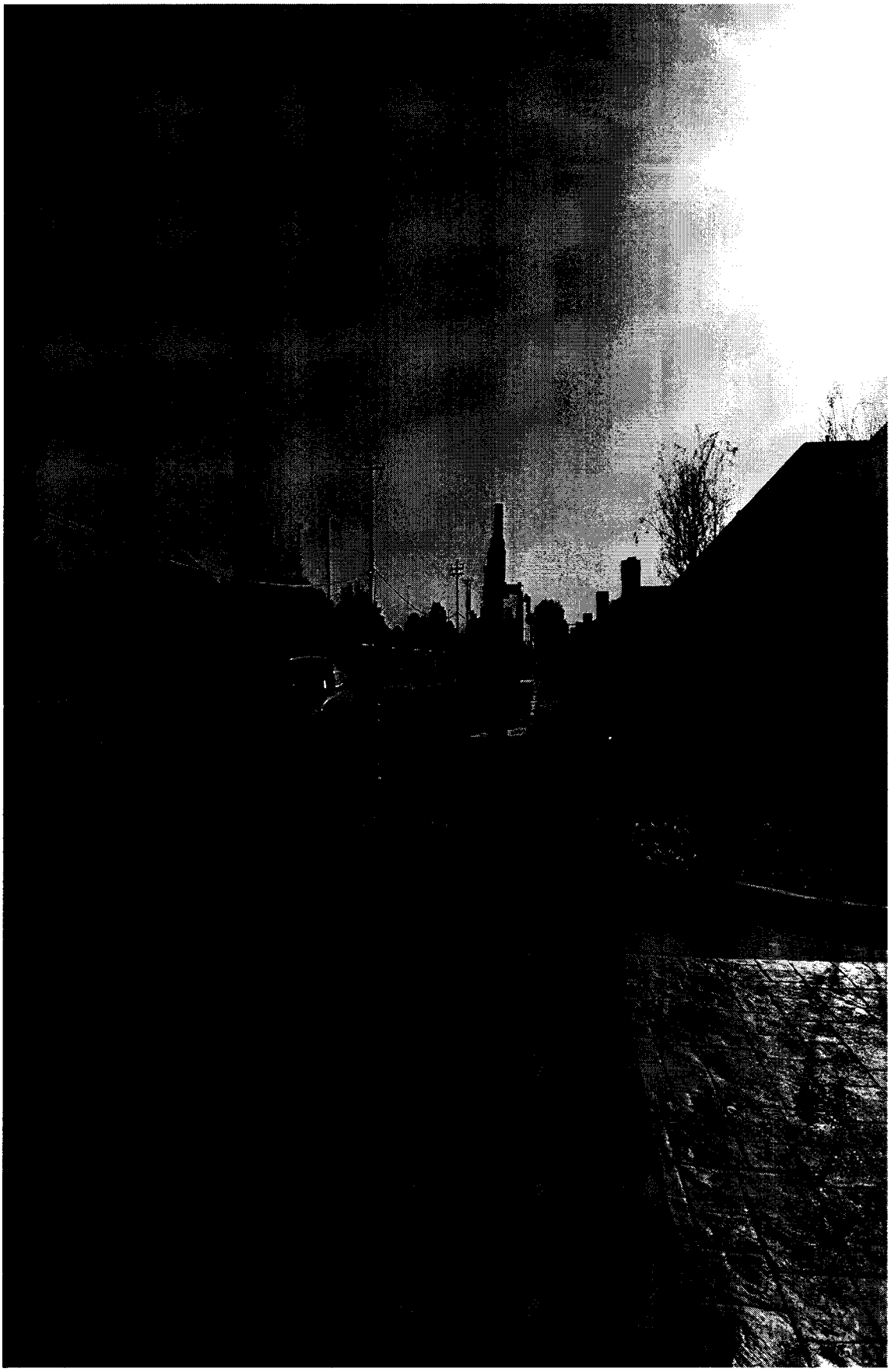
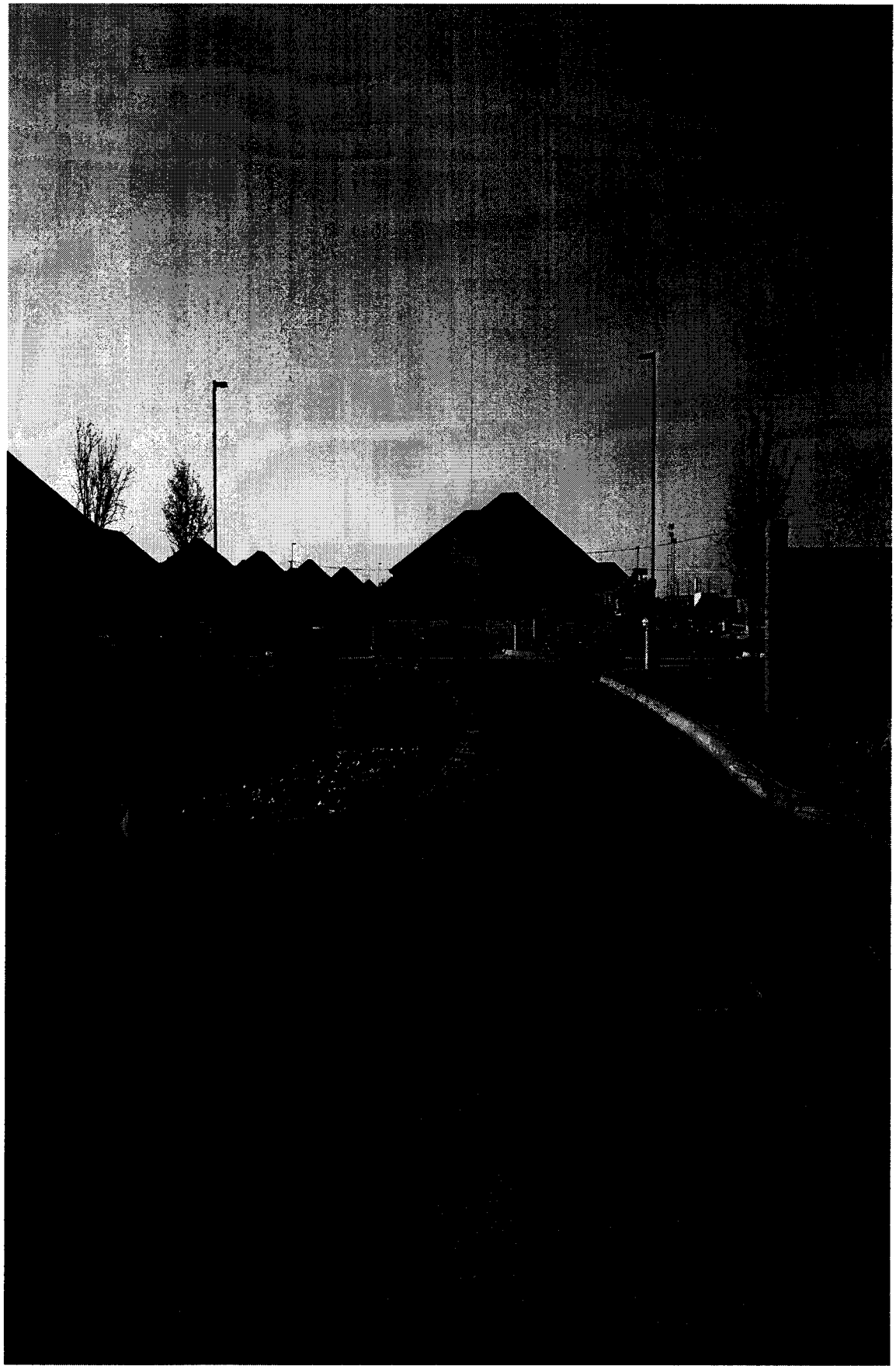
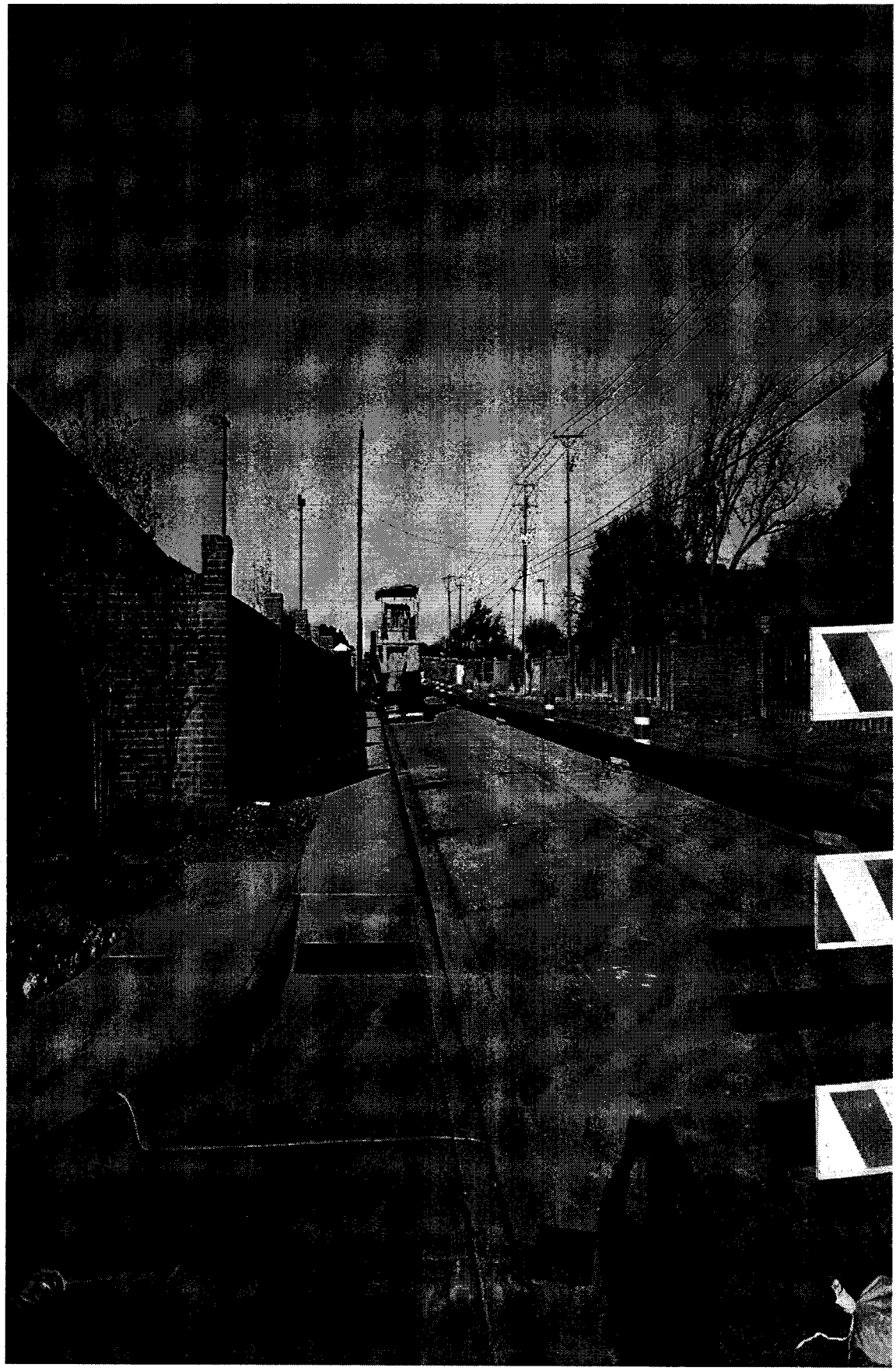
















City Council Meeting

Item Number: 38

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Valerie A. Sherman, Senior Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOT 2, BLOCK 2, WALLACE HEIGHTS ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF SINCLAIR AVENUE, APPROXIMATELY 290 FEET EAST OF NORTH LOOP 250 WEST), WHICH IS PRESENTLY ZONED PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 4) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Manor Park, Inc., is requesting a Specific Use Designation with Term for the sale of all alcoholic beverages for on-premises consumption in a restaurant for Manor Park South at 5323 Sinclair Avenue, Midland, Texas 79707.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Discussion:

Surrounding Zoning and Land Use:

The property to the north is zoned PD, Planned District for a Housing Development. The properties to the east are zoned SF-1, Single-Family Dwelling District and O1, Office District. The properties to the south across Andrews Highway are zoned RR, Regional Retail District, and LR Local Retail District. The properties to the west are zoned RR, Regional Retail District and PD, Planned District for a Transitional District.

Analysis:

The property is zoned PD, Planned Development District for a Housing Development, with an underlying zoning of MF-16, Multiple-Family Dwelling District. The property is in the process of amending its PD, Planned Development District for a Housing Development, to allow for a restaurant with a Specific Use Designation Permit to sell all alcoholic beverages on premises. The applicant is proposing a restaurant, located at 5323 Sinclair Avenue, and will have a total square footage of 7,701, of which 4,774 square feet (see Exhibit A) will be dedicated to the alcohol serviceable area.

The proposed site plan provides adequate access and internal circulation.

A total of 41 shared parking spaces are proposed, of which 4 will be accessible spaces. Which is in conformance with the minimum number of parking spaces shown on Exhibit A.

The restaurant is proposing the following hours of operation and alcohol service:

Sunday through Saturday from 10:00 a.m. to 8:00 p.m.

Per Midland City Code, Section 5-4-4, Prohibited Places of Business:

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public school, public school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no schools or churches within 300 feet of the property.

This request has been circulated to and reviewed by respective City departments for internal review and their comments, conditions, and requirements are as follows:

Engineering: (Approved)

No objection.

Building Code: (Approved)

No objections. Occupant load provided with the Building Permit is required to be posted.

Fire: (Approved)

No objections.

Transportation: (Approved)

No objection to zone change.

Code Administration: (Approved)

No comments.

Planning:

This request is in compliance with the Tall City Tomorrow Comprehensive plan, Chapter 6 Character Plan - Goal 4, “Encourage the development of places where Midland residents can gather and socialize to build connections” (Tall City tomorrow, page 137). Manor Park, Inc. will create a vibrant atmosphere where residents can socialize and be entertainment with a diversity of activities while enjoying alcoholic beverages.

This request was recommended for approval at the August 2, 2021 Planning and Zoning Commission Meeting.

This request meets all requirements; therefore, staff recommends approval of the Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, subject to Conditions A through F.

Conditions:

A. That the Establishment shall be located in the community building shown in Exhibit “A”, which is attached hereto and incorporated herein for all purposes.

B. That the serviceable area of the restaurant shall be limited to approximately 4,774 square feet as shown in Exhibit “B”, which is attached hereto and incorporated herein for all purposes.

C. That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.

D. That the days and hours of alcoholic beverages sales and consumption shall be limited to:

Sunday through Saturday from 10:00 a.m. to 8:00 p.m.

E. That the occupancy of the establishment shall not exceed the maximum occupancy

determined by the Building Code and Fire Code.

F. That the establishment shall meet all requirements of the Fire Department and Code Administration.

G. That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on premises consumption to ensure that the conditions of this permit are satisfied.

Letters of Objection:

As of August 11, 2021, staff has not received any letters of objections.

Attachments:

Site Plan (Exhibit A)
Floor Plan (Exhibit B)
Application
Maps
Ordinance No. 10177

Robert Patrick

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOT 2, BLOCK 2, WALLACE HEIGHTS ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF SINCLAIR AVENUE, APPROXIMATELY 290 FEET EAST OF NORTH LOOP 250 WEST), WHICH IS PRESENTLY ZONED PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation With Term for Lot 2, Block 2, Wallace Heights Addition, Section 9, City and County of Midland, Texas (the "Property"), as set out hereinafter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to grant the Property a Specific Use Designation With Term for the sale of all alcoholic beverages in a restaurant (the "Establishment") for on-premises consumption, together with the uses permitted in the present PD, Planned Development District for a Housing Development.

SECTION TWO. That the Property shall be subject to the following conditions and restrictions:

A. That the Establishment shall be located in the community building shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

B. That the serviceable area of the Establishment shall be limited to approximately 4,774 square feet as shown in Exhibit "B", which is attached hereto and incorporated herein for all purposes.

C. That the sale and on-premises consumption of alcoholic beverages shall conform to all applicable state and local laws.

D. That the days and hours of alcoholic beverage sales and consumption shall be limited to Sunday through Saturday from 10:00 a.m. to 8:00 p.m.

E. That the occupancy of the Establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

F. That the Establishment shall meet the requirements of the Fire Department and the Code Administration Division.

G. That the operator of the Establishment shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on-premises consumption to ensure that the conditions of this Specific Use Designation With Term are satisfied.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance

with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

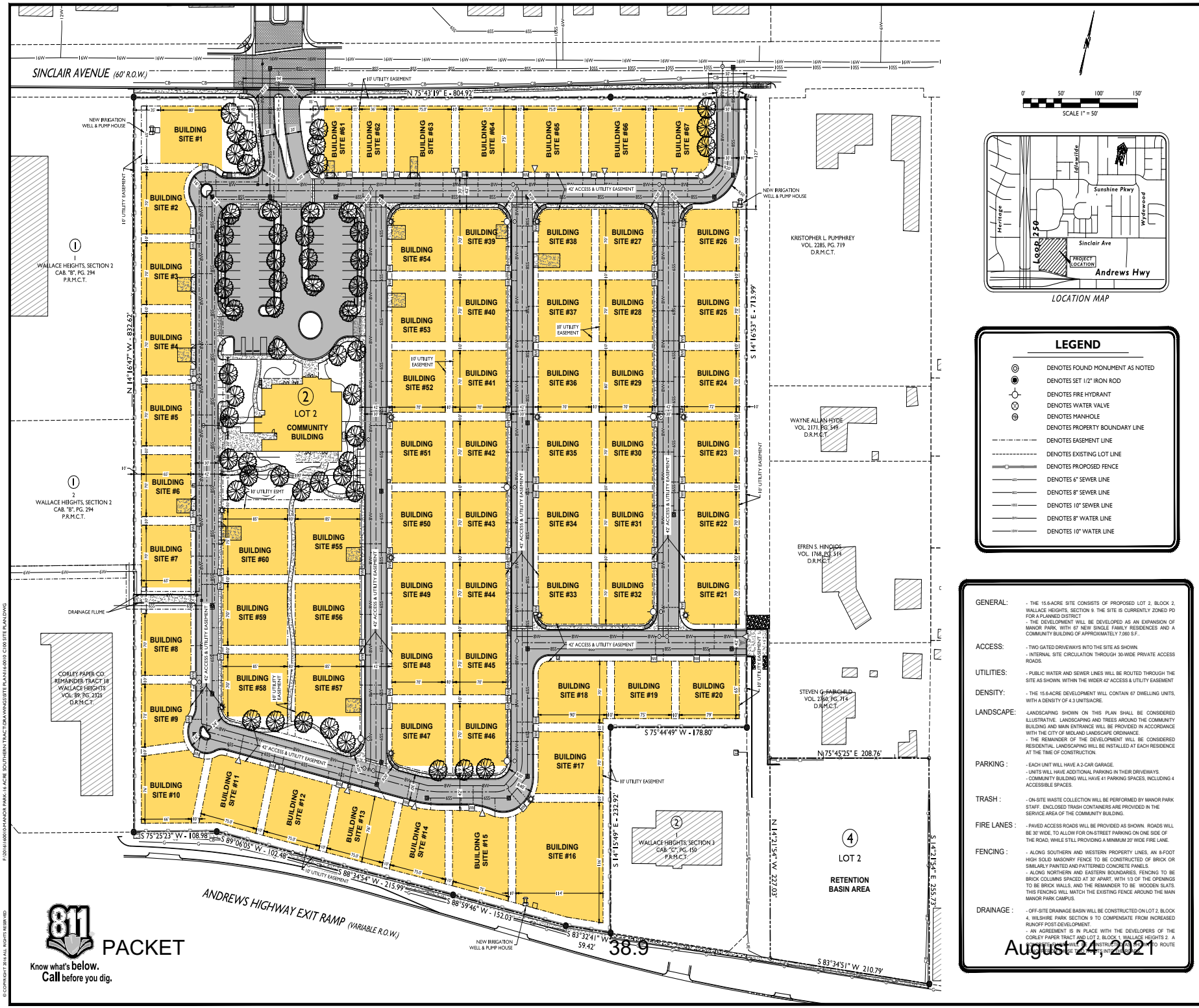
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

Exhibit A



0' 50' 100' 150'
SCALE 1" = 50'

LOCATION MAP

LEGEND

- DENOTES FOUND MONUMENT AS NOTED
- DENOTES SET 1/2" IRON ROD
- DENOTES FIRE HYDRANT
- DENOTES WATER VALVE
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GENERAL: - THE 15.6-ACRE SITE CONSISTS OF PROPOSED LOT 2, BLOCK 2, WALLACE HEIGHTS, SECTION 9. THE SITE IS CURRENTLY ZONED PD FOR A PLANNED DISTRICT
- THE DEVELOPMENT WILL BE DEVELOPED AS AN EXPANSION OF MANOR PARK, WITH 67 NEW SINGLE FAMILY RESIDENCES AND A COMMUNITY BUILDING OF APPROXIMATELY 7,000 S.F..

ACCESS: - TWO GATED DRIVEWAYS INTO THE SITE AS SHOWN.
- INTERNAL SITE CIRCULATION THROUGH 30-WIDE PRIVATE ACCESS ROADS.

UTILITIES: - PUBLIC WATER AND SEWER LINES WILL BE ROUTED THROUGH THE SITE AS SHOWN. WITHIN THE WIDER 42' ACCESS & UTILITY EASEMENT

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- AN AGREEMENT IS IN PLACE WITH THE DEVELOPERS OF THE CORLEY PAPER TRACT AND LOT 2, BLOCK 1, WALLACE HEIGHTS 2. A [illegible] TO ROUTE

811 Know what's below. Call before you dig.

PACKET 38.9 August 24, 2021

MAVERICK ENGINEERING
1909 West Wall Street, Suite "K"
Midland, Texas 79701
Tel: (432) 262-0993 Fax: (432) 262-0989
www.Maverick-Eng.com
TBPE#: F-15089

REVISIONS	BY	APPR.	DATE
02242021 EXPANDED SITES			

DRAWN BY: CB
CHECKED BY: PRH
APPROVED BY: PRH
DATE: 02242021
JOB: 164010

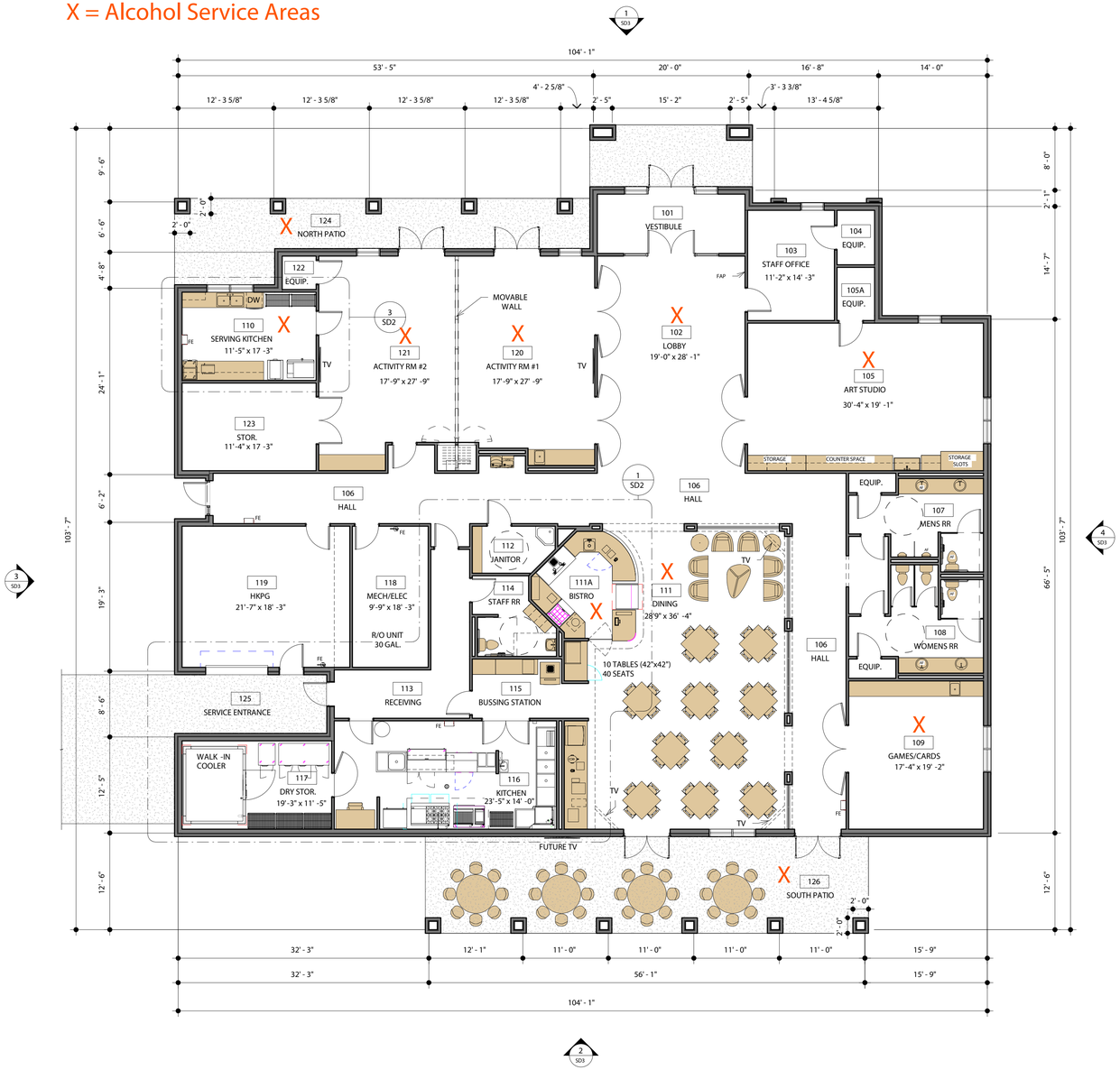
SITE PLAN
MANOR PARK SOUTH
LOT 2, BLOCK 2, WALLACE HEIGHTS, SECTION 9
CITY AND COUNTY OF MIDLAND, TEXAS

SHEET C100 OF 01

F:\2016\164010\MANOR PARK-16 ACRE SOUTHERN TRACT\DRAWINGS\SITE PLAN\164010 C100 SITE PLAN.DWG
© COPYRIGHT 2016 ALL RIGHTS RESERVED

"EXHIBIT B"

X = Alcohol Service Areas



A SD1 MANOR PARK COMMUNITY BUILDING
1/8" = 1' -0"

7,701 SQ. FT.

P&A PATE ARCHITECTS

09/13/19

MIDLAND Planning Division

Specific Use Designation with Term for the Sale of Alcoholic Beverages for On-Premises Consumption

Project Number: SUD-21-0109

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: MANOR PARK, INC.		Phone (436) 689 9898 Email jhobbs@manorparkinc.com	
Address 2208 N LOOP 250 W	City MIDLAND	State TX	Zip 79707
Property Owner Printed Name: MANOR PARK, INC.		Phone ( ) Email	
Address 2208 N LOOP 250 W	City MIDLAND	State TX	Zip 79707
Representative *(if different from Applicant or Property Owner)* Firm: MANOR PARK, INC. Printed Name: JAY HOBBS, COO		Phone (325) 668 8097 Email jhobbs@manorparkinc.com	
Address 2208 N LOOP 250 W	City MIDLAND	State TX	Zip 79707

Street Address: ~~220~~ 5323 SINCLAIR AVE. MIDLAND TX VILLAGE SOUTH COMMUNITY CENTER

Business Name: MANOR PARK INC.

Legal Description
Lot: 2 Block: 2 Subdivision: Wallace Heights, Sec. 9

Current Zoning: COMBINATION of MF-1, MF-2, and TH.

Reason for Request: Beer and Wine for the residents at Manor Park. CO

Type of Business *(restaurant, bar, lounge, nightclub, etc.)*: BISTRO/RESTAURANT.

Proposed/Current Days and Hours of Operation: SUNDAY – Thursday

Proposed Days and Hours of Alcohol Service: 12-8pm

Total Square Footage of Business: 7,701 sqft.

Square Footage of Alcohol Serviceable Area:

Restroom Fixtures:	*Men*	**Toilets/Urinals:**	3	**Bathroom Sinks:** 2
	Women	**Toilets:**	3	**Bathroom Sinks:** 2

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Floor Plan showing:
  - Seating
  - Exits
  - Restrooms
  - Kitchen (if applicable)
  - Total Square Footage
  - Serviceable Square Footage
- Dimensioned Site Plan showing:
  - Parking
  - Business Footprint
- Digital Copies of Floor Plan & Site Plan (PDF/JPEG)

Signatures

Applicant (signature):	Date: 7-21-2021
Applicant (printed): Jay Hobbs	
Property Owner (signature):	Date: 7-21-2021
Property Owner (printed) : Alan Hale	

The Specific Use Designation with Term for the sale of all alcoholic beverages shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Jay Hobbs who, being by me duly sworn, upon oath says: That (s)he is authorized by Alan Hale, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Authorized Agent (*signature*)

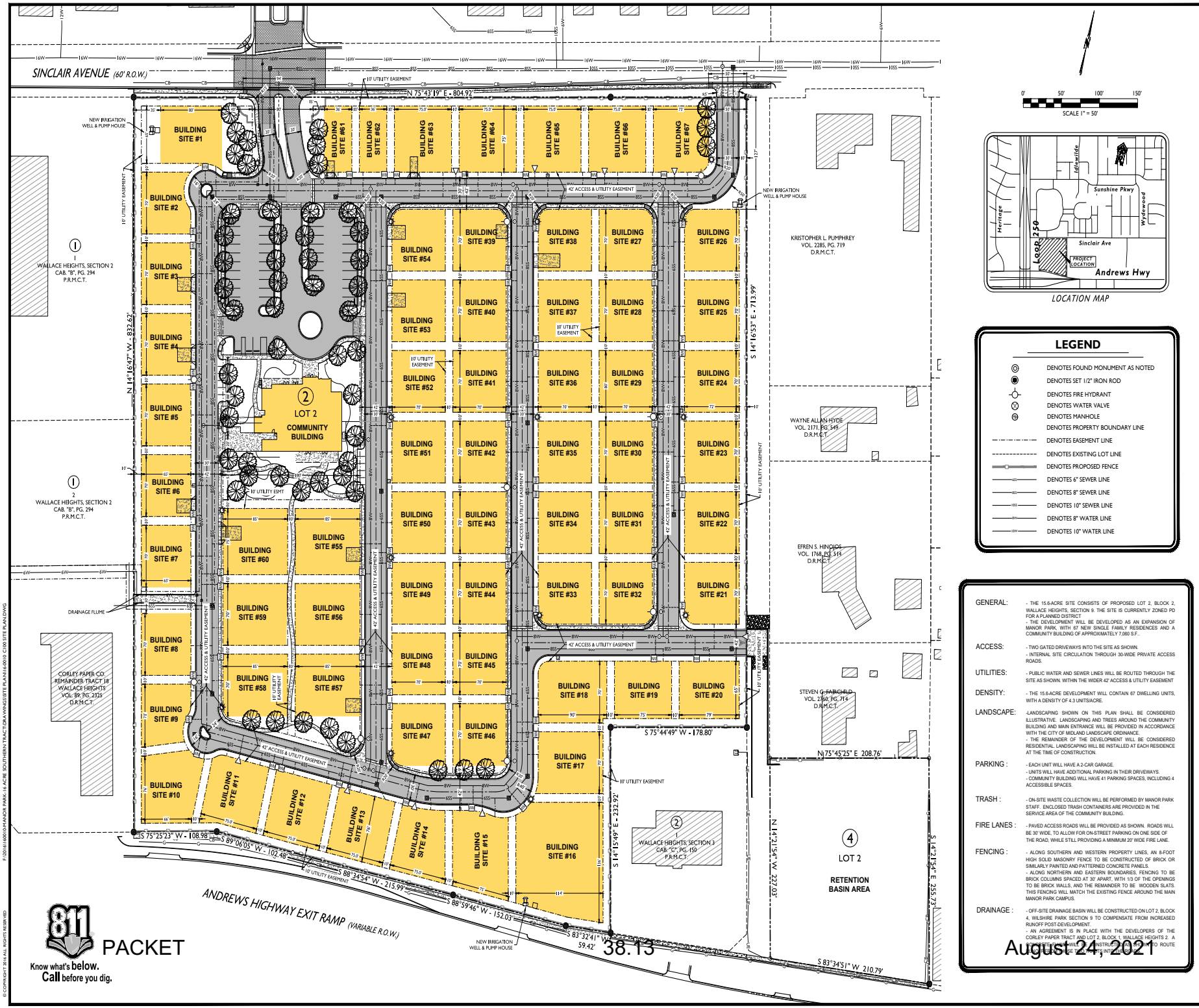
Subscribed and sworn to before me, this 21 day of July, 2021, to certify which witness my hand and seal of office.

Nancy Angela Ervin
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

NOTARY PUBLIC STATE OF TEXAS
Nancy Angela Ervin
My Commission Expires
12/06/2023
ID No. 6670404

****Application will not be considered for scheduling until reviewed by a planner.****

Exhibit A



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811 Know what's below. Call before you dig.

PACKET 38.13 August 24, 2021

MAVERICK ENGINEERING
1909 West Wall Street, Suite "K"
Midland, Texas 79701
Tel: (432) 262-0993 Fax: (432) 262-0989
www.Maverick-Eng.com
TBPE#: F-15089

REVISIONS	BY	APPR.	DATE
02/24/2021 EXPANDED SITES			

DRAWN BY: CB
CHECKED BY: PRH
APPROVED BY: PRH
DATE: 02/24/2021
JOB: 16-0010

SITE PLAN
MANOR PARK SOUTH
LOT 2, BLOCK 2, WALLACE HEIGHTS, SECTION 9
CITY AND COUNTY OF MIDLAND, TEXAS

SHEET C100 OF 01

F:\2016\16-0010\MANOR PARK-16 ACRE SOUTHERN TRACT\DRAWINGS\SITE PLAN\16-0010 C100 SITE PLAN.DWG
© COPYRIGHT 2016 ALL RIGHTS RESERVED

"EXHIBIT B"

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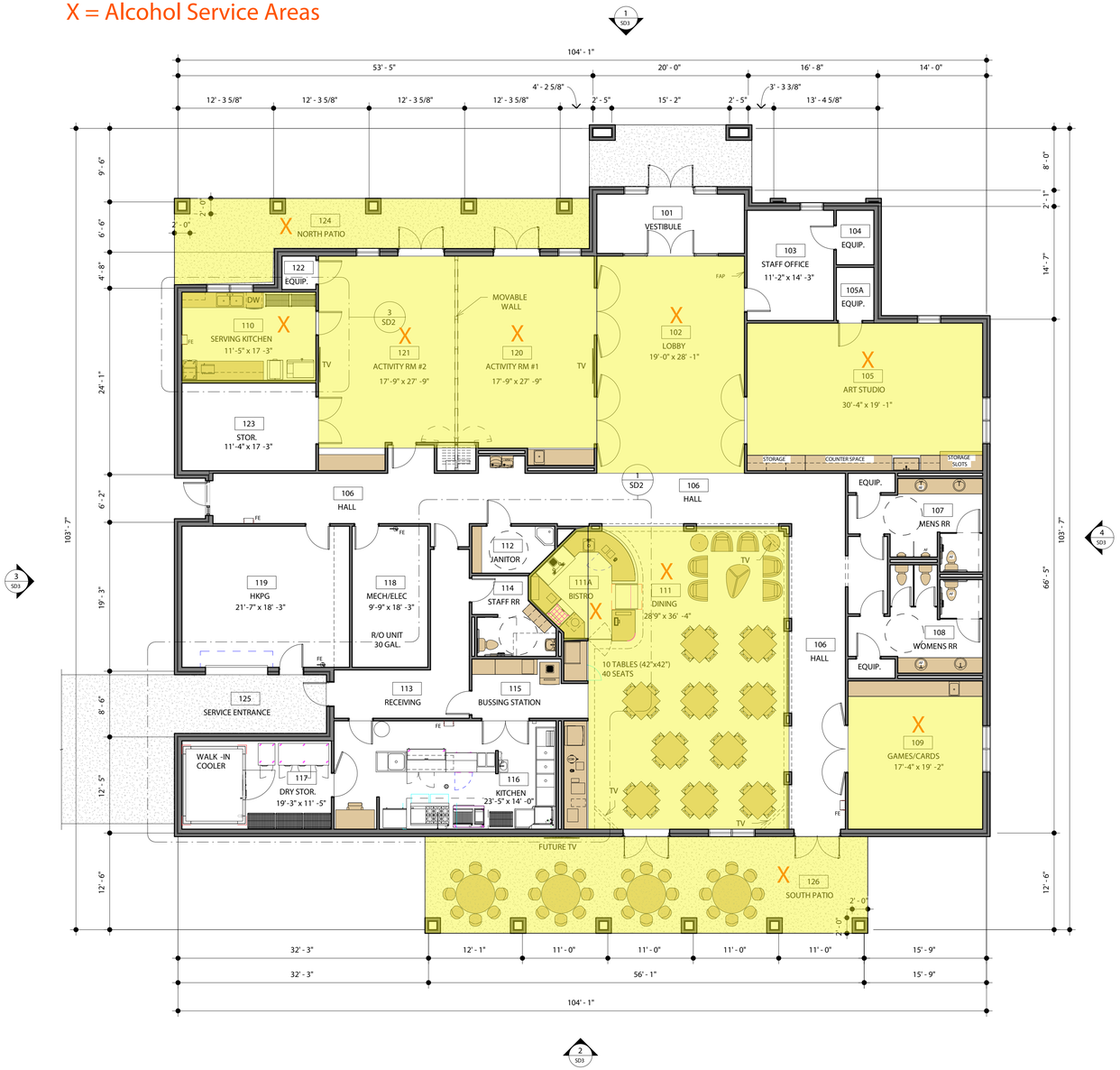

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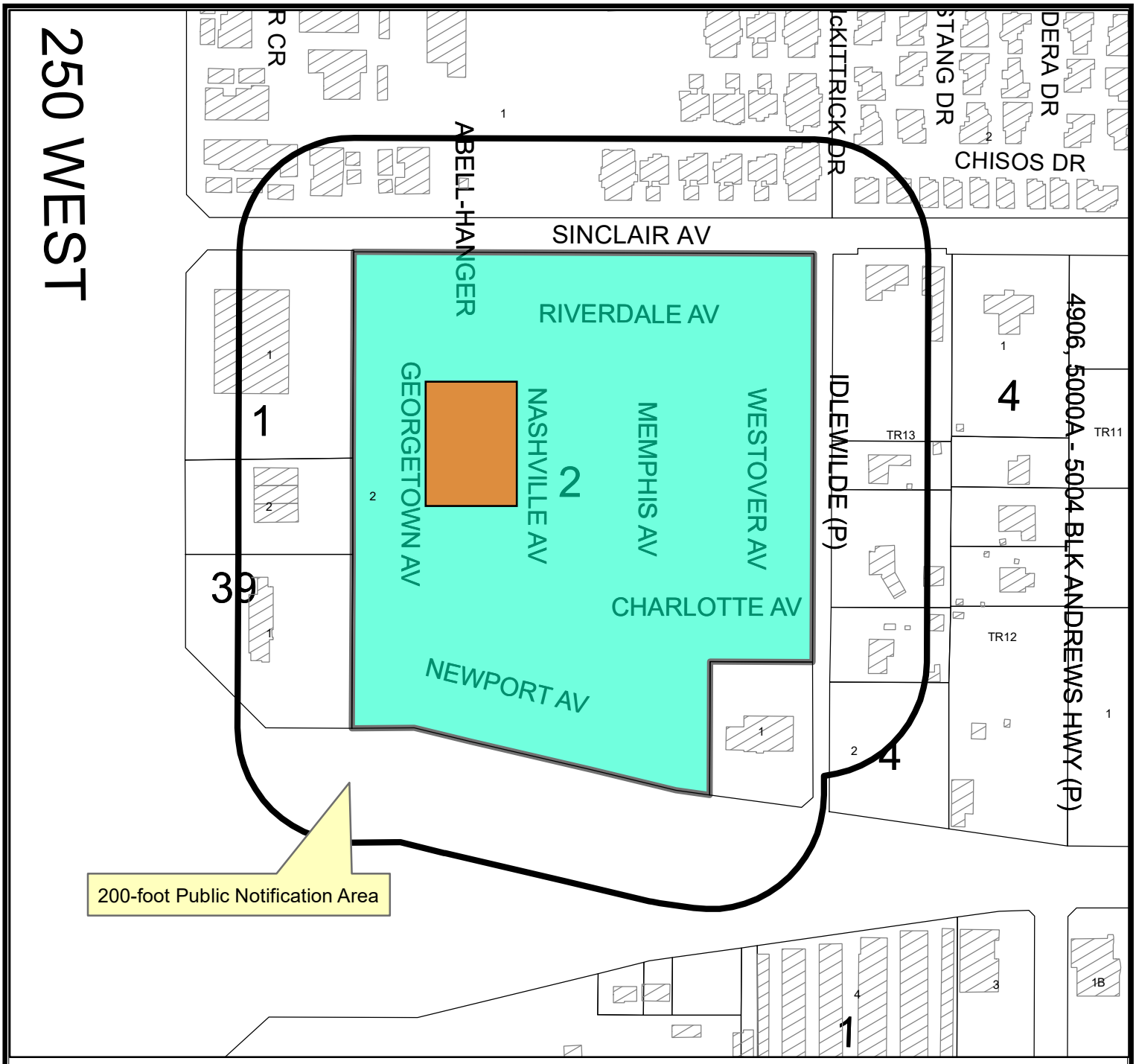


LOCATION MAP

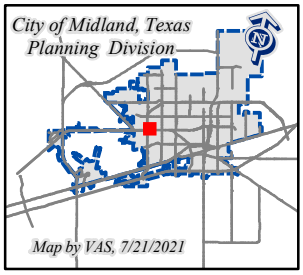
SUD-21-0109 **Scale: 1" = 250'**

Consider a request by Manor Park, Inc. for a Specific Use Designation with Term for the Sale of all Alcoholic Beverages, for on premises consumption in a restaurant, on a 4,774 square feet portion of Lot 2, Block 2, Wallace Heights Addition, Section 9, City and County of Midland, Texas.

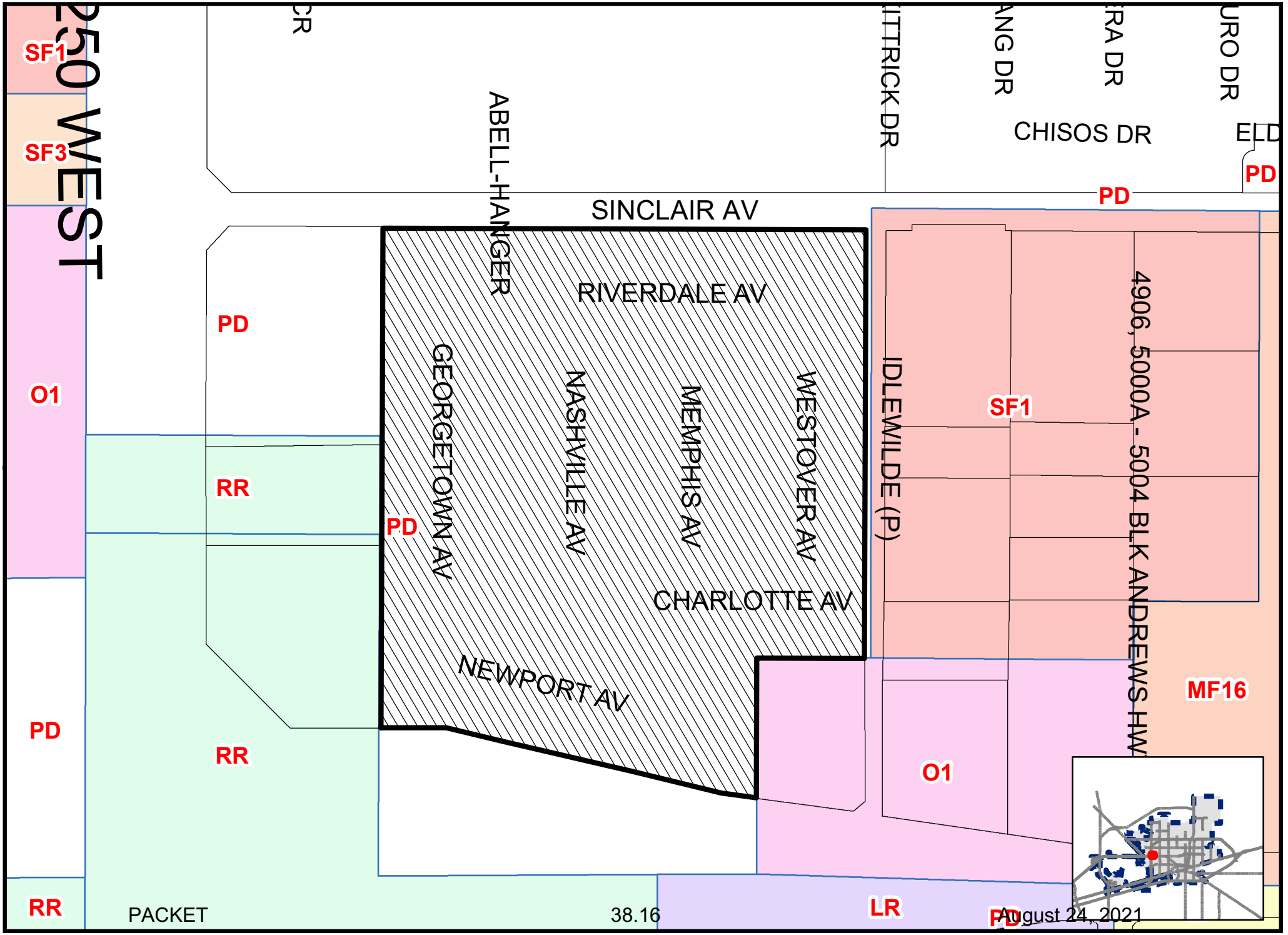
Generally located on the south side of Sinclair Avenue, approximately 290 feet east of N. Loop 250 West. (Council District 4)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



August 24, 2021



Map By VAS, 7/7/2021

SUD-21-0109

Scale: 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2021: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

ORDINANCE NO. 10177

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 2, BLOCK 2, WALLACE HEIGHTS ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE SOUTH SIDE OF SINCLAIR AVENUE, APPROXIMATELY 290 FEET EAST OF NORTH LOOP 250 WEST); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 2, Block 2, Wallace Heights Addition, Section 9, City and County of Midland, Texas (the "Property") to an amended PD, Planned Development District for a Housing Development and adopting a site plan therefor, as set out hereinafter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from PD, Planned Development District for a Housing Development to an amended PD, Planned Development District for a Housing Development.

SECTION TWO. That the base zoning district to which the use and development of the Property shall conform, except as modified by Section Three of this ordinance, is the MF-16, Multiple-Family Dwelling District.

SECTION THREE. That a site plan, which is attached hereto as Exhibit "A" and incorporated herein for all purposes, is hereby adopted, and the use and development of the Property shall be subject to the following conditions and restrictions:

A. That the Property shall significantly conform to the site plan attached hereto as Exhibit "A".

B. That the landscaping shown in Exhibit "A" shall be considered illustrative. The landscaping shall conform to the regulations set forth in Title XI, Chapter 9 of the City Code.

C. That the minimum number of required parking spaces shall be as shown in Exhibit "A".

D. That the fencing shall significantly conform to Exhibit "A".

SECTION FOUR. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FIVE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION SIX. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SEVEN. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION EIGHT. The City Secretary is hereby authorized and directed to publish

the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the 27th day of April, A.D., 2021; and passed to second reading on motion of Council member Trost, seconded by Council member Dufford, by the following vote:

Council members voting "AYE": Blong, Trost, Robnett, Dufford, Ladd, Norman

Council members voting "NAY": None

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member Norman, seconded by Council member Blong, on the 11th day of May, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE": Blong, Robnett, Payton, Dufford, Ladd, Norman

Council members voting "NAY": None

PASSED AND APPROVED THIS 11th day of May, A.D., 2021.

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

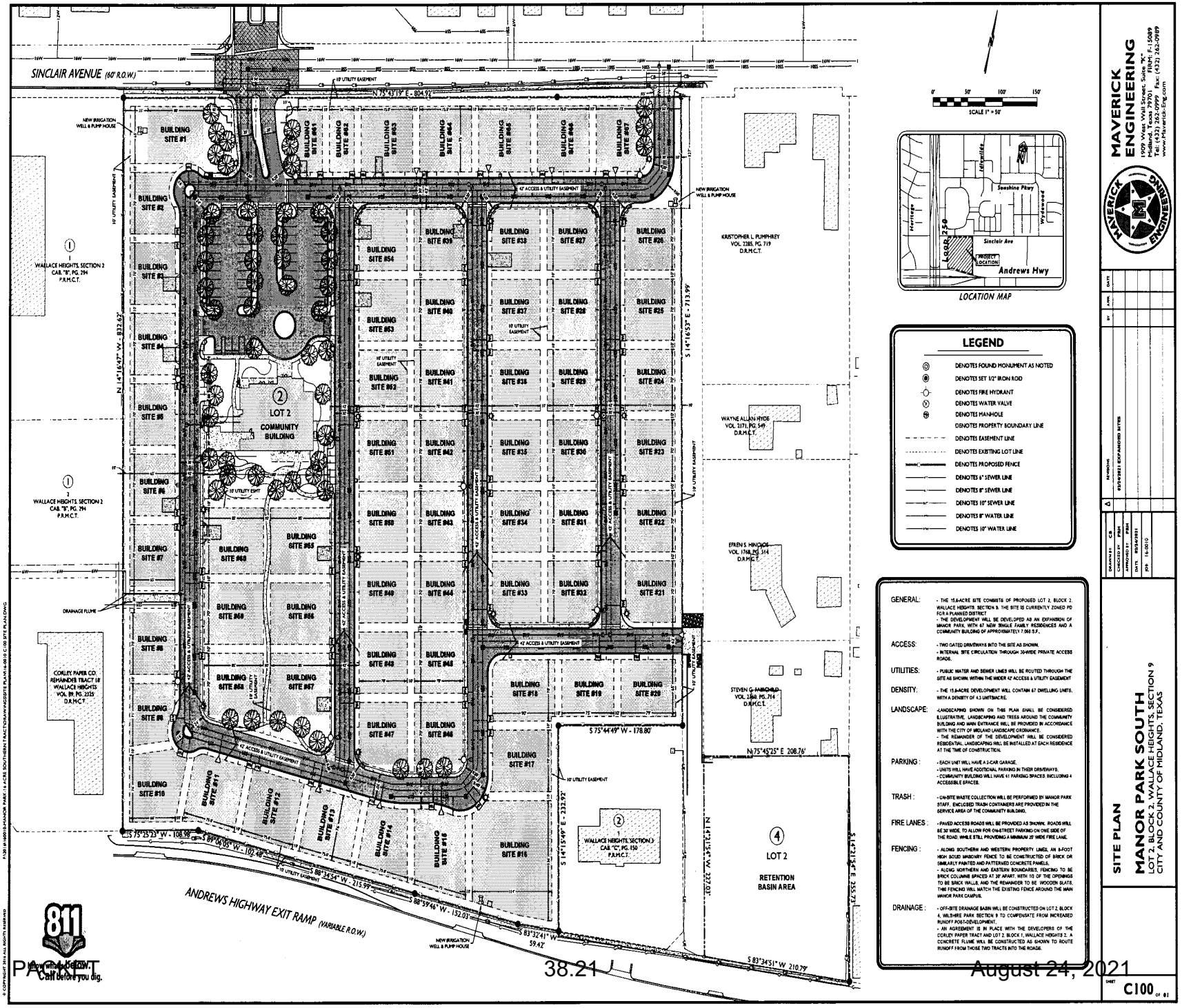
APPROVED AS TO CONTENT
AND COMPLETENESS:

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

Exhibit A



0' 50' 100' 150'
SCALE 1" = 50'

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DRAINAGE: - OFF-SITE DRAINAGE BASIN WILL BE CONSTRUCTED ON LOT 2, BLOCK 4, WILSHIRE PARK SECTION 9 TO COMPENSATE FROM INCREASED RUNOFF POST-DEVELOPMENT.
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MAVERICK ENGINEERING
1909 West Wall Street, Suite "K"
Midland, Texas 79701
Tel: (432) 262-0989 Fax: (432) 262-0989
www.maverick-eng.com

NO.	REVISIONS	DATE
1	03/29/2021 EXPANDED SITES	

DRAWN BY: CB
CHECKED BY: PBH
SCALE: 1" = 50'
DATE: 03/29/2021
JOB: 16-0010

SITE PLAN

MANOR PARK SOUTH
LOT 2, BLOCK 2, WALLACE HEIGHTS, SECTION 9
CITY AND COUNTY OF MIDLAND, TEXAS

SHEET C100 OF 01

10177 ☑ APPROVED

City Council Meeting

Item Number: 11

Meeting Date: April 27, 2021

To: City Council / City Manager

From: Valerie A. Sherman, Senior Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 2, BLOCK 2, WALLACE HEIGHTS ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT TO AN AMENDED PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE SOUTH SIDE OF SINCLAIR AVENUE, APPROXIMATELY 290 FEET EAST OF NORTH LOOP 250 WEST); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DEVELOPMENT SERVICES)

Purpose:

The applicant, Manor Park, Inc., is requesting to amend their site plan to modify the building area site along Sinclair Avenue and Andrews Highway frontage. The property is located at 5323 Sinclair Avenue and is the location of Manor Park South.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the city.

Discussion:

Surrounding Zoning and Land Use:

The property to the north is zoned PD, Planned District for a Housing Development. The properties to the east are zoned SF-1, Single-Family Dwelling District and O1, Office District. The properties to the south across Andrews Highway are zoned RR, Regional Retail District, and LR Local Retail District. The properties to the west are zoned RR, Regional Retail District and PD, Planned District for a Transitional District.

Analysis:

The site plan, attached hereto as Exhibit A, shows a modification of the lot area for Building Sites #63 through # 67 along Sinclair Avenue, from 36 feet to 75 feet to make seven lots; and to modify the lot area for Building Sites #11 through # 15 along Andrews Highway, from 35 feet to 75 feet to make five lots. No additional changes or modifications of the property are being proposed.

This proposed project has been circulated to and reviewed by respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections.

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Engineering: (Approved)

No objection to zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Code: (Approved)

No Oil or Gas wells identified within 500 ft. permitted well radius or in the 135 ft. non-permitted well radius of location on plat.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Planning:

Per the Future Land Use map, this location is designated as Urban Medium; which calls for a mix of housing types including single-family housings, multi-family housing, commercial, and mixed-use; therefore, this zone change complies with the Future Land Use plan.

This request has been recommended for approval by a unanimous vote at the April 5, 2021 Planning and Zoning Commission meeting.

Staff recommends approval of the zone change from a PD, Planned District for a Housing Development to amended PD, Planned Development District for a Housing Development, subject to conditions A and E.

Conditions:

A. **That the use and development of this property shall conform to the regulations of the MF-16, Multiple Family Dwelling District.**

B. **That this property shall conform to the site plan, which is attached hereto and incorporated herein as Exhibit A.**

C. **That the landscaping shall conform to the regulations set forth in Title XI, Chapter 9 of the City Code.**

D. **That the minimum number of required parking spaces shall be shown on Exhibit "A.**

E. **That the fencing shall significantly conform to Exhibit "A.**

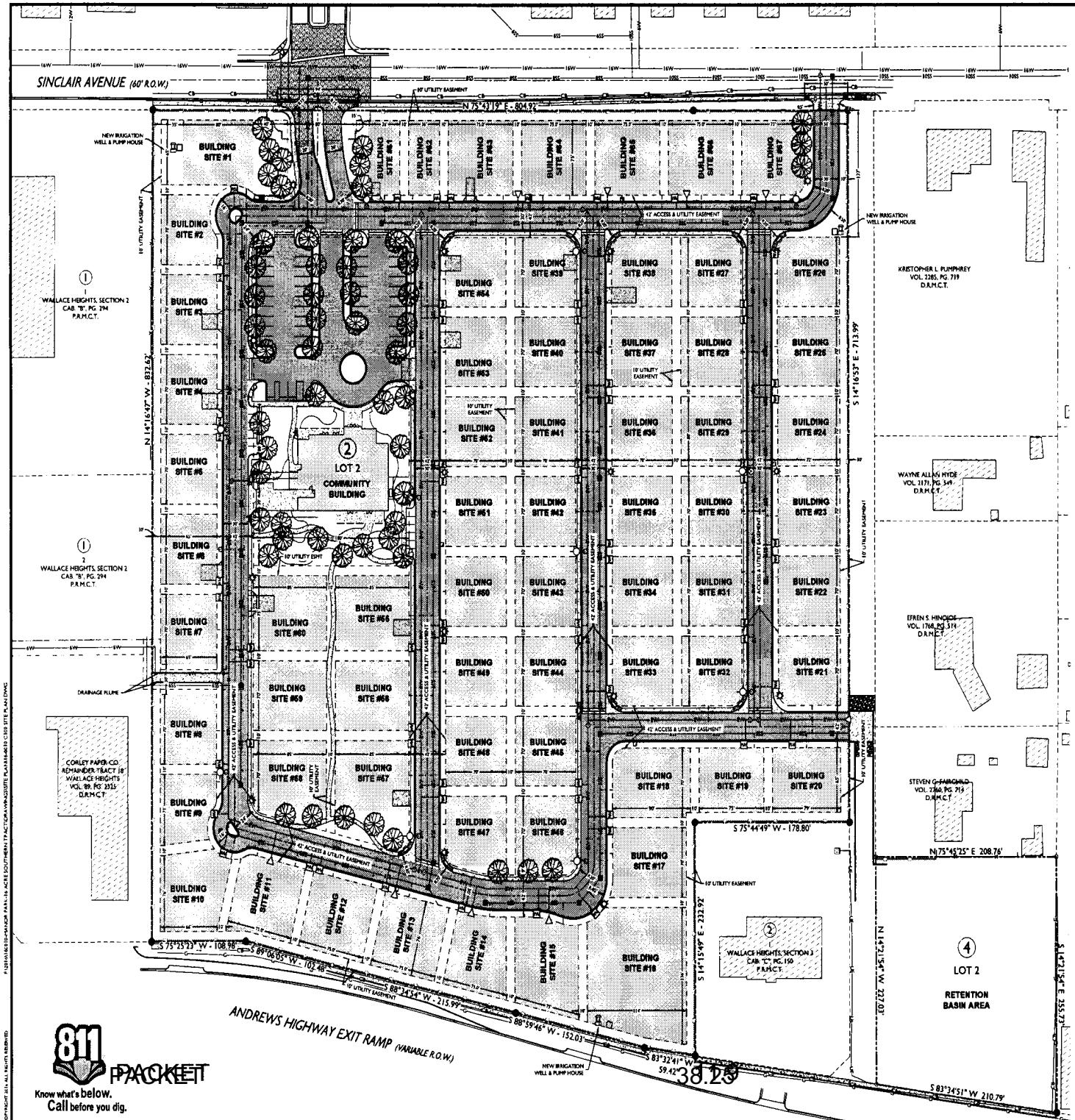
Letters of Objection:

Staff has not received any objections as of April 23, 2021.

Attachments:

Site Plan (Exhibit A)
Application
Maps
Ordinance No. 9586

Robert Patrick



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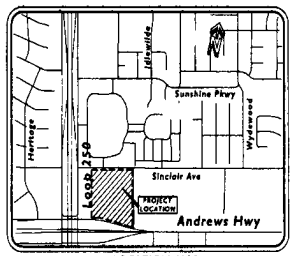
SCALE 1" = 50'



LOCATION MAP

LEGEND

- DENOTES FOUND MONUMENT AS NOTED
- DENOTES SET 1/2" IRON ROD
- DENOTES FIRE HYDRANT
- DENOTES WATER VALVE
- DENOTES MANHOLE
- DENOTES PROPERTY BOUNDARY LINE
- DENOTES EASEMENT LINE
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- DENOTES 10" WATER LINE

GENERAL: - THE 15.6-ACRE SITE CONSISTS OF PROPOSED LOT 2, BLOCK 2, WALLACE HEIGHTS, SECTION 9. THE SITE IS CURRENTLY ZONED PD FOR A PLANNED DISTRICT.
- THE DEVELOPMENT WILL BE DEVELOPED AS AN EXPANSION OF MANOR PARK, WITH 67 NEW SINGLE FAMILY RESIDENCES AND A COMMUNITY BUILDING OF APPROXIMATELY 7,000 S.F.

ACCESS: - TWO GATED DRIVEWAYS INTO THE SITE AS SHOWN.
- INTERNAL SITE CIRCULATION THROUGH 30-WIDE PRIVATE ACCESS ROADS.

UTILITIES: - PUBLIC WATER AND SEWER LINES WILL BE ROUTED THROUGH THE SITE AS SHOWN, WITHIN THE WIDER 42' ACCESS & UTILITY EASEMENT.

DENSITY: - THE 15.6-ACRE DEVELOPMENT WILL CONTAIN 67 DWELLING UNITS, WITH A DENSITY OF 4.3 UNITS/ACRE.

LANDSCAPE: -LANDSCAPING SHOWN ON THIS PLAN SHALL BE CONSIDERED ILLUSTRATIVE. LANDSCAPING AND TREES AROUND THE COMMUNITY BUILDING AND MAIN ENTRANCE WILL BE PROVIDED IN ACCORDANCE WITH THE CITY OF MIDLAND LANDSCAPE ORDINANCE.
- THE REMAINDER OF THE DEVELOPMENT WILL BE CONSIDERED RESIDENTIAL. LANDSCAPING WILL BE INSTALLED AT EACH RESIDENCE AT THE TIME OF CONSTRUCTION.

PARKING: - EACH UNIT WILL HAVE A 2-CAR GARAGE
- UNITS WILL HAVE ADDITIONAL PARKING IN THEIR DRIVEWAYS.
- COMMUNITY BUILDING WILL HAVE 41 PARKING SPACES, INCLUDING 4 ACCESSIBLE SPACES.

TRASH: - ON-SITE WASTE COLLECTION WILL BE PERFORMED BY MANOR PARK STAFF. ENCLOSED TRASH CONTAINERS ARE PROVIDED IN THE SERVICE AREA OF THE COMMUNITY BUILDING.

FIRE LANES: - PAVED ACCESS ROADS WILL BE PROVIDED AS SHOWN. ROADS WILL BE 30' WIDE, TO ALLOW FOR ON-STREET PARKING ON ONE SIDE OF THE ROAD, WHILE STILL PROVIDING A MINIMUM 20' WIDE FIRE LANE.

FENCING: - ALONG SOUTHERN AND WESTERN PROPERTY LINES, AN 8-FOOT HIGH SOLID MASONRY FENCE TO BE CONSTRUCTED OF BRICK OR SIMILARLY PAINTED AND PATTERNED CONCRETE PANELS.
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DRAINAGE: - OFF-SITE DRAINAGE BASIN WILL BE CONSTRUCTED ON LOT 2, BLOCK 4, WILSHIRE PARK SECTION 9 TO COMPENSATE FROM INCREASED RUNOFF POST-DEVELOPMENT.
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38.23

August 24, 2021

MAVERICK ENGINEERING
1909 West Wall Street, Suite "K"
Midland, Texas 79701 TBPE F-15989
Tel: (432) 262-0999 Fax: (432) 262-0989
www.Maverick-Eng.com

NO.	REVISIONS	BY	APPR.	DATE
1	REVISED LOT 2 EXPANDED SITES			

DRAWN BY: CB
CHECKED BY: PBM
APPROVED BY: PBM
DATE: 02/24/2021
JOB: 16-0910

SITE PLAN
MANOR PARK SOUTH
LOT 2, BLOCK 2, WALLACE HEIGHTS, SECTION 9
CITY AND COUNTY OF MIDLAND, TEXAS

SHEET C100 OF 01

MIDLAND
Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: _____

Case Number: Z-21-0222

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Manor Park, Inc.		Phone ( ) Email	
Address 2208 N. Loop 250 West	City Midland	State TX	Zip 79707

Property Owner Printed Name: " "		Phone ( ) Email	
Address	City	State	Zip

Representative *(if different from Applicant or Property Owner)* Firm: Maverick Engineering Printed Name: Andrew Mellen, PE		Phone (432-) 262-0999 Email amellen@maverick-eng.com	
Address 1909 W. Wall St. Ste, K	City Midland	State TX	Zip 79701

Street Address: 5323 Sinclair Avenue

Legal Description
Lot: 2 Block: 2 Subdivision: Wallace Heights Addition, Section 9

Current Zoning: PD-HD	**Proposed Zone:** PD-HD *(List by tracts if more than one district is requested)*

Reason for Zone Change Request: Modify area of building sites along Sinclair Ave. & Andrews Hwy frontages

Present Use of Property: Under-development (senior & assisted housing)

Proposed Use of Property: Senior & assisted housing

How would this zone change affect the public health, safety and welfare?
No affect.

Describe how conditions affecting the property have changed since present zoning designation: No change. Project under construction.

Submittal and Fees
Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature):	Date:
Applicant (printed): Manor Park, Inc.	
Property Owner (signature): Alan Hale	Date: 2-24-21
Property Owner (printed): ALAN HALE	

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Andrew L. Mellen, PE who, being by me duly swom, upon oath says: That (s)he is authorized by Manor Park, Inc., the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Andrew L. Mellen
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 24th day of February, 2021, to certify which witness my hand and seal of office.

Kelsey Ann Stine

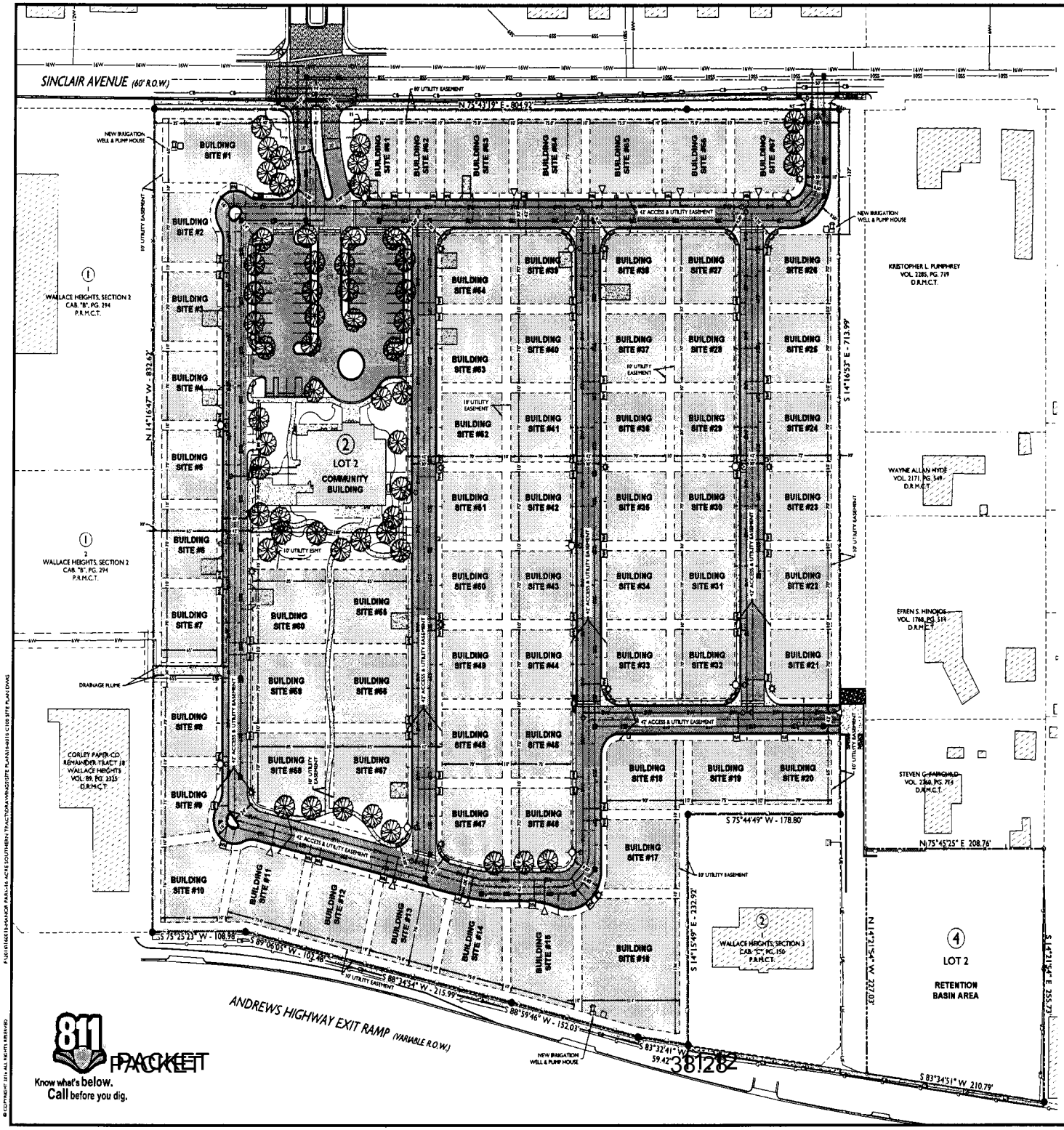
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

NOTARY PUBLIC STATE OF TEXAS
Kelsey Ann Stine
My Commission Expires
02/19/2022
ID No. 131456366

FOR OFFICE USE ONLY

- ☑ Property Owner Authorization
- ☑ Application Fee
- Check # 3353
- ☑ Dimensioned Site Plan
- ☑ Plans in Digital Format (PDF/JPEG)
- Received By: Joseph Marquez
- Date: RECEIVED FEB 24 2021 BY:

****Application will not be considered for scheduling until reviewed by a planner.****



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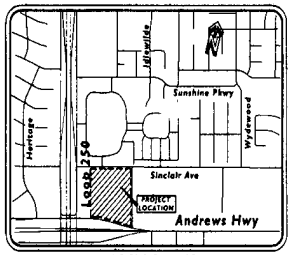
SCALE 1" = 50'



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August 24, 2021

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P:\2016\2016-MANOR PARK\16 ACRE SOUTHERN TRACT\MXD\SITE PLAN\16-6015 C100 SITE PLAN.DWG

MAVERICK ENGINEERING
1909 West Wall Street, Suite "K"
Midland, Texas 79701 FIRM # F-15089
Tel: (432) 262-0999 Fax: (432) 262-0989
www.Maverick-Eng.com

NO.	REMARKS	DATE	BY
1	8/24/2021 EXPANDED SITES		

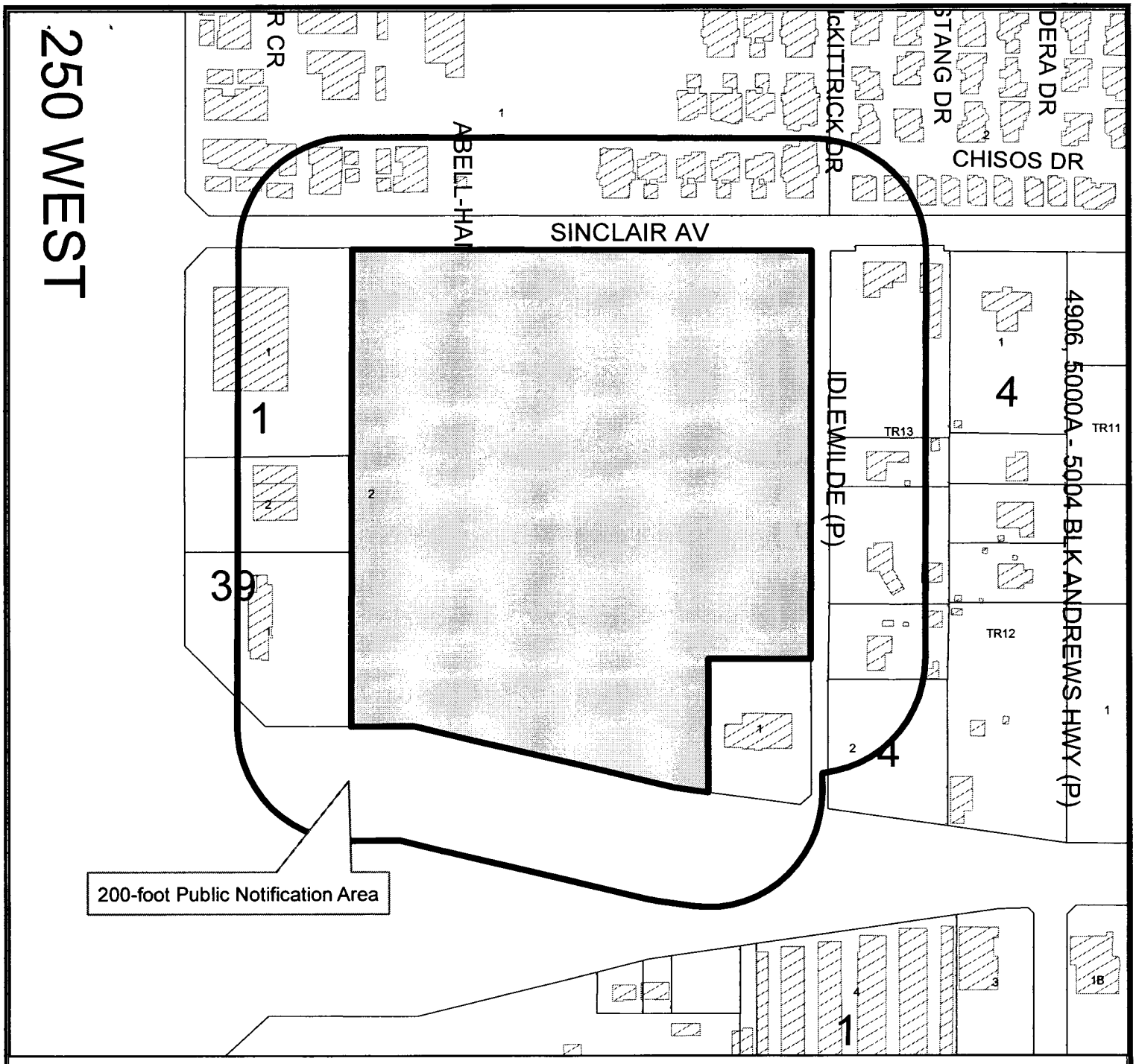
DRAWN BY: CB
CHECKED BY: PBH
APPROVED BY: PBH
DATE: 8/24/2021
JOB: 16-6015

SITE PLAN

MANOR PARK SOUTH

LOT 2, BLOCK 2, WALLACE HEIGHTS, SECTION 9
CITY AND COUNTY OF MIDLAND, TEXAS

SHEET C100 OF 01



LOCATION MAP

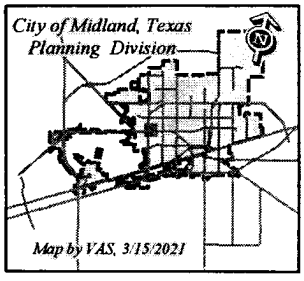
Z-21-0222 **Scale: 1" = 250'**

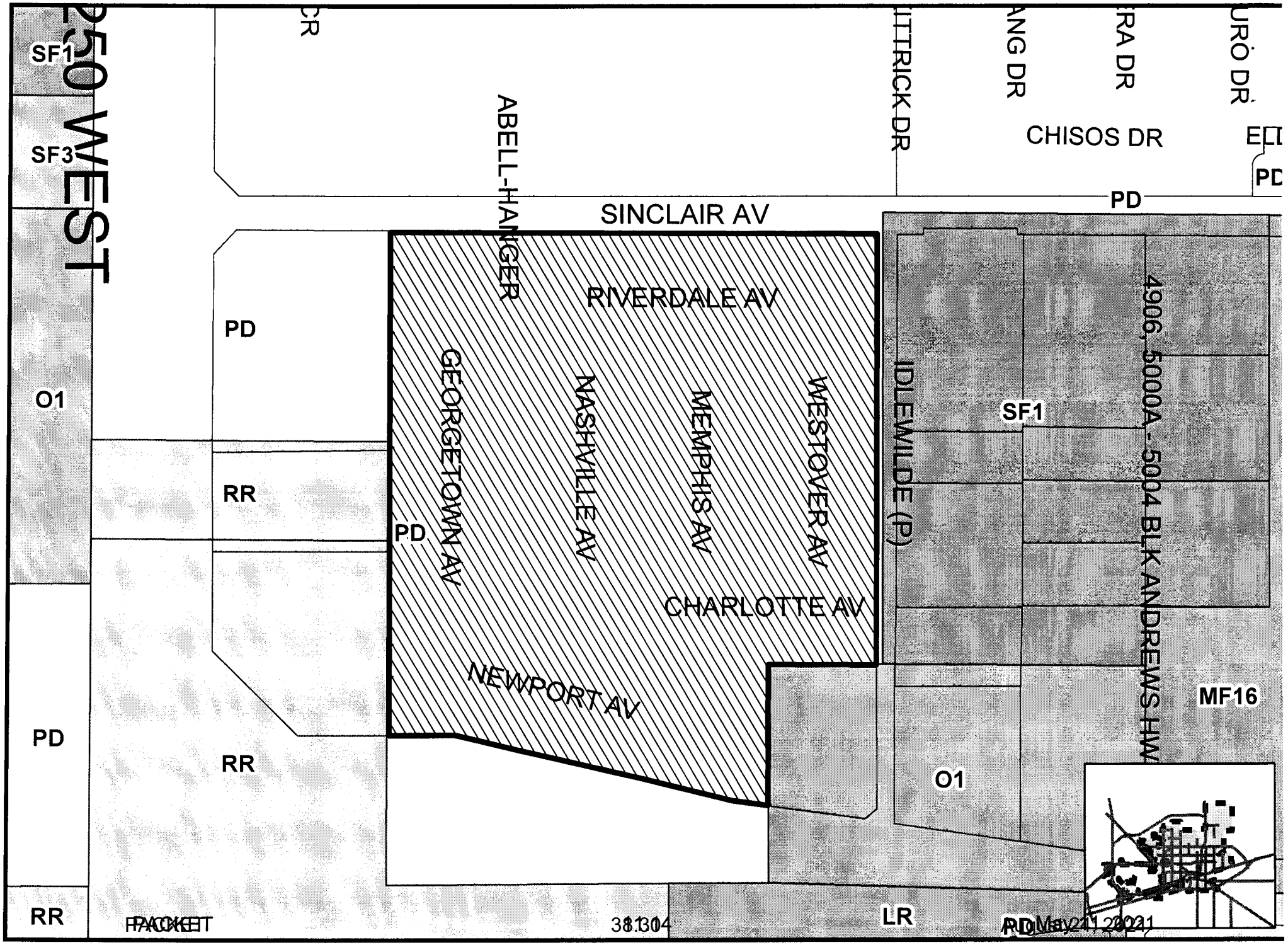
Consider a request by Manor Park, Inc., for a zone change from PD, Planned District for a Housing Development to Amended PD, Planned Development District for a Housing Development on Lot 2, Block 2, Wallace Heights Addition, Section 9, City and County of Midland, Texas.

Generally located on the south side of Sinclair Avenue, approximately 290 feet east of N. Loop 250 West. (Council District 4)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS





Map By VAS, 3/15/2021

Z-21-0222

Scale: 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2021: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA

ORDINANCE NO. 9586

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING TRACTS 14, 15, 16, AND 17, WALLACE HEIGHTS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH ARE PRESENTLY ZONED 1F-1, ONE-FAMILY DWELLING DISTRICT, IN PART, MF-1, MULTIPLE-FAMILY DWELLING DISTRICT, IN PART, MF-2, MULTIPLE-FAMILY DWELLING DISTRICT, IN PART, AND TH, TOWNHOUSE DWELLING DISTRICT, IN PART, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE SOUTH SIDE OF SINCLAIR AVENUE, APPROXIMATELY 290 FEET EAST OF NORTH LOOP 250 WEST); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of "Planned Districts" under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a PD, Planned District for a Housing Development, as set out hereinafter and subject to the conditions and restrictions set out hereinafter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned 1F-1, One-Family Dwelling District, in part, MF-1, Multiple-Family Dwelling District, in part, MF-2, Multiple-Family Dwelling District, in part, and TH, Townhouse Dwelling District, in part,

and it shall be used as a PD, Planned District for a Housing Development, said property being described as follows:

Tracts 14, 15, 16, and 17, Wallace Heights Addition, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

A. That the use and development of the property shall conform to the regulations of the MF-1, Multiple-Family Dwelling District, except as otherwise stated below.

B. That the use and development of the property shall significantly conform to the site plan, which is attached hereto and incorporated herein as Exhibit "A".

C. That the landscaping of the property shall significantly conform to the landscape notes in Exhibit "A".

D. That the internal landscaping of the property may be installed in phases as construction progresses.

E. That the fencing shall significantly conform to Exhibit "A"

F. That there shall be no fewer parking spaces on the property than the number of parking spaces shown in Exhibit "A".

G. That all lighting shall significantly conform to the standards set forth in the City Code.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of

Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the 26th day of July, A.D., 2016; and passed to second reading on motion of Council member Love, seconded by Council member Lacy, by the following vote:

Council members voting "AYE": Love, Sparks, Morales, Dufford, Lacy, Robnett

Council members voting "NAY": None

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member Hotchkiss, seconded by Council member Lacy, on the 9th day of August, A.D., 2016, at a regular meeting of the City Council:

Council members voting "AYE": Hotchkiss, Love, Sparks, Morales, Dufford, Lacy, Robnett

Council members voting "NAY": None

PASSED AND APPROVED THIS 9th day of August, A.D., 2016.

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Frank Salvato, Assistant City Manager

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

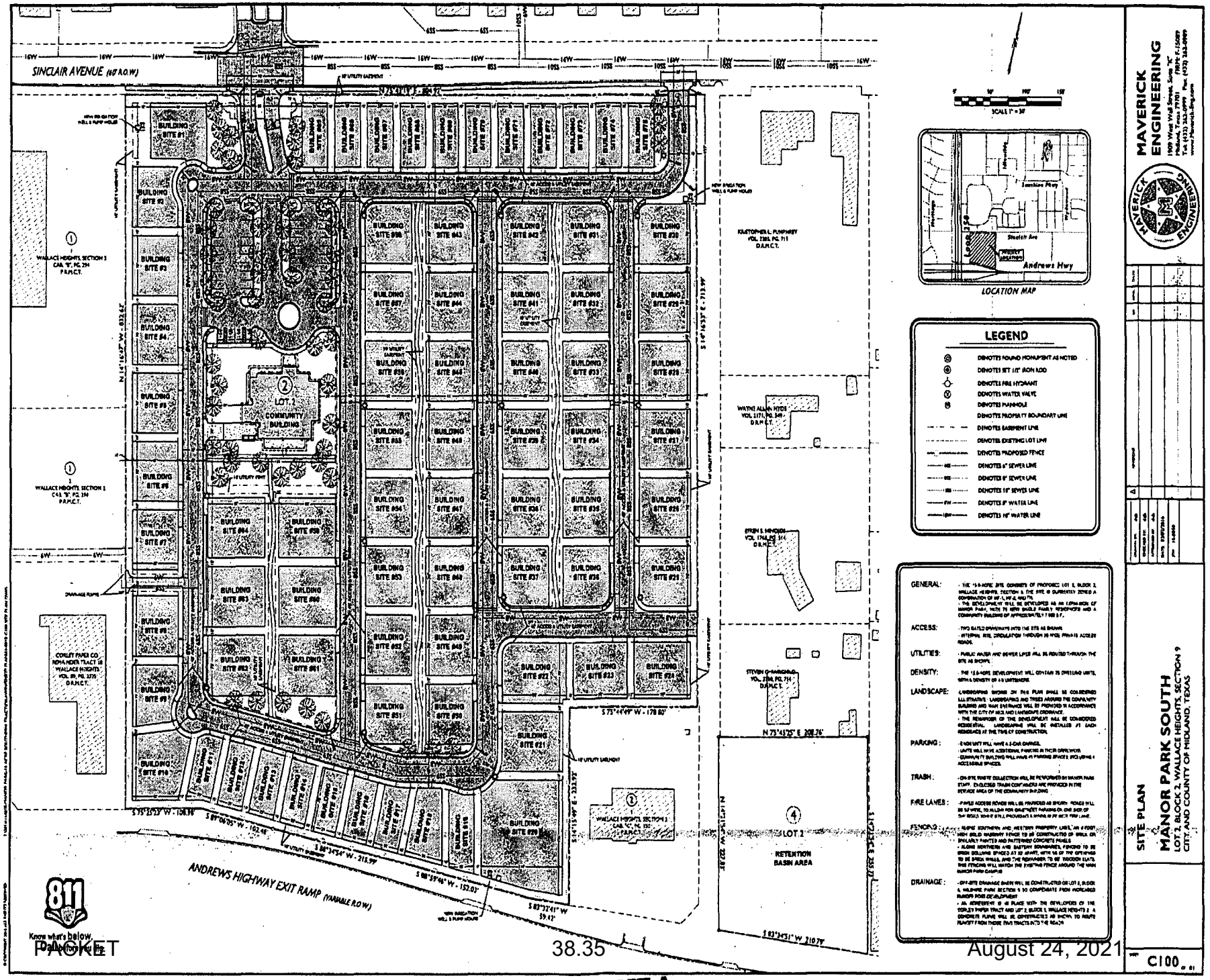


EXHIBIT A

PACKET 11.19 May 11, 2021 22.8

9586

City Council Agenda

APPROVED

Approved for Agenda:
fsalvato
City Manager's Office

MEETING DATE: August 9, 2016

TO: City Council / City Manager

FROM: Geoff Solomonson, Planner

SUBJECT: Consider an ordinance on second reading on a request by Manor Park for a Zone Change from 1F-1, One-Family Dwelling District, in part, MF-1, Multiple-Family Dwelling District, in part, TH, Townhouse Dwelling District, in part, and MF-2, Multiple-Family Dwelling District, in part, to PD, Planned District for a Housing Development, on Tracts 14, 15, 16, and 17, Wallace Heights Addition, City and County of Midland, Texas. (Generally located on Sinclair Avenue, approximately 290-feet east of N. Loop 250 West. – Council District 4)

Purpose:

Consider an ordinance on second reading on a request by Manor Park for a Zone Change from 1F-1, One-Family Dwelling District, in part, MF-1, Multiple-Family Dwelling District, in part, TH, Townhouse Dwelling District, in part, and MF-2, Multiple-Family Dwelling District, in part, to PD, Planned District for a Housing Development, to allow for a future expansion of the Manor Park Retirement Community.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No City funds are required to process this request.

Discussion:

Current Zoning:

1F-1, One-Family Dwelling District, in part, MF-1, Multiple Family Dwelling District, in part, TH, Townhouse Dwelling District, in part, and MF-2, Multiple Family Dwelling District, in part.

Surrounding Zoning and Land Use:

The property is located near the intersection of N. Loop 250 West and Andrews Highway and is currently undeveloped. The zoning to the north, across Sinclair Avenue, is a PD, Planned District for a Housing Development (Ordinance No. 8126), with an underlying zoning of MF-1, Multiple-Family Dwelling District, and is the location of Manor Park Retirement Community. The properties to the east are zoned 1F-1, One-Family Dwelling District, and O1, Office District, and contain single-family residences within the 1F-1, One-Family Dwelling District, and an office building within the O1, Office District.

To the south are properties zoned LR-1, Local Retail District, and LR-2, Local Retail District, which are mainly undeveloped with a few single-family residences. Zoning to the west is LR-2, Local Retail District, in part, and a PD, Planned District for a Transition District (Ordinance No. 6739). Tracker Boat Center is located in the PD, Planned District for a Transition District.

Analysis:

The parcels proposed for rezoning were originally platted as Wallace Heights Addition in 1946, with the intent of 1F-1, One-Family Dwelling District, for single-family residential. In 1980, the properties were rezoned to MF-1, Multiple-Family Dwelling District, in part, TH, Townhouse Dwelling District, in part, and MF-2, Multiple-Family Dwelling District, in part, by Ordinance No. 5613.

PD, Planned District for a Housing Development, with an underlying zoning of MF-1, Multiple-Family Dwelling District, is an appropriate application of a zone change to match the current Manor Park Retirement Community campus, as the expansion is a large housing development. This Zone Change is in process along with the re-platting of the property as Wallace Heights, Section 9.

Exhibit A, provided by the applicant, shows the proposed site plan for an expansion of the Manor Park Retirement Community. Seventy Five (75) building sites are proposed as an expansion to the south from the adjacent Manor Park Retirement Community campus. Each site can have up to 2 units for a maximum density of 4.8 dwelling units per acre. The PD, Planned District for a Housing Development, with an underlying zoning of MF-1, Multiple-Family Dwelling District, allows for a maximum of 16 dwelling units per acre according to the Midland City Zoning Ordinance Chapter 11-1-6, Zoning district classification; use and development regulations.

This proposed development would generate approximately 15 morning peak hour (7 a.m. to 9 a.m.) trips and 20 evening peak hour (4 p.m. to 6 p.m.) trips based on Senior Adult Housing from the Trip Generation Manual by the Institute of Transportation Engineers.

Landscaping on the site meets Midland City Zoning Ordinance Chapter 11-9, Landscape Regulations of 1 tree per 30 feet of street frontage and 1 tree per 15 parking spaces.
Landscaping around the community building and main entrance will be provided in accordance with the City of Midland Landscape Ordinance. The remainder of the landscaping of the development will be considered residential and will be installed at each residence at the time of construction.

The site will have a primary access point and another emergency access point with gates both along Sinclair Avenue.

Staff recommends approval of a Zone Change from 1F-1, One-Family Dwelling District, in part, MF-1, Multiple-Family Dwelling District, in part, TH, Townhouse Dwelling District, in part, and MF-2, Multiple-Family Dwelling District, in part, to PD, Planned District for a Housing Development, subject to conditions A through G.

Conditions:

A. That the use and development of this property shall significantly conform to the regulations of the MF-1, Multiple-Family Dwelling District, except as otherwise stated below.

B. That the use and development of the property shall significantly conform to the attached site plan, Exhibit "A."

C. That the landscaping shall significantly conform to the Exhibit "A" Landscaping Notes.

D. That the landscaping internal to the site may be installed in phases as construction progresses.

E. That the fencing shall significantly conform to Exhibit "A."

F. That the minimum number of required parking spaces shall be shown on Exhibit "A."

G. That all lighting shall significantly conform to the standards set forth in the Midland City Code.

Letters of Objection:

As of July 22, 2016, staff has received no letters of objection.

Attachments:

Application
Maps
Proposed Site Plan (Exhibit A)
Ordinance No. 8126

Case Number: Z-16-0016

MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

I. APPLICATION

Applicant:

Manor Park Inc, Alan Hale, Executive Director (Name) | 432-689-9898 (Phone)

2208 N Loop 250 West, Midland, TX 79707 (Address) | ahale@manorparkinc.org (Email)

Property Owner:

_____ (Name) | _____ (Phone)

_____ (Address) | _____ (Email)

Representative (*please see affidavit on page 2*):

Andrew Hobby, P.E. - Maverick Engineering (Name) | 432-262-0999 (Phone)

1909 West Wall St. Ste K, Midland, TX 79701 (Address) | ahobby@maverick-eng.com (Email)

Street address: _____

Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal, each district must be described separately):

Tracts 17, 16, 15, and the North 4 Acres of Tract 14, Wallace Heights Addition, City and County of Midland, Texas.

Present Zone: MF-1, MF-2, TH Proposed Zone: PD-HD

(List by tracts if more than one district is requested)

Reason for Zone Change Request: Development of site for future phase of Manor Park.

Present Use of Property: Undeveloped

Proposed Use of Property: Senior housing community

How would this zone change affect the public health, safety and welfare?

NA

Describe how conditions affecting the property have changed since present zoning designation:

NA

II. APPLICATION FEES:

Single, standard zone change: **$400**, Multiple, standard zone change: add **$100** per additional district.
Single PD zone change: **$550**, Multiple PD proposal: add **$100** per district.

Total: $ 550.00

III. SITE PLAN SUBMITTALS *(if applicable)*:

5 FOLDED copies of the PD site plan: x
Site Plan in digital format (PDF & JPEG): x

VI. Signature

Property Owner (signature): _____ Date: _____

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Andrew Hobby who, being by me duly sworn, upon oath says: That (s)he is authorized by Alan Hale, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Authorized Agent (signature)

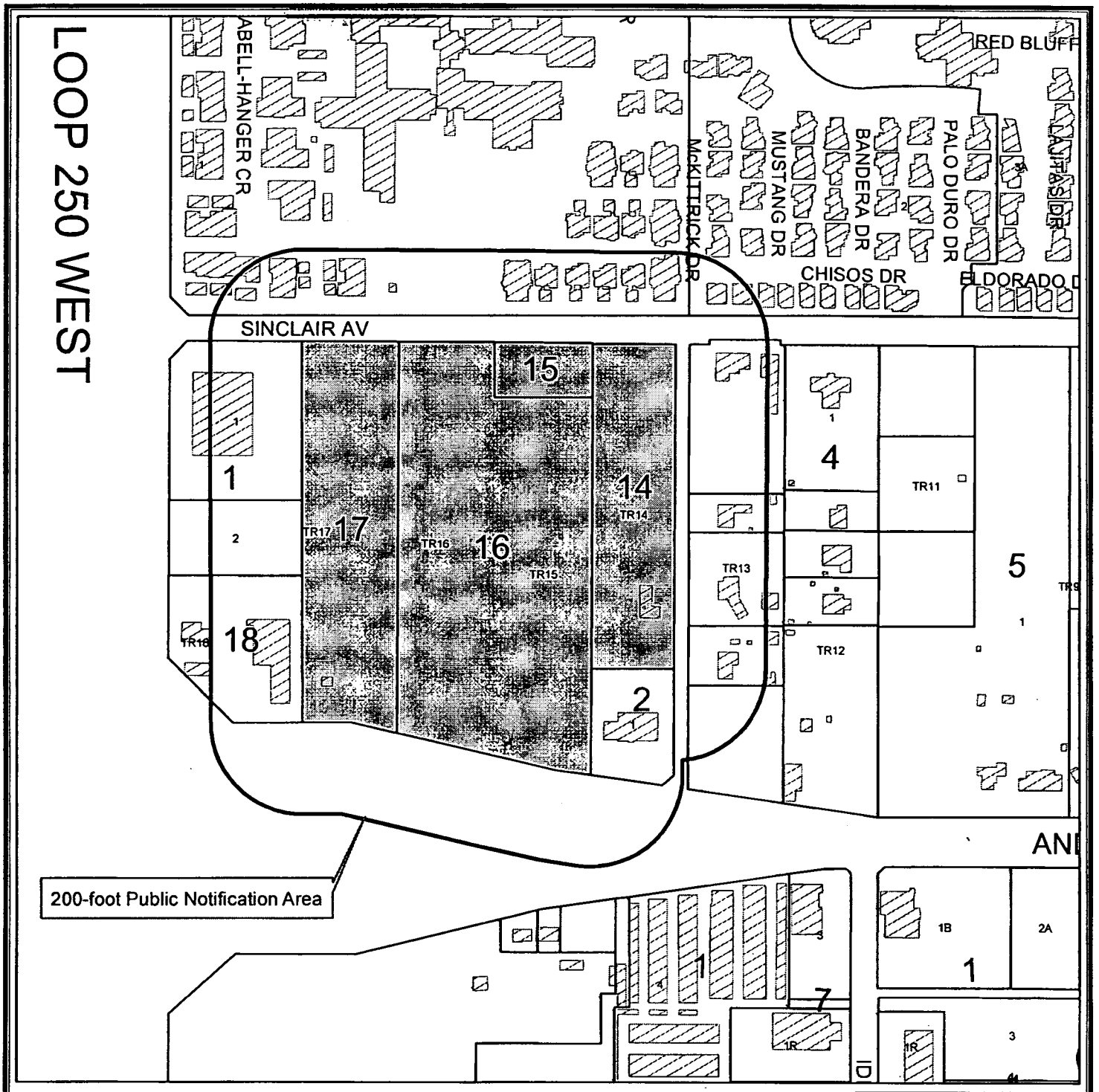
Subscribed and sworn to before me, this 10th day of June, 20 16, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY
Rec'd By: _____ Date: _____
Assigned: _____
For: _____ On: _____

PALADIN HUCKABA
Notary Public, State of Texas
Comm. Expires 08-26-2019
Notary ID 13034715-0

****Application will not be considered for scheduling until reviewed by a planner.****



LOCATION MAP

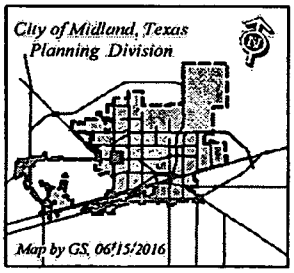
Z - 16 - 0016 **Scale: 1" = 300'**

Consider a request for a Zone Change from 1F-1, One-Family Dwelling District, in part, MF-1, Multiple-Family Dwelling District, in part, TH, Townhouse Dwelling District, in part, and MF-2, Multiple-Family Dwelling District, in part, to PD, Planned Development for a Housing Development on Tracts 14, 15, 16, and 17, Wallace Heights Addition, City and County of Midland, Texas.

Generally located on Sinclair Avenue approximately 290-feet east of N. Loop 250 W. (Council District 4)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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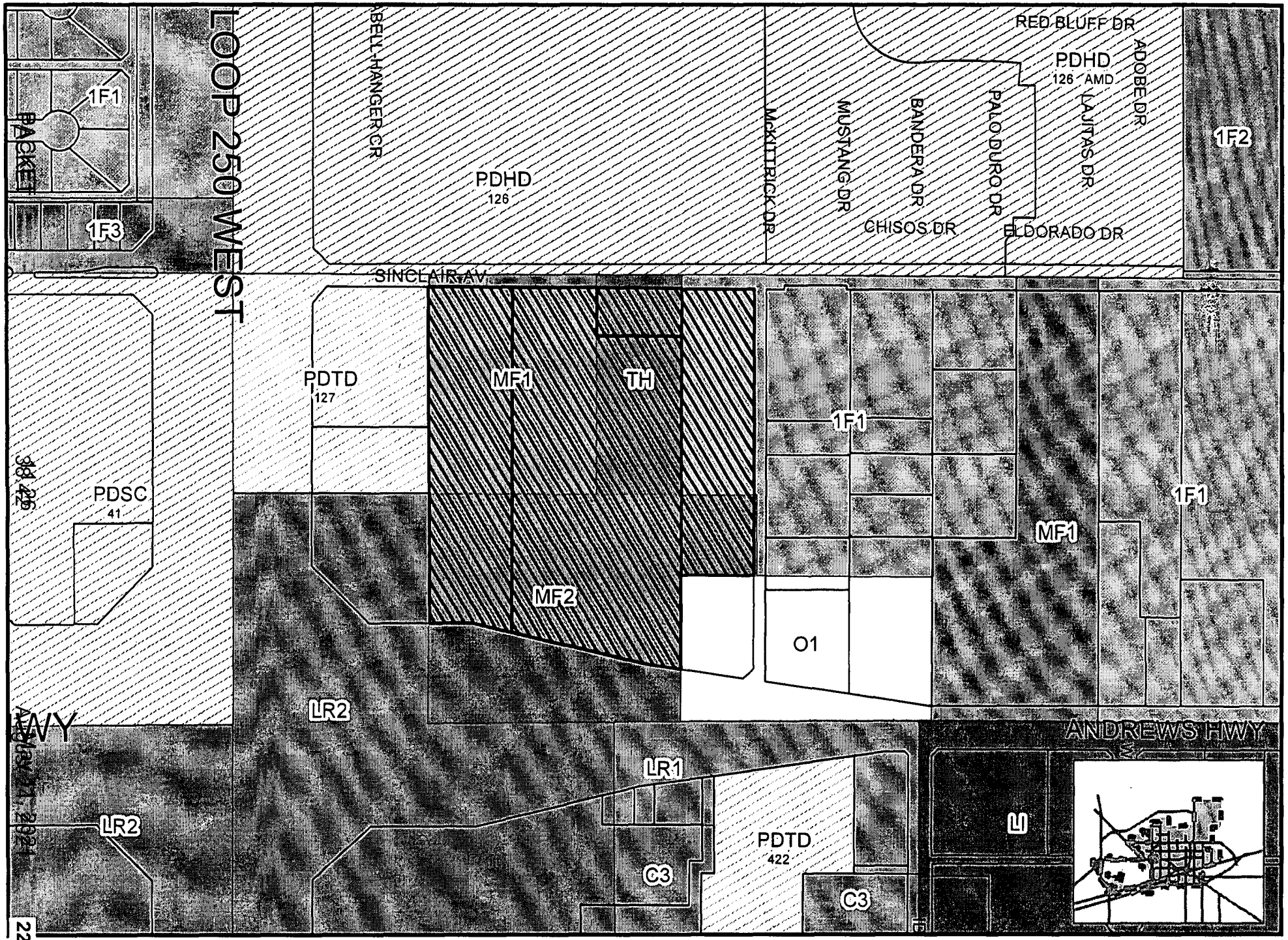
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN



22.12

up By GS, 06/15/2016

Z - 16 - 0016

Scale: 1" = 300'

ZONING MAP

© CITY OF MIDLAND - 2016: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLEY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

ORDINANCE NO. 8126

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1, BLOCK 1, TRINITY TOWERS MANOR, SECTION 1; AND A 25.71-ACRE TRACT OUT OF SECTION 19, BLOCK 39, T-1-S, T & P RAILROAD COMPANY SURVEY, MIDLAND COUNTY, TEXAS WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT AND 1F-3, ONE-FAMILY DWELLING DISTRICT TO BE USED AS PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; AND EXPRESSLY REPEALING ORDINANCE NO. 6213; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of "Planned Districts" under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a PD, Planned District for a Housing Development set out hereinafter and subject to the conditions and restrictions set out hereinafter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned PD, Planned District for a Housing Development and 1F-3, One-Family Dwelling District, and it shall be used as a PD, Planned District for a Housing Development, subject to the special conditions and

restrictions hereinafter set out, said property being described as follows:

Lot 1, Block 1, Trinity Towers Manor, Section 1; and a 25.71-acre tract out of Section 19, Block 39, T-1-S, T & P Railroad Company Survey, Midland County, Texas. (As further described on the attached metes and bounds description, Exhibit "A", incorporated herein by reference.)

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

A. That the use and development of this property shall conform to the regulations of the MF-1, Multiple-Family Dwelling District, except as otherwise stated below.

B. That the use and development of this property shall conform to the conditions shown on the attached site plan, Exhibit "B", in all respects.

C. That the maximum building height for Lot 1, Block 1, Trinity Towers Manor, Section 1 shall not exceed 65 feet or four stories. The maximum building height for Lot 2, Block 2 shall be 80 feet, or five stories.

D. That the indicated six-foot tall screening fence around the east 25 acres of this property may be installed in phases. The landscaping indicated along Sinclair Avenue may also be installed in phases, concurrently with the fence construction.

E. That the landscaping internal to the site may be installed in phases as construction progresses, provided that a minimum of 15 percent of each developing area is landscaped, and that the total landscaping once all construction is complete is 15 percent. All landscaping shall be irrigated with an automatic sprinkler system, and shall be maintained in a healthy, growing condition.

F. That the minimum number of required parking spaces shall be as shown on Exhibit "B."

G. That all fixtures for security lighting within the eastern 25 acres shall not be mounted higher than 20 feet above natural grade.

H. That Ordinance 6213 is repealed.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that

covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict, and Ordinance no. 6213 is hereby expressly repealed..

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the 27th day of August, A.D., 2002; and passed to second reading on motion of Council member Simpson, seconded by Council member Bradford, by the following vote:

Council members voting "AYE": Simpson, Bradford, Perry, Morgan, Dingus, Canon and Dufford

Council members voting "NAY": None

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member Simpson, seconded by Council member Dufford, on the 10th day of September, A.D., 2002, at a regular

meeting of the City Council:

Council members voting "AYE": Simpson, Dufford, Perry, Morgan, Dingus, Canon and Bradford

Council members voting "NAY": None

PASSED AND APPROVED THIS 10th day of September, A.D., 2002.

Michael J. Canon, Mayor

ATTEST:

Kaylah J. McCord, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CERTIFICATE

THE STATE OF TEXAS

COUNTY OF MIDLAND

00C 23786 VOL 2077 PG 755

ZONING FOR TRINTY TOWER MANOR, SECTION 2

LEGAL DESCRIPTION FOR A 25.71 ACRE TRACT LOCATED IN SECTION 19, BLOCK 39, T-1-S, T. & P. RR. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

Boundary being further described by metes and bounds as follows:

BEGINNING at the Southwest corner of this tract in the center of Sinclair Avenue, from whence a 5/8" iron rod found, as set by the City of Midland, Engineering Department, at the Southeast corner of Lot 1, Block 1, Trinity Tower Manor, as recorded in Cabinet D, Page 76, Plat Records of Midland County, Texas and the Northwest corner of said 0.271 Acre right of way dedication in Volume 1185, Page 543, bears N15°15'02"W, a distance of 34.18 feet, also from said point of beginning, the Southwest corner of said Section 19, Block 39, T-1-S, based on calls of the 10.0 Acre Tract recorded in Volume 961, Page 1, bears S74°45'W, a distance of 1202.3 feet and S15°15'E, a distance of 1113.00 feet;

THENCE N15°15'02"W with and projections of the East line of said Lot 1, Block 1, and the West boundary line of said 10.0 Acre tract, at 1062.94 feet pass the Northwest corner of said 10.0 Acre Tract, continuing for a total distance of 1072.94 feet to the Northwest corner of this tract in the center of an existing alley, from whence a ½" iron rod found at the Northeast corner of said Lot 1, Block 1, bears N15°15'02"W a distance of 472.87 feet;

THENCE N74°48'58"E with the center of an existing alley, a distance of 1044.56 feet to the Northeast corner of this tract, from whence the Northeast corner of a 5.0 Acre Tract as described in Volume 649, Page 288, Deed Records bears S15°11'17"E, a distance of 10.00 feet;

THENCE S15°11'17"E with and projections of the West boundary line of Wydewood Estates, Section 4, as recorded in Cabinet C, Page 47, Plat Records of Midland County, at 1042.64 feet pass a 5/8" iron rod found at the Northeast corner of said 0.058 Acre dedicated for right of way as described in Volume 1221, Page 485, Official Records of Midland County, continuing for a total distance of 1072.70 feet to the Southeast corner of this tract, in the center of Sinclair Avenue;

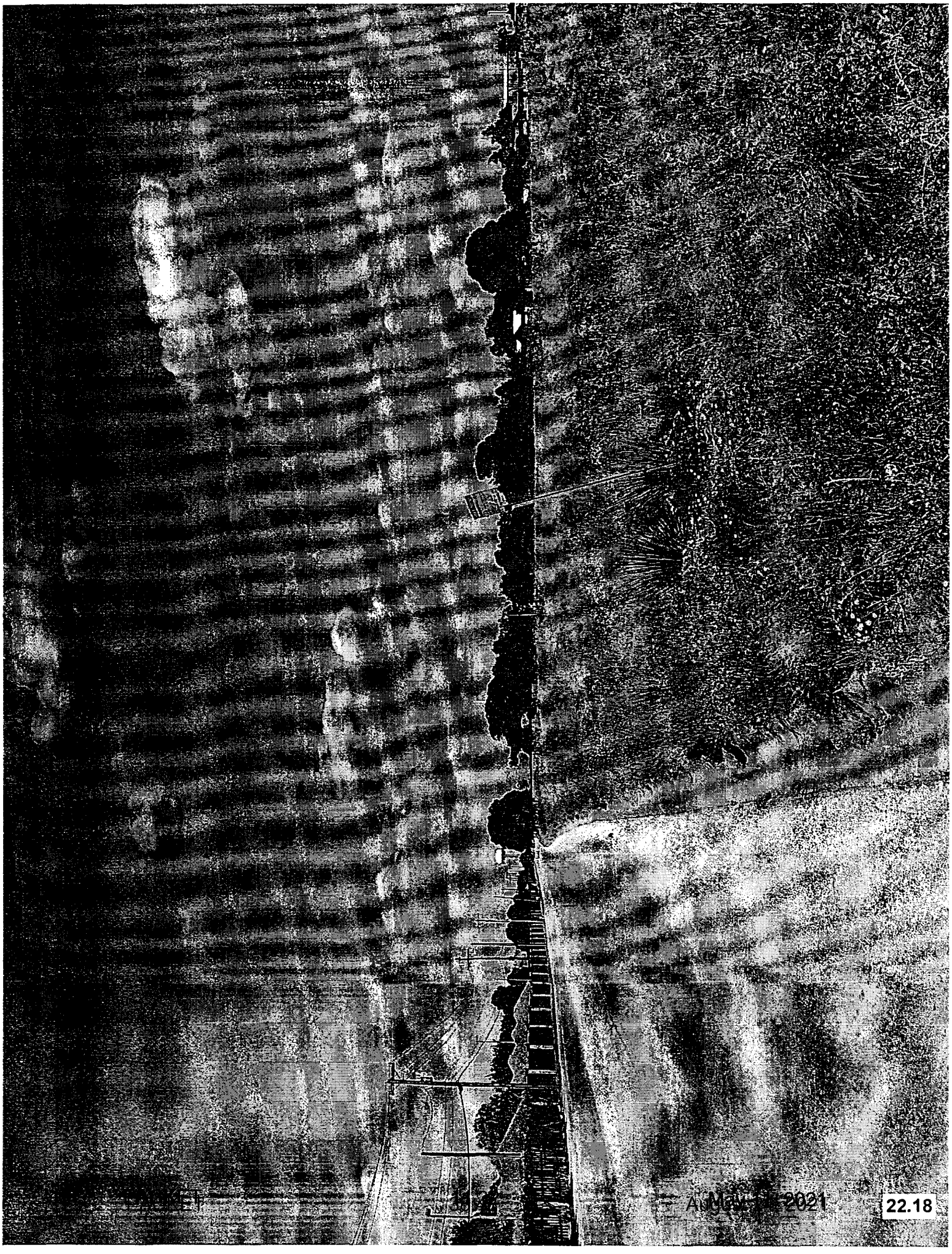
THENCE S74° 48'10"W with the center of Sinclair Avenue, a distance 1043.40 feet to the Place of Beginning.

I, J. Stan Piper, Professional Land Surveyor, do hereby certify that this legal description is based on an actual survey made by me or under my supervision, and that the same is true and correct to the best of my knowledge and belief as surveyed on the ground at various dates through June 5, 2002.

J. Stan Piper
Professional Land Surveyor

Prepared for:
Parkhill, Smith, and Cooper, Inc.
Attn.: Mr. Jay Edwards
5214 Thomason
Midland, TX 79703
(915) 697-1447

PIPER SURVEYING CO., BOX 60432, MIDLAND, TX 79711, (915) 550-7810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699-3413
Reserve Your Spot Today!
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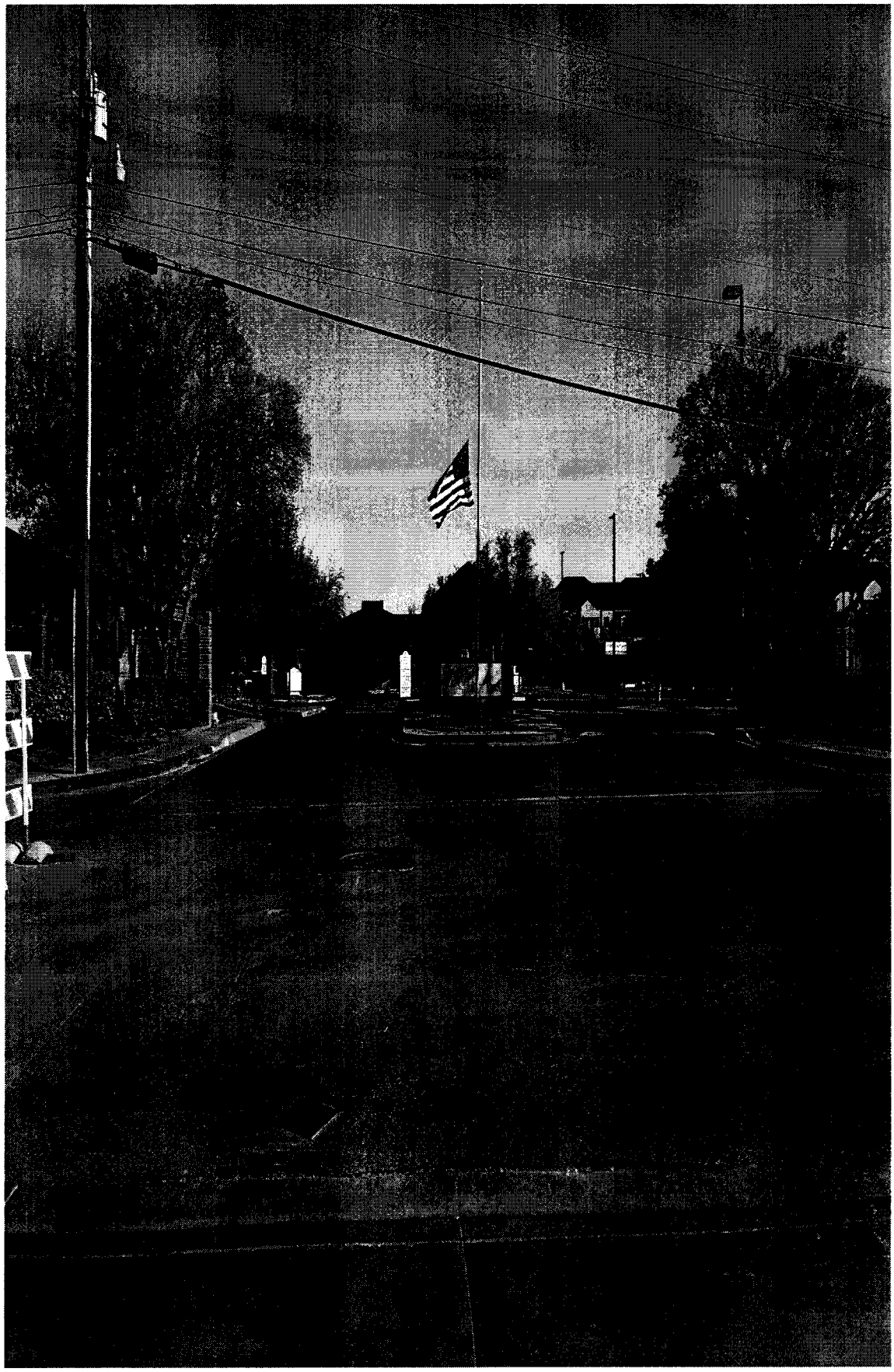
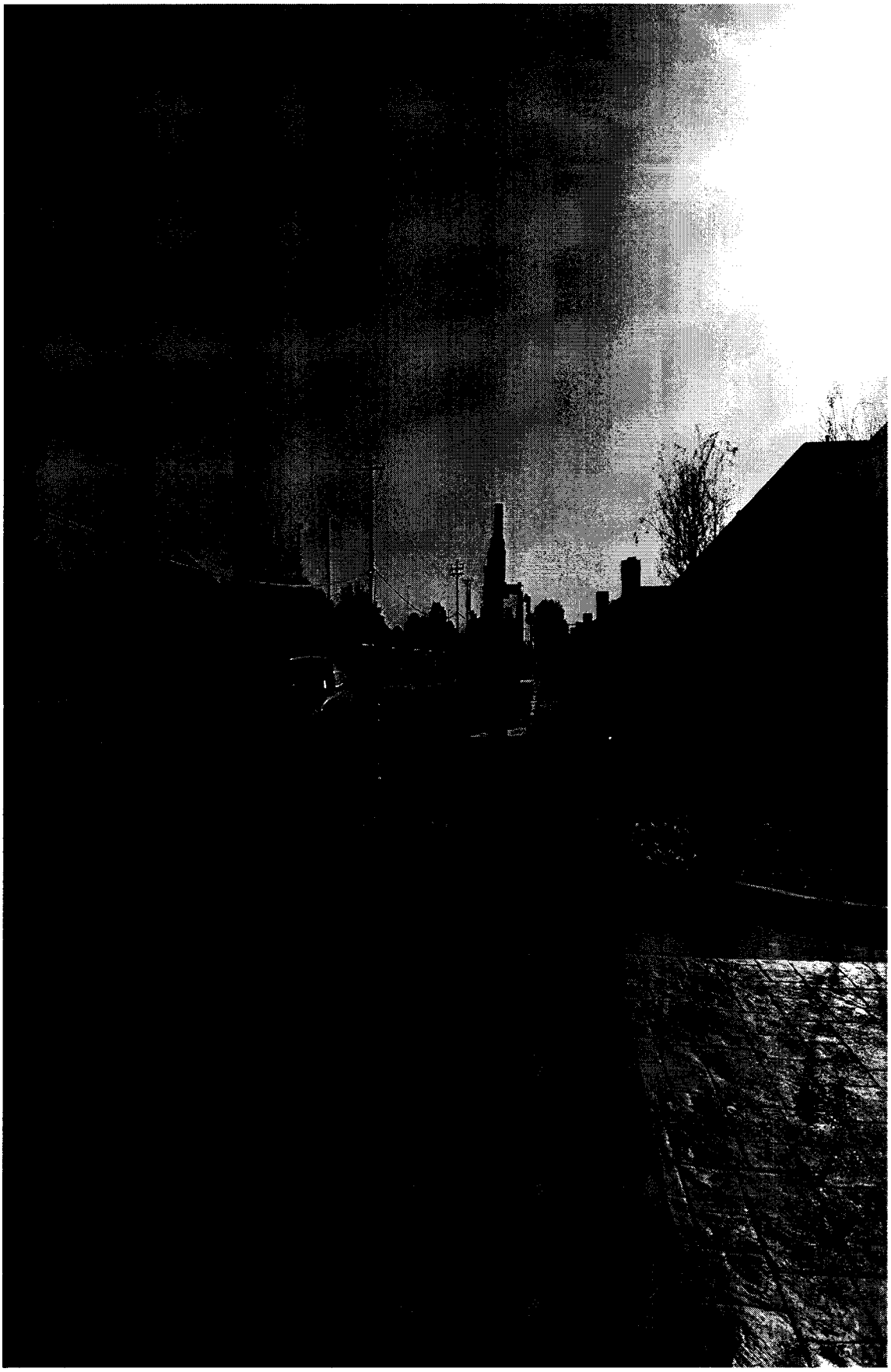
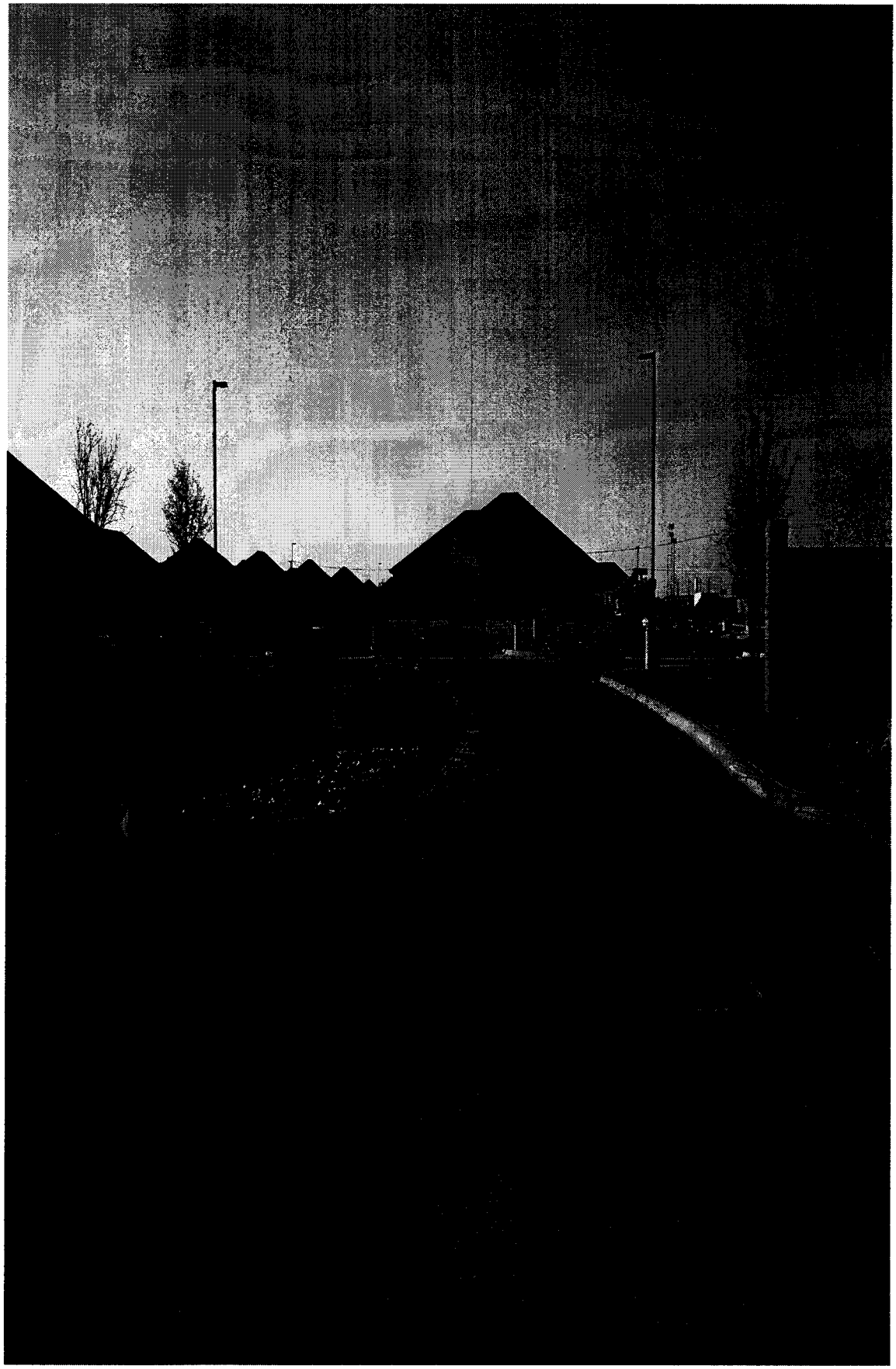
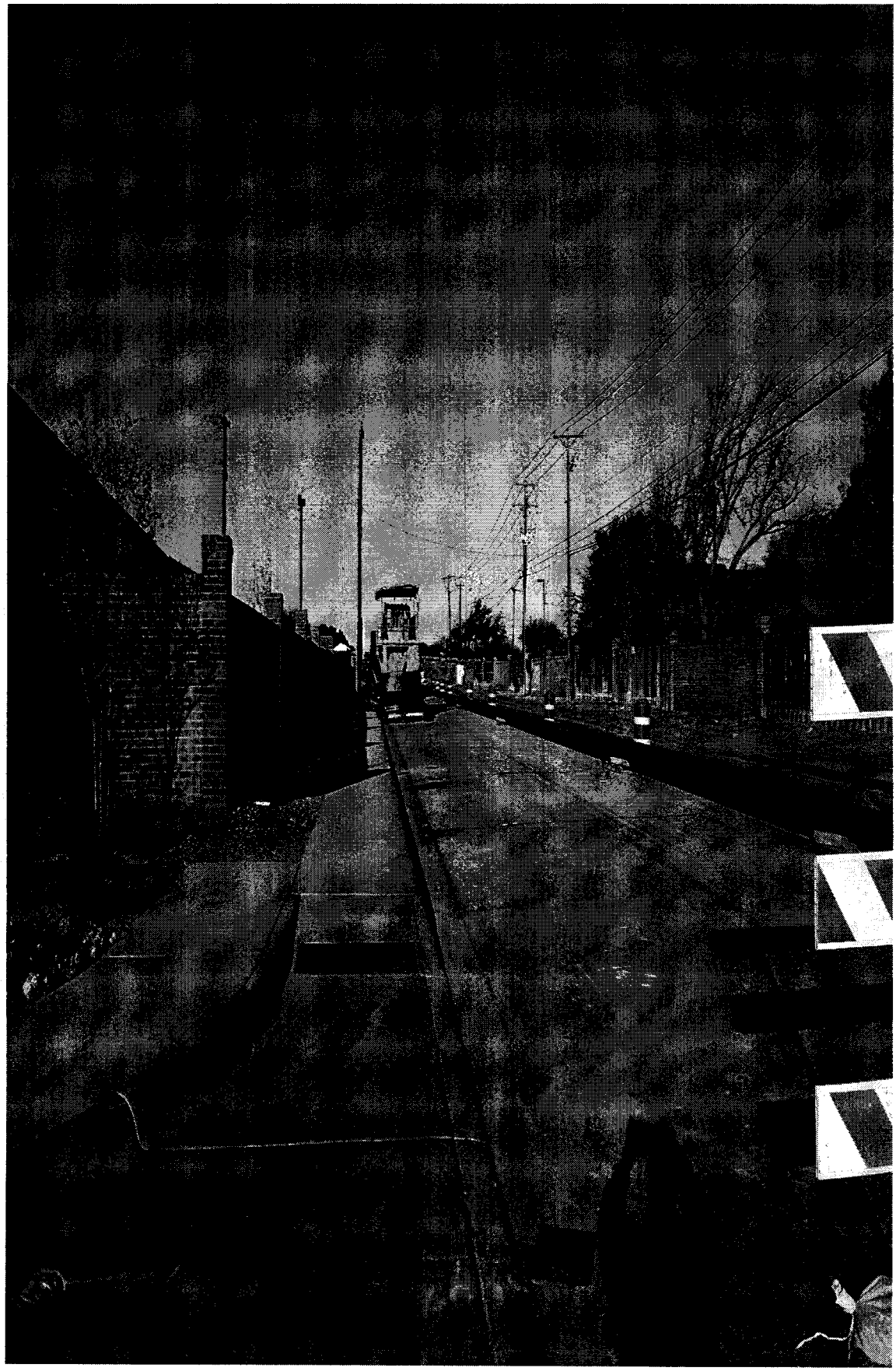
















City Council Meeting

Item Number: 39

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Elizabeth Shaughnessy, Planning Division Manager

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 16, BLOCK 2, EASTOVER ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF JESSE STREET AND EAST ILLINOIS AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Leyda Medina, is requesting a Zone Change from MF-22, Multiple Family Dwelling District to SF-3 Single Family Dwelling District at 214 Jesse Street, to construct a single family residence.

Recommended City Council Action:

Approve

Fiscal Impact:

This request does not require any City funds.

Discussion:

Current Zoning:

MF-22, Multiple Family Dwelling District

Surrounding Zoning and Land Use:

The property to the north is zoned LI, Light Industrial District and the location of an oil well. The properties to the east, south, and west are also zoned MF22, Multiple Family Dwelling District and the location of vacant land and a single family residence, respectively.

Analysis:

The applicant is requesting this zone change for the purposes of constructing a single family home. The property does not meet the minimum lot size requirements for the SF-3, Single Family Dwelling District, however; a special exception for the minimum lot dimensions was approved by the City Council on August 10, 2021.

This proposed zone change has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Fire: (Approved)

No objections

Building: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Engineering: (Approved)

No objection to zone change.

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

Code: (Approved)

No Oil or Gas wells identified within 500 ft. permitted well radius or in the 135 ft. non-permitted well radius of location on plat.

Transportation: (Approved)

Site drainage, utilities, driveway access, and traffic circulation may be adjusted during construction drawing review as necessary to receive building permit approval from Engineering and Traffic Operations.

No objection to zone change.

Planning:

Under the previous zoning code, the current zoning district would have allowed for the construction of single family homes, which allowed for the proliferation of their construction in this area. Under the new Zoning Ordinance adopted in 2019, construction of single family homes was restricted to single-family dwelling districts.

This request is in compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 3 An Integrated Land Use Vision, “Future Land Use Map” as it designates this area for Urban Residential Medium, a classification which calls for single family detached housing. As the surrounding lots consist of vacant lots and residences, this zone change will follow the existing characteristics of the surrounding neighborhood and provide additional housing for residents of the City of Midland.

This request was recommended for approval at the August 16, 2021 Planning and Zoning Commission meeting.

Therefore, staff recommends approval of this zone change from MF-22, Multiple Family Dwelling District to SF-3, Single Family Dwelling District, subject to condition A.

Conditions:

A. **That the use and development of this property shall conform to the regulations of the SF-3, Single Family Dwelling District.**

Letters of Objection:

Staff has not received any letters of objection as of August 12, 2021.

Attachments:

Application
Site Plan
Maps

Robert Patrick

City Manager’s Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 16, BLOCK 2, EASTOVER ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF JESSE STREET AND EAST ILLINOIS AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by rezoning Lot 16, Block 2, Eastover Addition, Section 2, City and County of Midland, Texas (the "Property") to SF-3, Single-Family Dwelling District, as set out hereinafter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances

inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: 2-21-0248

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Leyda Medina		Phone (432) 214-1453 Email l.arroyo4@yahoo.com	
Address 1200 e pennsylvania ave	City midland	State tx	Zip 79701
Property Owner Printed Name: Leyda Medina		Phone (432) 214-1453 Email l.arroyo4@yahoo.com	
Address 1200 e pennsylvania ave	City midland	State tx	Zip 79701
Representative *(if different from Applicant or Property Owner)* Firm: Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: (Jesse st) lot #16 block 2. eastover second addition

Legal Description
Lot: 16 Block: 2 Subdivision:

Current Zoning: MF22

Proposed Zone:
(List by tracts if more than one district is requested)

Reason for Zone Change Request: to build a house

Present Use of Property: Vacant lot (nothing there just land)

Proposed Use of Property: home

How would this zone change affect the public health, safety and welfare?

Describe how conditions affecting the property have changed since present zoning designation:

Submittal and Fees
Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan
- Digital Copies of Site Plan (PDF/JPEG)

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature): Leyda Medina	Date: 6/18/21
Applicant (printed): Leyda Medina	
Property Owner (signature): Leyda Medina	Date: 6/18/21
Property Owner (printed) : Leyda Medina	

The Zone Change/Planned District Amendment/Site Plan Approval shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appear_____who, being by me duly sworn, upon oath says: That (s)he is the owner of _____or authorized by_____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

_____
Authorized Agent (*signature*)

Subscribed and sworn to before me, this_____day of_____, 20____, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

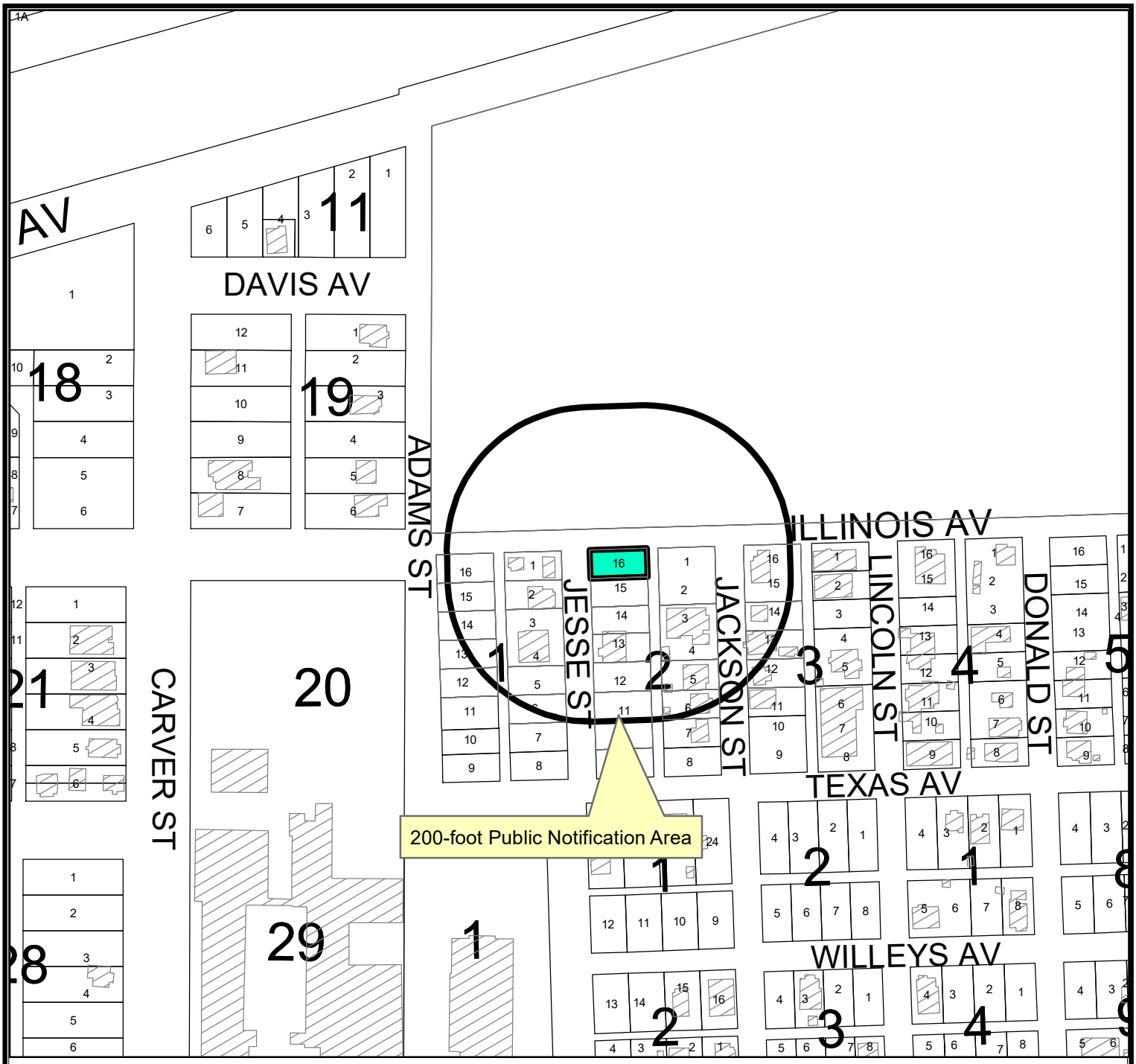
☑ Property Owner Authorization
☑ Application Fee
Check # Credit Card
☐ Dimensioned Site Plan
☐ Plans in Digital Format (PDF/JPEG)

Received By: Joseph Marquez
Date: RECEIVED JUN 25 2021 BY:

****Application will not be considered for scheduling until reviewed by a planner.**

Site Plan – 214 Jesse St





LOCATION MAP

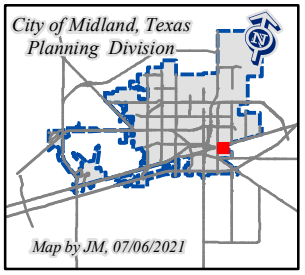
Z-21-0248 **Scale: 1" = 200'**

A request by Leyda Medina for a zone change from MF-22, Multiple Family Dwelling District to SF-3, Single Family Dwelling Districton Lot 16, Block 2, Eastover Addition, Section 2, City and County of Midland, Texas.

Generally located on the southeast corner of the intersection of Jesse Street and East Illinois Avenue. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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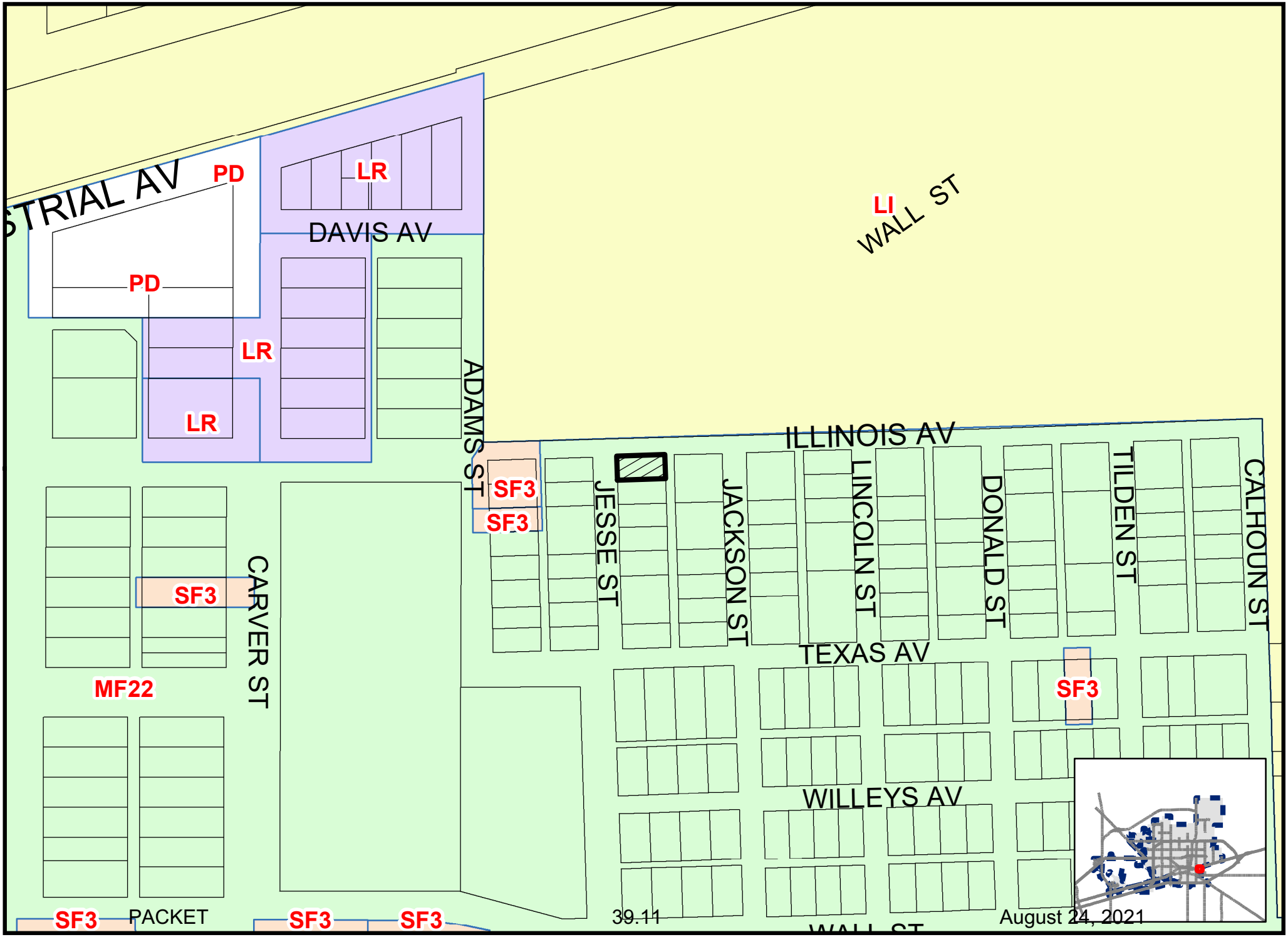
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ITS NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map By JM, 07/13/2021

E-21-0055

Scale: 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2021: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.


E Illinois Ave
STOP







City Council Meeting

Item Number: 40

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Elizabeth Shaughnessy, Planning Division Manager

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,977-SQUARE FOOT PORTION OF LOT 1, BLOCK 11, WESTRIDGE PARK ADDITION, SECTION 27, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF DEAUVILLE ROAD AND TRADEWINDS BOULEVARD), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Bertha Ramirez, is requesting a Specific Use Designation with Term for the sale of all alcoholic beverages, for on premises consumption, in a restaurant at 1119 Tradewinds Boulevard.

Recommended City Council Action:

Approve

Fiscal Impact:

Processing this request does not require any City funds.

Discussion:

The applicant, Bertha Ramirez, is requesting a Specific Use Designation with Term for the sale of all alcoholic beverages, for on premises consumption, in a restaurant at 1119 Tradewinds Boulevard.

Surrounding Zoning and Land Use:

The property to the north, south, and west are zoned RR, Regional Retail District, and the location of vacant land. The property to the south is zoned O2, Office District and the location of medical offices.

Analysis:

The property is located in the RR, Regional Retail District. This zoning district permits the sale and on premises consumption of alcoholic beverages in a restaurant, with the approval of a Specific Use Designation with Term.

The site is located at 1119 Tradewinds Boulevard, and has an expired Specific Use Designation for sale and on premises consumption of alcoholic beverages. The serviceable area will have a maximum indoor floor area of 4,977 square feet which includes a bar, dining room, and patio The site currently has 95 parking spots which is adequate for the proposed use. The applicant is requesting alcohol service hours as the following:

Monday through Sunday, 9:00 a.m. to 2:00 a.m.

The proposed hours of operation are the following:

Monday through Sunday, 6:00 a.m. to 2:00 a.m.

Per Midland City Code 5.4.4. –Prohibited place of business

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public school, public school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no churches, private schools, public schools, public school grounds, athletic stadium, public hospital within 300 feet measurement along the property lines of the street fronts, and from the front door in a direct line across intersection where they occur within this site.

This project has been circulated to all City departments for review. Below are the department comments.

Fire: (Approved)

No objections.

Engineering: (Approved)

No objections.

Traffic: (Approved)

No objection to zone change.

Building Code: (Approved)

No Objection. Occupant load is 413 and shall be posted.

Planning:

The request is in compliance with the Tall City Tomorrow Comprehensive Plan, Chapter 6-Character Plan Goal 4, “Encourage the development of places where Midland residents can gather and socialize to build connections” (Tall City Tomorrow page 137). The SUD for La Mission will give Midlanders an opportunity to socialize will enjoying a long time community staple in a new location.

This request meets all requirements; therefore, staff recommends approval of the request of the Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, subject to Condition A through G.

Conditions:

A. That the serviceable area of the restaurant shall be limited to approximately 4,977 square feet as shown in Exhibit “A”, which is attached hereto and incorporated herein for all purposes.

B. That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

C. That the establishment shall meet all requirements of the Fire Department and Code Administration.

D. That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.

E. That the days and hours of alcoholic beverages sales and consumption shall be limited to:

Monday through Sunday, 9:00 a.m. to 2:00 a.m.

F. That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on premises consumption to ensure that the conditions of this permit are satisfied.

G. That in accordance with Section 9.07.E.3 of the zoning ordinance, the restaurant shall be in operation within 120 days from the final adoption date of this ordinance.

Letters of Objection:

As of August 12, 2021, staff has not received any letters of objection.

Attachments:

Floor Plan (Exhibit A)
Application
Maps

Robert Patrick

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,977-SQUARE FOOT PORTION OF LOT 1, BLOCK 11, WESTRIDGE PARK ADDITION, SECTION 27, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF DEAUVILLE ROAD AND TRADEWINDS BOULEVARD), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation With Term for a 4,977-square foot portion of Lot 1, Block 11, Westridge Park Addition, Section 27, City and County of Midland, Texas (the "Property"), as set out hereinafter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to grant the Property a Specific Use Designation With Term for the sale of all alcoholic beverages in a restaurant (the "Establishment") for on-premises consumption, together with the uses permitted in the present RR, Regional Retail District.

SECTION TWO. That the Property shall be subject to the following conditions and

restrictions:

A. That the serviceable area of the Establishment shall be limited to approximately 4,977 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

B. That the sale and on-premises consumption of alcoholic beverages shall conform to all applicable state and local laws.

C. That the days and hours of alcoholic beverage sales and consumption shall be limited to Monday through Sunday from 9:00 a.m. to 2:00 a.m. of the following day.

D. That the occupancy of the Establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

E. That the Establishment shall meet the requirements of the Fire Department and the Code Administration Division.

F. That the operator of the Establishment shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on-premises consumption to ensure that the conditions of this Specific Use Designation With Term are satisfied.

G. That in accordance with Section 11-1-9.07.E.3 of the City Code, the Establishment shall be in operation within 120 days from the final adoption date of this ordinance.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance

with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

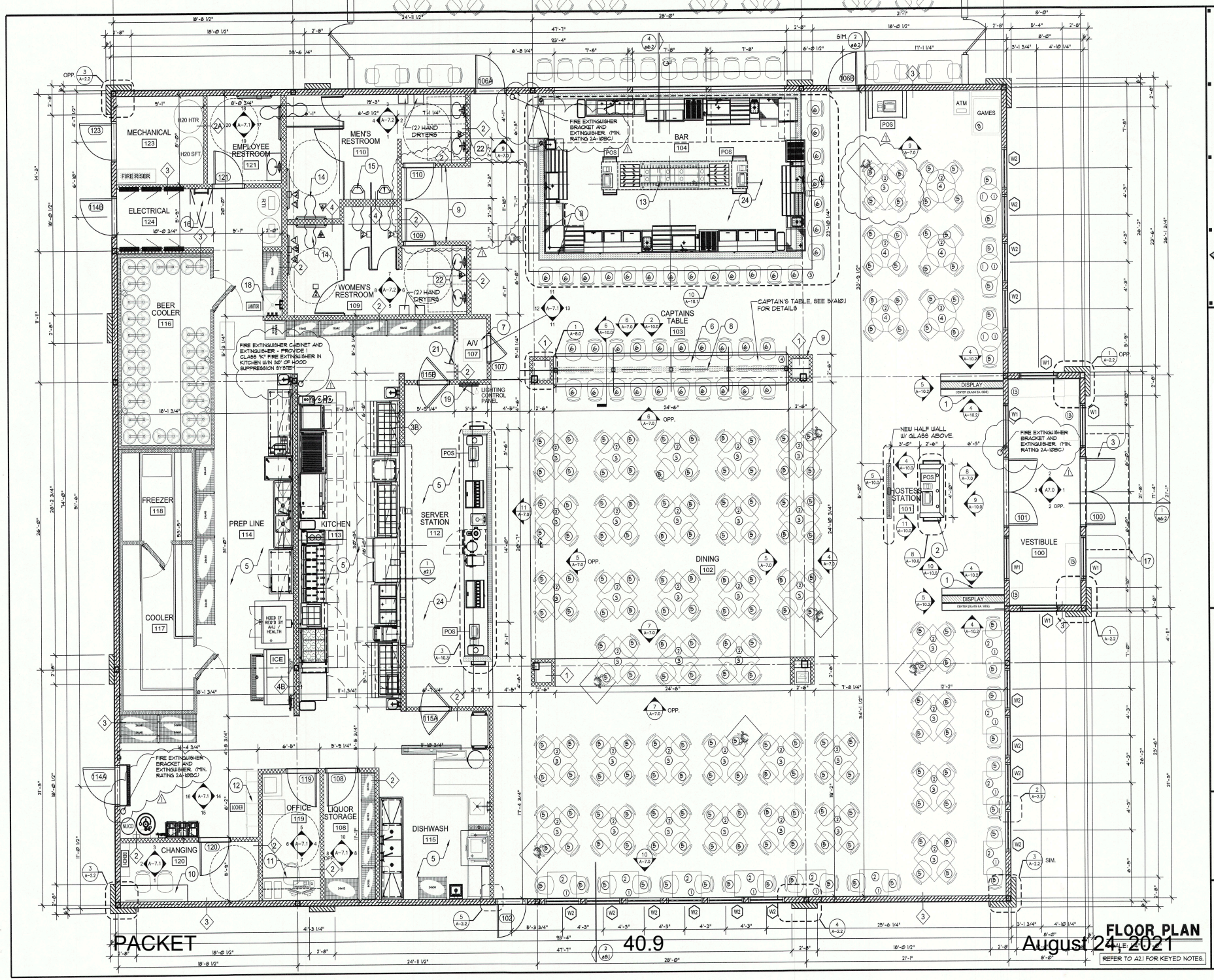
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"



FLOOR PLAN

REFER TO A2.1 FOR KEYED NOTES.

Architectonics Studio
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218 5th Ave. N St. Petersburg, FL. 33701
(p) 727-323-5676 (f) 727-323-5826
info@architectonicsstudio.com www.architectonicsstudio.com

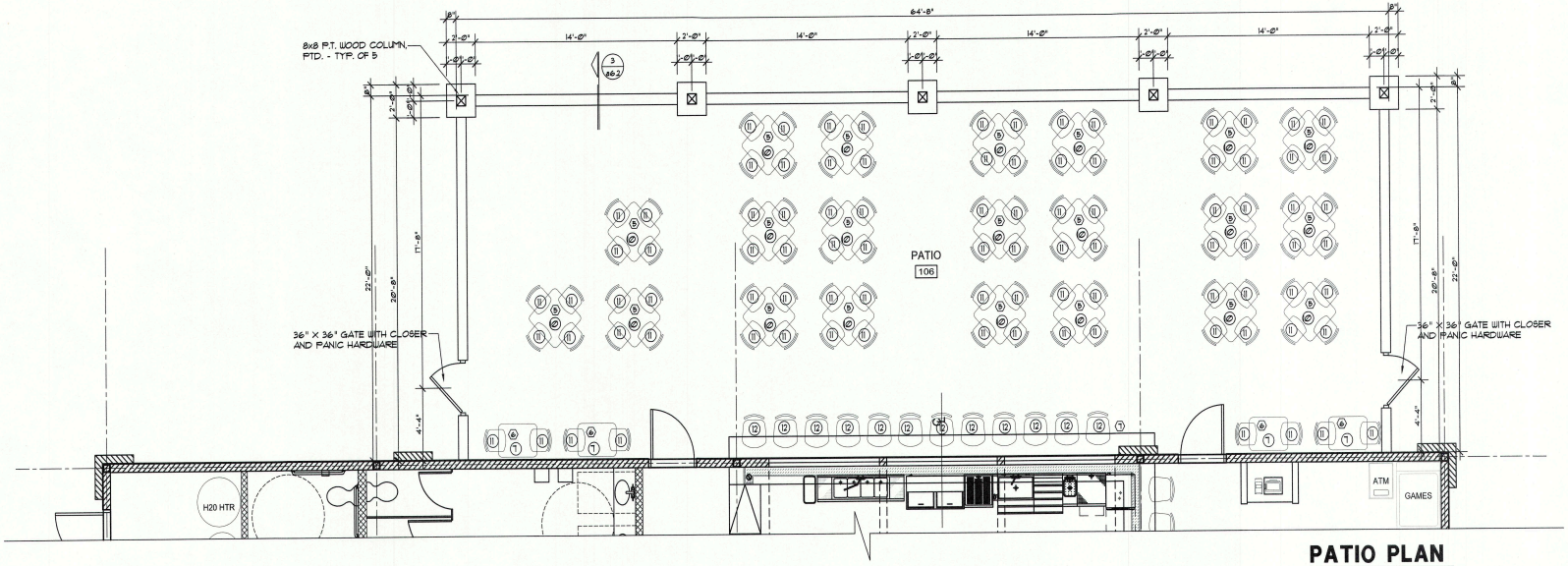
Floor Plan

File Name: ??????a11.dwg
Revisions: 1 6/5/14

Project No. 2013-267C
Date: April 29, 2014

6/5/14
MICHAEL ARRIGO
LIC. NO. 18741

a2.0



PATIO PLAN

SCALE: 1/4" = 1'-0"

WALL LEGEND

- FULL HEIGHT EXTERIOR WALL
- FULL HEIGHT INTERIOR WALL
- HALF WALL
- COOLER WALL

SEATING LEGEND

	QUANTITY	SEATING	
DINING			
TWO TOPS	13	26	①
FOUR TOPS	40	160	②
DINING TOTAL	53	186	
BAR			
BARSTOOLS	20	20	③
CAPTAIN TABLE	1	20	④
BAR TOTAL	21	40	
DINING + BAR TOTAL		226	
PATIO			
FOUR TOPS	21	84	⑤
TWO TOPS	4	8	⑥
BARSTOOLS	12	12	⑦
PATIO TOTAL	37	104	
GRAND TOTAL		330	

GENERAL NOTES

1. OWNER'S VENDER TO SUPPLY ALL FREESTANDING TABLES, CHAIRS AND BARSTOOLS. GC TO UNPACK AND INSTALL.
2. INSTALL ALL ACCESSORIES WITH SCREWS OR BOLTS EXTENDING AT LEAST 1" INTO SOLID BLOCKING.
3. ALL ACCESSORIES MOUNTING HEIGHTS TO MEET ANSI A117.1-1998.

EQUIPMENT/ACCESSORIES SCHEDULE

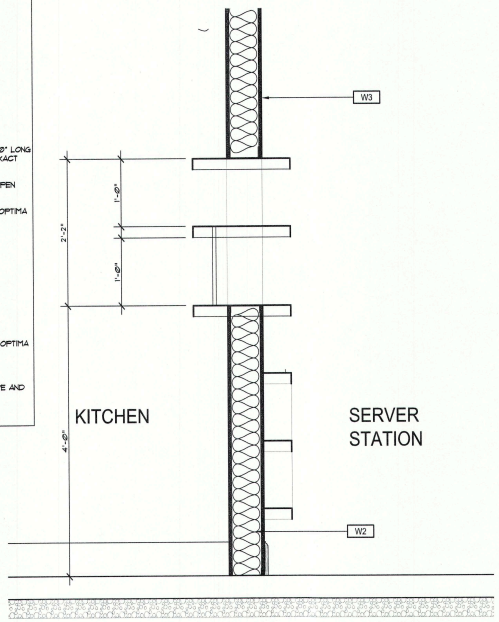
DESCRIPTION	MFG AND MODEL NO.
① TWO TOP TABLES (ROUND) - 3	FURNISHED BY OWNER'S VENDOR
② TWO TOP TABLES (SQUARE) - 10	FURNISHED BY OWNER'S VENDOR
③ FOUR TOP TABLES (SQUARE) - 35	FURNISHED BY OWNER'S VENDOR
④ FOUR TOP TABLES (ROUND) - 5	FURNISHED BY OWNER'S VENDOR
⑤ CHAIR - 186	FURNISHED BY OWNER'S VENDOR
⑥ BARSTOOL - 40	FURNISHED BY OWNER'S VENDOR
⑦ TWO TOP PATIO TABLE (SQUARE) - 4	
⑧ NOT USED	
⑨ VIDEO GAME	FURNISHED BY OWNER'S VENDOR
⑩ FOUR TOP PATIO TABLE (SQUARE) - 21	FURNISHED BY OWNER'S VENDOR
⑪ PATIO CHAIR - 92	FURNISHED BY OWNER'S VENDOR
⑫ BARSTOOL PATIO - 12	
⑬ BENCH	FURNISHED BY OWNER'S VENDOR
⑭ TRASH/ASH CAN	FURNISHED BY OWNER'S VENDOR

SYMBOLS

- NAME / # — ROOM NUMBER
- INTERIOR PARTITION - REFER WALL LEGEND ON A-0.1
- HALF WALL
- EXTERIOR WALL
- (#) KEYED NOTES - REFER TO FLOOR PLAN NOTES.
- ELEVATION TAG
- (#) DOOR TAG
- (#) WALL TYPE

FLOOR PLAN NOTES

1. DISPLAY CASE PROVIDED BY OWNER.
2. NEW HOSTESS / WAIT STATION. REFER TO DETAILS SHEETS FOR ADDITIONAL INFO.
3. NEW PAIR OF CUSTOM FIBERGLASS ENTRY DOORS. REFER TO DOOR SCHEDULE, FOR ADDITIONAL INFORMATION.
4. NOT USED.
5. EQUIPMENT AREA. REFERENCE FOOD SERVICE EQUIPMENT DRAWINGS FOR ADDITIONAL INFORMATION.
6. NEW CAPTAIN'S TABLE. REFER TO DETAILS SHEETS FOR ADDITIONAL INFO.
7. A/V EQUIPMENT. PROVIDE ACCESS DOOR PANEL IN REAR.
8. NEW 6" LOW WALL.
9. NEW FULL HEIGHT WALL.
10. NEW VANITY COUNTER TOP AND NEW MIRROR BY MILLWORK VENDOR. INSTALLED BY G.C.
11. ALL OFFICE MILLWORK AND CABINETS BY MILLWORK VENDOR. INSTALLED BY G.C.
12. NEW LOCKERS PROVIDED BY OWNER AND INSTALLED BY G.C. QTY 42 TYP. UNO.
13. PROVIDE (4) 3" CONDUIT FOR BEER SYSTEM. ALL CONDUIT SHALL HAVE GRADUAL TRANSITIONS AND 90° LONG SWEEPS FOR ALL TURNS/BENDS. G.C. MUST CONTACT KITCHEN VENDOR AND/OR BEER SUPPLIER FOR EXACT SIZE, QUANTITY AND LOCATION.
14. NEW ADA COMPLIANT WATER CLOSET FIXTURE - KOHLER HIGHCLIFF K4368-B WITH LUSTRA K-4670-C OPEN FRONT SEAT AND SLOAN OPTIMA PLUS MODEL 811 WATER CLOSET FLUSHOMETER.
15. NEW ADA COMPLIANT URINAL FIXTURE - KOHLER DEXTER ELONGATED URINAL K-5016-ER WITH SLOAN OPTIMA PLUS MODEL 8186 URINAL FLUSHOMETER.
16. ROOF ACCESS, REFER TO A3.3 FOR DETAILS.
17. LINE OF CANOPY ABOVE. REFER TO EXTERIOR ELEVATIONS FOR ADDITIONAL INFORMATION.
18. NEW MOP SINK.
19. LIGHTING CONTROL PANEL.
20. NOT USED.
21. A/V ACCESS PANEL - COORDINATE WITH A/V CONSULTANT.
22. NEW ADA COMPLIANT SINK - AMERICAN STANDARD OVALYN UNDERCOUNTER 0495.221 WITH SLOAN ERF OPTIMA PLUS EBF-615 FAUCET.
23. NOT USED.
24. SERVICE AREA 112 AND BAR 104 TO HAVE W3 (BLACK FRP) - PASS THRU WALL SHOULD HAVE W3 ABOVE AND W2 BELOW.



1 SERVING STATION WALL SECTION
SCALE: 1" = 1'-0" DTL NAME

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Patio Plan/ Legends/notes

Project No. 2013-267C
Issue Date April 29, 2014
File Name: ????????.dwg
Revisions: 6/5/14

6/5/14
MICHAEL ARRIGO LIC. NO. 9741

a2.1

MIDLAND
Planning Division

Specific Use Designation with Term for the Sale of Alcoholic Beverages for On-Premises Consumption

Project Number: SUP-21-0110
Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Bertha Ramirez		Phone (432) 559-5096 Email r.jordan21@hotmail.com	
Address 1407 W CoRd 130	City Midland	State TX	Zip 79706
Property Owner Printed Name: BBKG 1119T, LLC		Phone (432) 682.1671 Email brandon@bbkginvestments.com	
Address PO BOX 1772	City MIDLAND	State TX	Zip 79702
Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 1119 Tradewinds BLVD.

Business Name: La Mision Restaurante and Cantina

Legal Description
Lot: 1 Block: 11 Subdivision: WESTRIDGE PARK ADDITION SECTION 27
PARCEL ID: R211572

Current Zoning:

Reason for Request: New Location

Type of Business *(restaurant, bar, lounge, nightclub, etc.)*: Restaurant & Bar

Proposed/Current Days and Hours of Operation: Mon - Sunday 6am - 2a.m.

Proposed Days and Hours of Alcohol Service: Mon - Sunday 9am - 2a.m.

Total Square Footage of Business:

Square Footage of Alcohol Serviceable Area:

Restroom Fixtures:	*Men*	**Toilets/Urinals:**	2 / 2	**Bathroom Sinks:** 2
	Women	**Toilets:**	3	**Bathroom Sinks:** 2

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Floor Plan showing:
  - Seating
  - Exits
  - Restrooms
  - Kitchen (if applicable)
  - Total Square Footage
  - Serviceable Square Footage
- Dimensioned Site Plan showing:
  - Parking
  - Business Footprint
- Digital Copies of Floor Plan & Site Plan (PDF/JPEG)

Signatures

Applicant (signature):	Date: 7-8-2021
Applicant (printed): Bertha Ramirez	
Property Owner (signature): BBKG 1119T, LLC / BRANDON WILLIAMS	Date: 7-8-2021
Property Owner (printed): M. Brandon Williams	

The Specific Use Designation with Term for the sale of all alcoholic beverages shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Bertha Ramirez who, being by me duly sworn, upon oath says: That (s)he is authorized by Bertha Ramirez, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Authorized Agent (*signature*)

Subscribed and sworn to before me, this 8th day of July, 2021, to certify which witness my hand and seal of office.

ALICE R. OGDEN
NOTARY PUBLIC
ID# 2749618
State of Texas
Comm. Exp. 05-28-2024

Alice R. Ogden

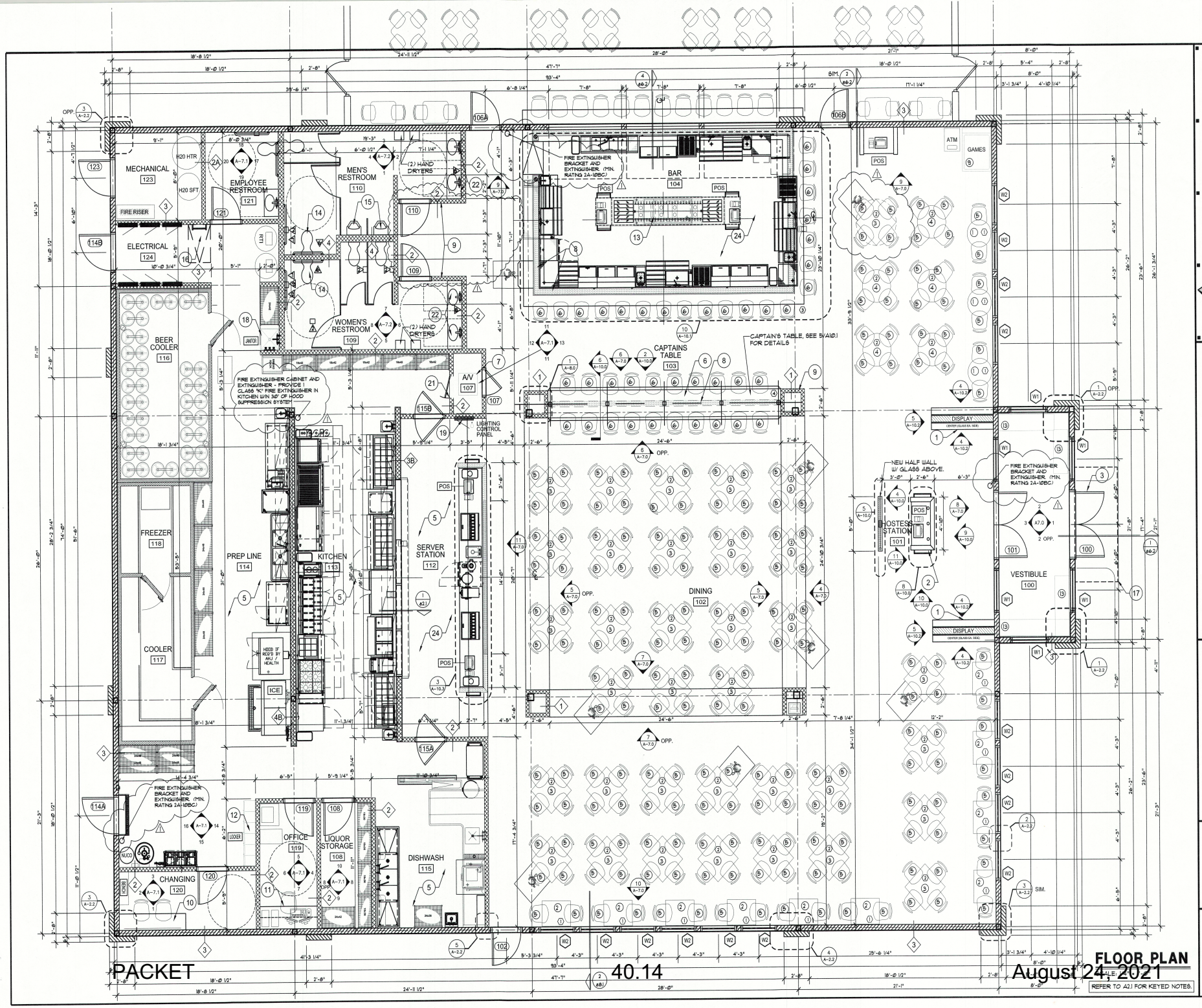
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

****Application will not be considered for scheduling until reviewed by a planner.****

FOR OFFICE USE ONLY	
☑ Property Owner Authorization	☑ Dimensioned Floor Plan
☑ Application Fee	☐ Site Plan
Check # 17709	☐ Plans in Digital Format (PDF/JPEG)
Received By: Joseph Marquez	Date:

RECEIVED
JUL 08 2021
BY:

****Application will not be considered for scheduling until reviewed by staff****



PACKET 40.14 August 24, 2021

FLOOR PLAN

SCALE: 1/8"=1'-0"

REFER TO A2.1 FOR KEYED NOTES.

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Floor Plan

File Name: ??????????a11.dwg
Revisions: 1 6/5/14

Project No. 2013-267C
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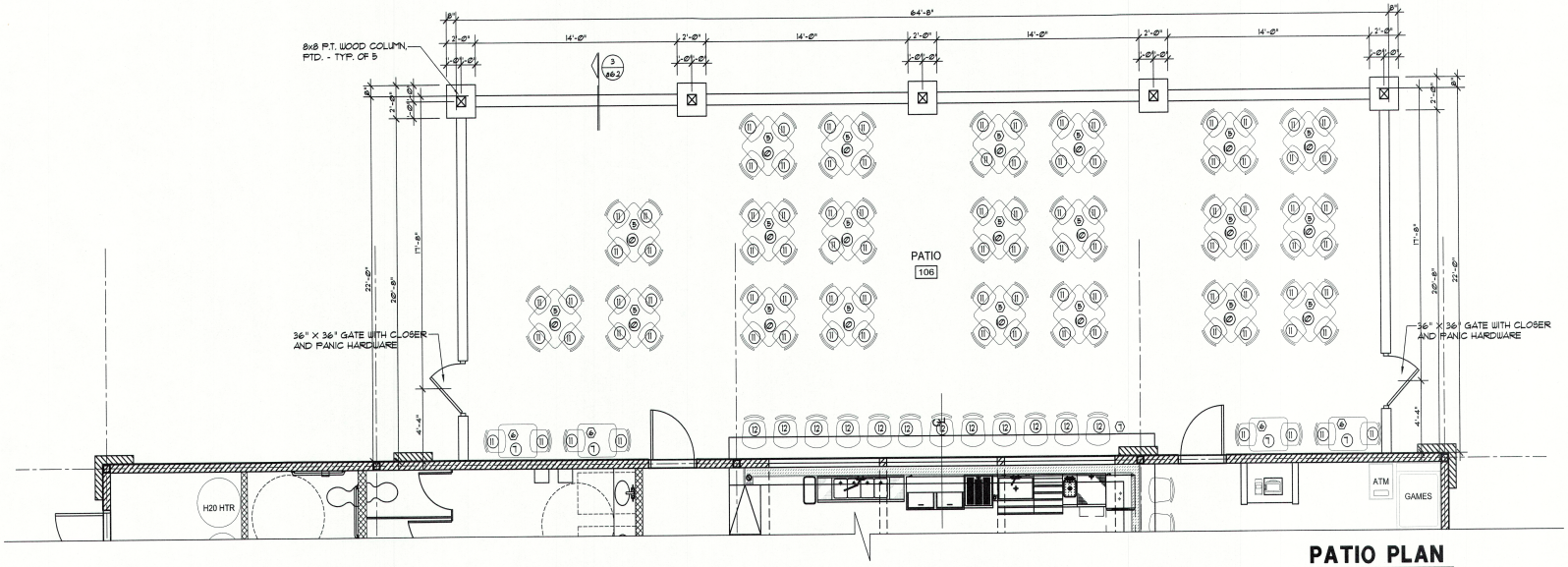
a2.0



PATIO PLAN

SCALE: 1/4" = 1'-0"

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- FULL HEIGHT INTERIOR WALL
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SYMBOLS

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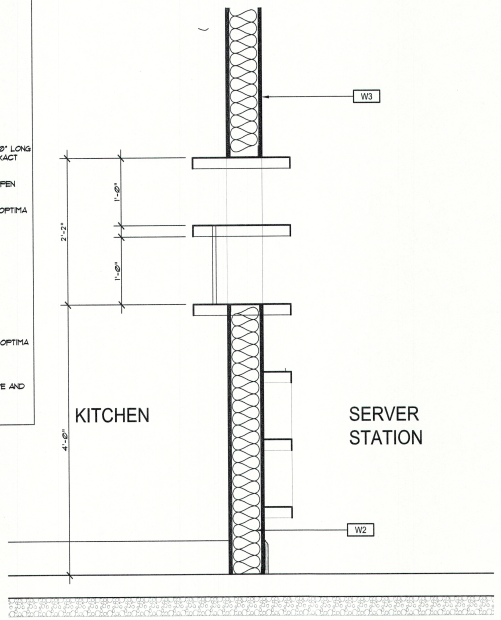
- HALF WALL
- EXTERIOR WALL
- # — KEYED NOTES - REFER TO FLOOR PLAN NOTES.
- ELEVATION TAG
- # — DOOR TAG
- # — WALL TYPE

FLOOR PLAN NOTES

1. DISPLAY CASE PROVIDED BY OWNER.
2. NEW HOSTESS / WAIT STATION. REFER TO DETAILS SHEETS FOR ADDITIONAL INFO.
3. NEW PAIR OF CUSTOM FIBERGLASS ENTRY DOORS. REFER TO DOOR SCHEDULE, FOR ADDITIONAL INFORMATION.
4. NOT USED.
5. EQUIPMENT AREA. REFERENCE FOOD SERVICE EQUIPMENT DRAWINGS FOR ADDITIONAL INFORMATION.
6. NEW CAPTAIN'S TABLE. REFER TO DETAILS SHEETS FOR ADDITIONAL INFO.
7. A/V EQUIPMENT. PROVIDE ACCESS DOOR PANEL IN REAR.
8. NEW 6" LOW WALL.
9. NEW FULL HEIGHT WALL.
10. NEW VANITY COUNTER TOP AND NEW MIRROR BY MILLWORK VENDOR. INSTALLED BY G.C.
11. ALL OFFICE MILLWORK AND CABINETS BY MILLWORK VENDOR. INSTALLED BY G.C.
12. NEW LOCKERS PROVIDED BY OWNER AND INSTALLED BY G.C. QTY 42 TYP. UNO.
13. PROVIDE (4) 8" CONDUIT FOR BEER SYSTEM. ALL CONDUIT SHALL HAVE GRADUAL TRANSITIONS AND 90° LONG SWEEPS FOR ALL TURNS/BENDS. G.C. MUST CONTACT KITCHEN VENDOR AND/OR BEER SUPPLIER FOR EXACT SIZE, QUANTITY AND LOCATION.
14. NEW ADA COMPLIANT WATER CLOSET FIXTURE - KOHLER HIGHCLIFF K4368-B WITH LUSTRA K-4670-C OPEN FRONT SEAT AND SLOAN OPTIMA PLUS MODEL 811 WATER CLOSET FLUSHOMETER.
15. NEW ADA COMPLIANT URINAL FIXTURE - KOHLER DEXTER ELONGATED URINAL K-5016-ER WITH SLOAN OPTIMA PLUS MODEL 8186 URINAL FLUSHOMETER.
16. ROOF ACCESS, REFER TO A3.3 FOR DETAILS.
17. LINE OF CANOPY ABOVE. REFER TO EXTERIOR ELEVATIONS FOR ADDITIONAL INFORMATION.
18. NEW MOP SINK.
19. LIGHTING CONTROL PANEL.
20. NOT USED.
21. A/V ACCESS PANEL - COORDINATE WITH A/V CONSULTANT.
22. NEW ADA COMPLIANT SINK - AMERICAN STANDARD OVALYN UNDERCOUNTER 0495.221 WITH SLOAN ERF OPTIMA PLUS EBF-615 FAUCET.
23. NOT USED.
24. SERVICE AREA 112 AND BAR 104 TO HAVE W2 (BLACK FRP) - PASS THRU WALL SHOULD HAVE W3 ABOVE AND W2 BELOW.



1 SERVING STATION WALL SECTION

SCALE: 1" = 1'-0" DTL NAME

architectonics Studio
Lic. • AA-0003347
218 5th Ave. N St. Petersburg, FL. 33701
(p) 727-323-5676 (f) 727-323-5826
info@architectonicsstudio.com www.architectonicsstudio.com

Patio Plan/ Legends/notes

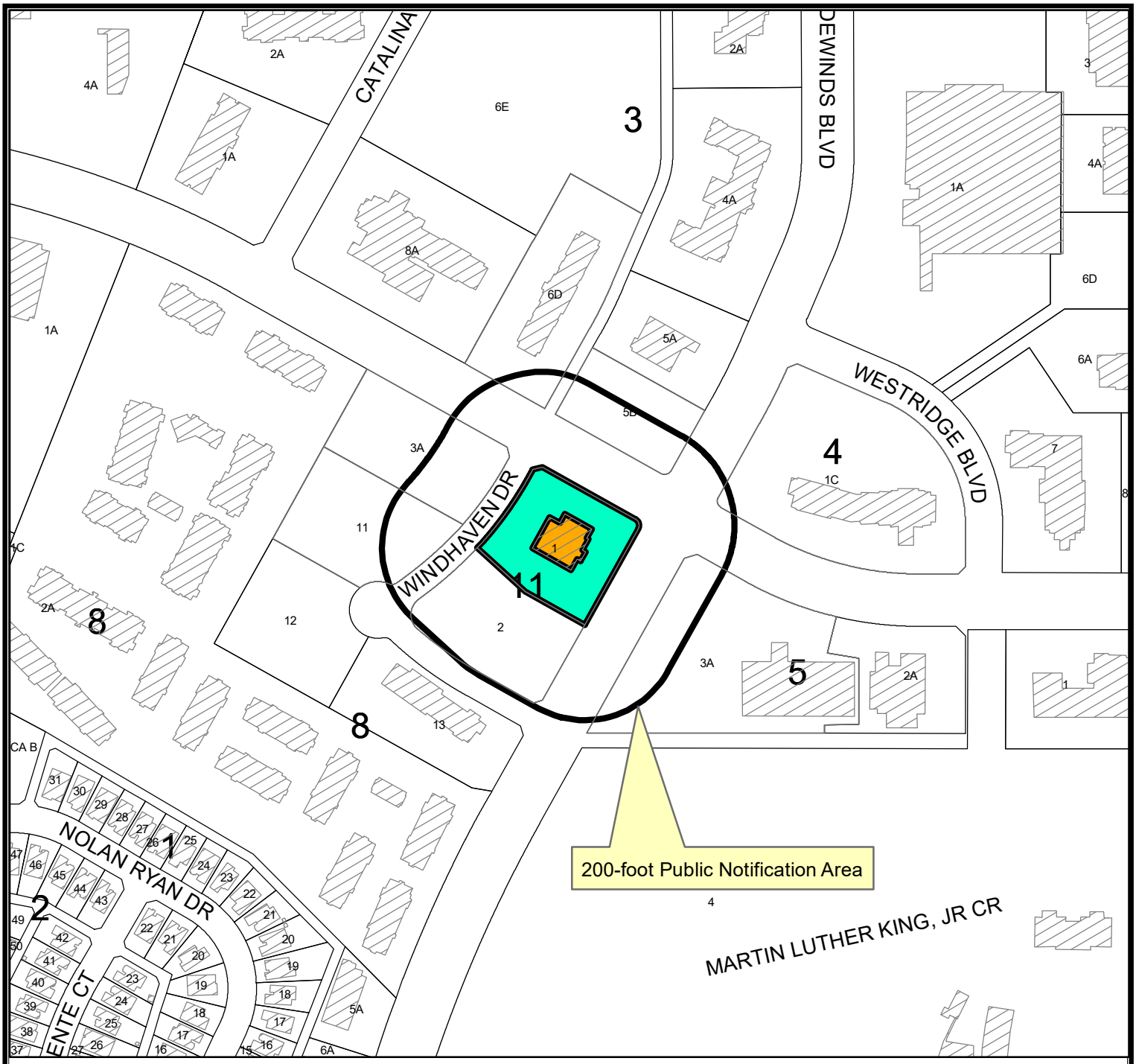
File Name: ????????.dwg
Revisions: 6/5/14

Project No. 2013-267C
Date: April 29, 2014

6/5/14
MICHAEL ARRIGO
LIC. NO. 18141

a2.1

PACKET 40.15 August 24, 2021



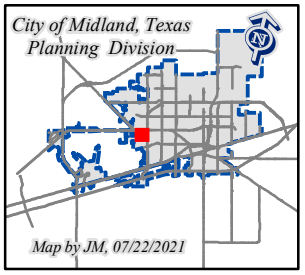
LOCATION MAP

SUD-21-0110 **Scale: 1" = 300'**

A request by Bertha Ramirez for a Specific Use Designation with term for the sale of all alcoholic beverages on a 4,977 square foot portion of Lot 1, Block 11, Westridge Park Addition, Section 27, City and County of Midland, Texas.
Generally located on the southwest corner of the intersection of Deauville Road and Tradewinds Boulevard. (Council District 4)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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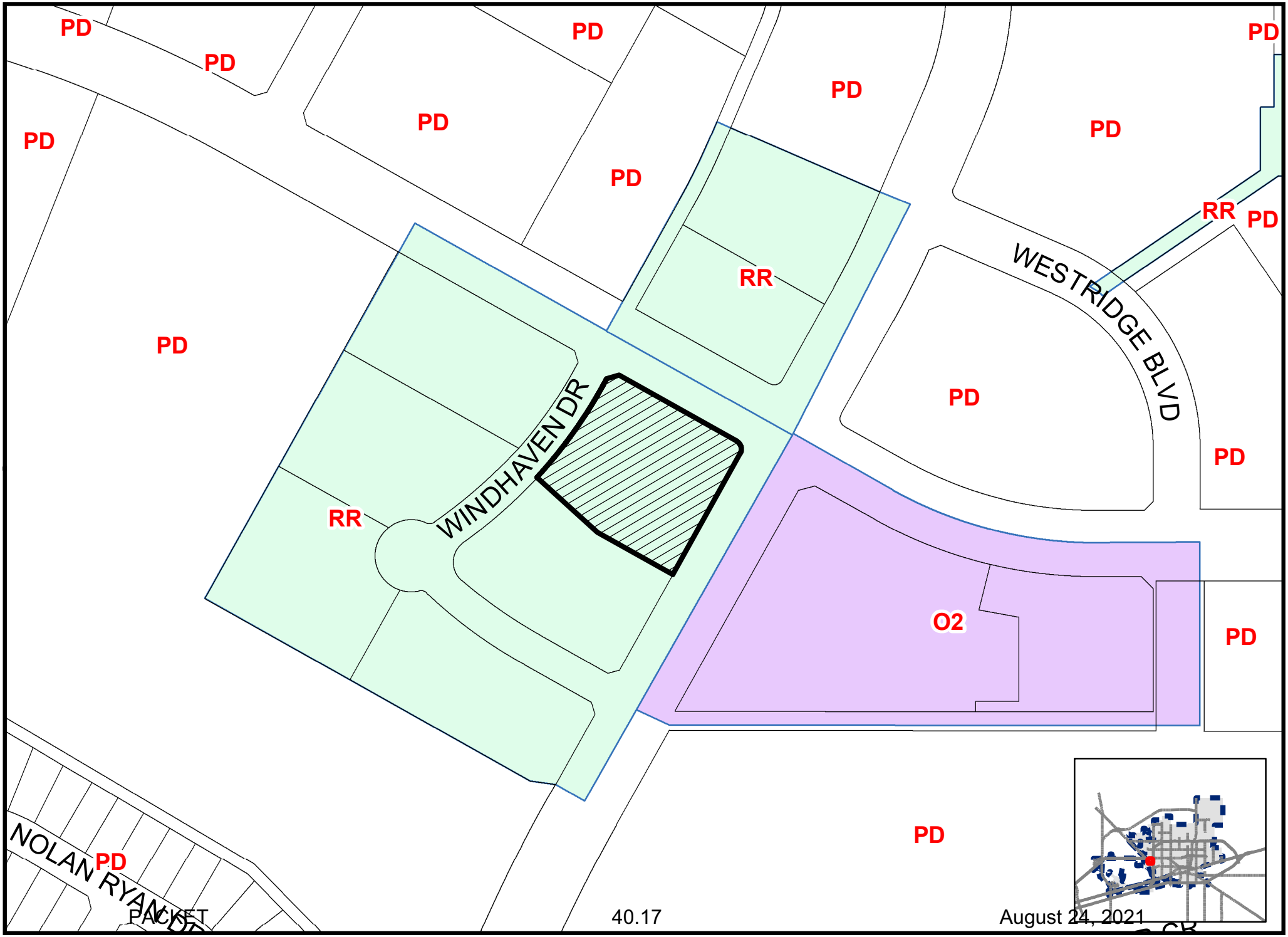

Map By JM, 07/27/2021

SUD-21-0110

Scale: 1" = 200'

ZONING MAP

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STOP
STOP
TROST




SPEED LIMIT 35
MIDLAND
Planning


La Misión
RESTAURANT & CANTINA
"A COLD BEER NEVER LOOKED SO GOOD"
FIRE LANE NO PARKING

City Council Meeting

Item Number: 41

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Elizabeth Shaughnessy, Planning Division Manager

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR LOT 1, BLOCK 1, CLAYDESTA PLAZA NORTH, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH BIG SPRING STREET AND WEST LOOP 250 NORTH), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR A MOBILE FOOD VENDOR PARK; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Christopher Sean Elphick, is requesting a Specific Use Designation without Term for a proposed mobile food vendor park located at 4401 North Big Spring Street.

Recommended City Council Action:

Approve

Fiscal Impact:

Processing this request does not require any City funds.

Discussion:

Current Zoning:

RR, Regional Retail District.

Surrounding Zoning and Land Use:

The property north is zoned PD, Planned Development District for a Recreation Center and the location of MISD softball fields. The property to the east is zoned RR, Regional Retail District and the location of a shopping center. The property to the south is zoned PD, Planned Development District for an Office Center and the location of vacant land. The property to the west is zoned 2F, Two-Family Dwelling District and the location of the Midland Executive Airpark.

Analysis:

The property is located in the RR, Regional Retail District. This zoning district permits the use of a Mobile Food Vendor Park with the approval of a Specific Use Designation without Term.

The site is located at 4401 N Big Spring St. The proposed mobile food vendor park will consist of the existing shack, parking for ten (10) mobile food vendors, an open space for seating, a bar, and a stage. Upon completion of construction, the site will have adequate parking and restroom facilities to support a Food Vendor Park of this size. The proposed hours of operation are the following:

Monday through Sunday, 11:00 a.m. to 12:00 a.m. (midnight)

The Mobile Food Vender Park Services will need to comply with the standards as listed in Section 4.04.A.14 of the Zoning Ordinances.

14. Mobile Food Vendor Park Standards

A Mobile Food Vendor Park shall meet the following requirements:

A. A Mobile Food Vendor Park is allowed by Specific Use Designation, according to the permitted Use Chart.

B. A Mobile Food Vendor Park shall be considered a primary use on a property and therefore is subject to all development standards applicable to the zoning of the property, including off-street parking requirements.

C. All Mobile Food Vendor Parks shall be on legally platted lots.

D. All Mobile Food Vendor Parks shall require a Certificate of Occupancy.

E. All Mobile Food Vendor Parks shall comply with all applicable regulations of the Midland Health Department, adopted building codes, International Fire Code, these standards, and all other applicable federal, state, and local laws.

F. All Mobile Food Vendors shall be removed from the Mobile Food Vendor Park upon

closing of the park. If a commissary is provided on-site and the Mobile Food Vendor is approved to operate within the site's commissary, then the Mobile Food Vendor will not have to be removed from the site each day.

G. On-site Manager: There must be a designated manager of the site that is responsible for the orderly organization of Mobile Food Vendors, the cleanliness of the site, and the site's compliance with all rules and regulations during business hours.

H. Restrooms: Permanent restroom facilities shall be provided according to the adopted International Building Code.

I. Mobile Food Vendor Parks may be standalone establishments or may be located on a property with other permanent uses (i.e. retail establishments). These properties shall accommodate all required development standards for all primary uses.

J. Mobile Food Vendors shall not be parked on unimproved surfaces and at a minimum be parked on compacted gravel base.

K. One on premise sign is permitted at the entrance(s) identifying the Mobile Food Vendor Park subject to the sign regulations for the applicable zoning district. Each Mobile Food Vendor may have attached signage.

L. Mobile Food Vendor Parks adjacent to single-family zoned or used property (not including a mixed-use structure), shall provide appropriate screening.

M. No Temporary Land Use Permits that allow for Mobile Food Vendors shall be permitted within Mobile Food Vendor Parks.

N. All Mobile Food Vendor Parks not located in the CB, Central Business District shall provide off-street parking. Off-street parking may be provided by way of shared or joint off-site parking arrangements within 1,000 feet of the park.

O. Mobile Food Vendor Park owners are encouraged to provide for an aesthetically-pleasing environment which includes shade and seating elements in addition to pervious groundcover.

P. All Mobile Food Vendor Parks shall comply with the noise regulations in City Code Section 6-6-13,14, 15, & 16.

Q. Vehicular drive-through service of food and/or beverages shall not be permitted.

This project has been circulated to all City departments for review. Below are the department comments.

Fire: (Approved with Conditions)

Perimeter road must have 20' of clearance to provide access for emergency vehicles to food trucks.

Engineering: (Approved)

No objection.

Transportation: (Approved)

No objection to zone change.

Building Code: (Approved)

No objections. Any and all sanitary facilities being provided at the site must be reasonably maintained and easily located by the public. Trailers shall be tied down or have wheel chocks to keep them from moving/rolling during possible adverse weather. Extension cords and/or water lines that pose a possible trip hazard shall be covered or located so that they pose no safety issues.

Planning:

The request is in compliance with the *Tall City Tomorrow Comprehensive Plan, Chapter 6-Character Plan Goal 4,* "Encourage the development of places where Midland residents can gather and socialize to build connections" (Tall City Tomorrow page 137). The Tailgate will create a vibrant atmosphere where residents can feel relaxed and enjoy alcoholic beverages with their food while supporting many local small businesses.

This request was recommended for approval at the July 6, 2021 Planning and Zoning Commission meeting; therefore, staff recommends approval of the request of the Specific Use Designation without Term for a Mobile Food Vendor Park, subject to Condition A through J.

Conditions:

A. **That the Mobile Food Vendor Park shall significantly conform to the Site Plan (Exhibit A) which is attached hereto and incorporated herein for all purposes.**

B. **That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.**

C. **That the establishment shall meet all requirements of the Fire Department and Code Administration.**

D. **That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the operation of the Mobile Food Vendor Park to ensure that the conditions of this permit are satisfied.**

E. **That the sale and on-premises consumption of alcoholic beverages shall be prohibited unless a Specific Use Designation for sale and on-premises consumption of alcoholic beverages is approved.**

F. That the days and hours of operation shall be limited to:

Monday through Sunday, from 11:00 a.m. to 12:00 a.m.

G. That signage will be placed at the driveway which prohibits a left turn on to North Big Spring Street.

H. That a 20 foot wide fire lane will be provided around the food trucks.

I. That the development of the Mobile Food Vendor Park shall comply with the standards listed in Section 4.04.A14 of the Zoning Ordinance.

J. That Christopher Sean Elphick shall be designated as the on-site manager of the Mobile Food Vendor Park and ensure that these conditions are met.

Letters of Objection:

As of August 19, 2021, staff has not received any letters of objection.

Attachments:

Site Plan (Exhibit A)
Application
Maps

Robert Patrick

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR LOT 1, BLOCK 1, CLAYDESTA PLAZA NORTH, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH BIG SPRING STREET AND WEST LOOP 250 NORTH), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR A MOBILE FOOD VENDOR PARK; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation Without Term for Lot 1, Block 1, Claydesta Plaza North, Section 4, City and County of Midland, Texas (the "Property") as set out hereinafter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to grant the Property a Specific Use Designation Without Term for a mobile food vendor park, together with the uses permitted in the present RR, Regional Retail District.

SECTION TWO. That the Property shall be subject to the following conditions and restrictions:

A. That the Establishment shall significantly conform to the site plan, which is attached hereto as Exhibit "A" and incorporated herein for all purposes.

B. That the operator of the Establishment shall place a sign at the driveway notifying drivers that a left turn onto North Big Spring Street is prohibited.

C. That the operator of the Establishment shall provide a 20-foot-wide fire lane around the mobile food vendors.

D. That the days and hours of operation of the Establishment shall be limited to Monday through Sunday from 11:00 a.m. to 12:00 a.m. (midnight).

E. That the occupancy of the Establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

F. That the Establishment shall meet the requirements of the Fire Department and the Code Administration Division.

G. That the sale and on-premises consumption of alcoholic beverages shall be prohibited unless a Specific Use Designation With Term for the sale and on-premises consumption of alcoholic beverages is approved and effective.

H. That the development and operation of the Establishment shall conform to Section 11-1-4.04.A.14 of the City Code and all other applicable laws, ordinances, and regulations.

I. The operator of the Establishment shall notify the City's Planning Division in writing of the name, address, telephone number, and e-mail address of the person who has been designated on-site manager of the Establishment who is responsible for the orderly organization of the Establishment, the cleanliness of the Property, and the Establishment's compliance with all applicable rules and regulations during business hours. If the City's Planning Division is not so notified, it shall be presumed that Christopher Sean Elphick is the on-site manager of the Establishment.

J. That the operator of the Establishment shall obtain a Certificate of Occupancy prior to commencing operation of the Establishment to ensure that the conditions of this Specific Use Designation Without Term are satisfied.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not

affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT 'A'



OCCUPANCY: **400 PEOPLE**
GAME AREA: 2,590 SQFT
* 1 PERSON PER 50SQFT
* **52 PEROPLE**
FIXED SEATING: 8,499 SQFT
* 24' OF BENCH SEATING = 1 PERSON
* 6' PICNIC TABLE = 6 PEOPLE
* 58 PICNIC TABLES
* **348 PEOPLE**

SEATING:
* FIXED SEATING A1: 3,720 SQFT
* FIXED SEATING A2: 2,160 SQFT
* FIXED SEATING A3: 1,850 SQFT
* FIXED SEATING A4: 769 SQFT
* GAME AREA SEATING: 2,590 SQFT
* *TOTAL FIXED SEATING AREA: **11,089 SQFT***

RESTROOMS:
* 2 EXISTING RESTROOMS
* 4 NEW RESTROOMS

PARKING LOT:
* SPACES: 10'X22'
* DRIVES: 30' WIDE
* **NUMBER OF SPACES:100**

ALCOHOL SERVICEABLE AREA

EXISTING BUILDING

A PRELIM. SITE PLAN
100 PARKING SPACES, 4 H.C. SPACES N. T. S.

PREPARED BY:
JM DRAFTING & DESIGN
Email: jmertink@gmail.com Cell: (432) 425-5297

NEW SITE PLAN FOR:
THE TAILGATE
4401 N BIG SPRING ST
MIDLAND TEXAS

PACKET

© COPYRIGHT JM DRAFTING & DESIGN, 2021 FEDERAL COPYRIGHT PROTECTION EXTENDING TO DECORATIVE PLANS, IS APPLICABLE TO INTENTIONAL AND UNINTENTIONAL INFRINGEMENTS AND PROVIDES FOR SPECIFIC STATUTORY DAMAGES BOTH CIVIL AND CRIMINAL. UNAUTHORIZED REPRODUCTION IN ANY FORM IS STRICTLY PROHIBITED AND FORBIDDEN.

DATE:
AUG. 02, 2021
DWG2021/SEANELPHC/THETAILGATE-A1
JOB # JM21072

August 24, 2021

MIDLAND
Planning Division

Specific Use Designation Application (Non-Alcohol)

Case Number: SUDw0-21-0022

Ord. Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Christopher Sean Elphick		Phone (432) 553-920 Email sean.elphick@yahoo.com	
Address 3209 Cimmaron Ave	City Midland	State TX	Zip 79705
Property Owner Printed Name: John Elphick		Phone (432) 553-9250 Email	
Address 500 W. Illinois Ste 200	City Midland	State TX	Zip 79705
Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Type of Permit: Food Truck Park

For Office Use Only
☐ with Term ☐without Term

Is there any Code Enforcement action pending on property? ☐ Yes ☐ No

Street Address: 4401 N Big Spring St. Midland, TX 79705

Legal Description
Lot: Block: Subdivision:

Current Zoning:

Maximum Floor Area: **Maximum Occupancy:**

Proposed hours and days of use or operation: mon-sun 11am-12am

Reason for request: Opening Food Park

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: Food Park will add to the quality of life in Midland

Submittal and Fees
Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Site Plan showing
  - Parking (if applicable)
  - Building Footprint
- Digital Copies of Site Plan (PDF/JPEG)

Signatures	
Applicant (signature):	Date: 6/9/21
Applicant (printed): Sean Elphick	
Property Owner (signature):	Date:
Property Owner (printed) :	

The Specific Use Designation shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Christopher Elphick who, being by me duly sworn, upon oath says: That (s)he is authorized by Self-owner, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Authorized Agent (*signature*)

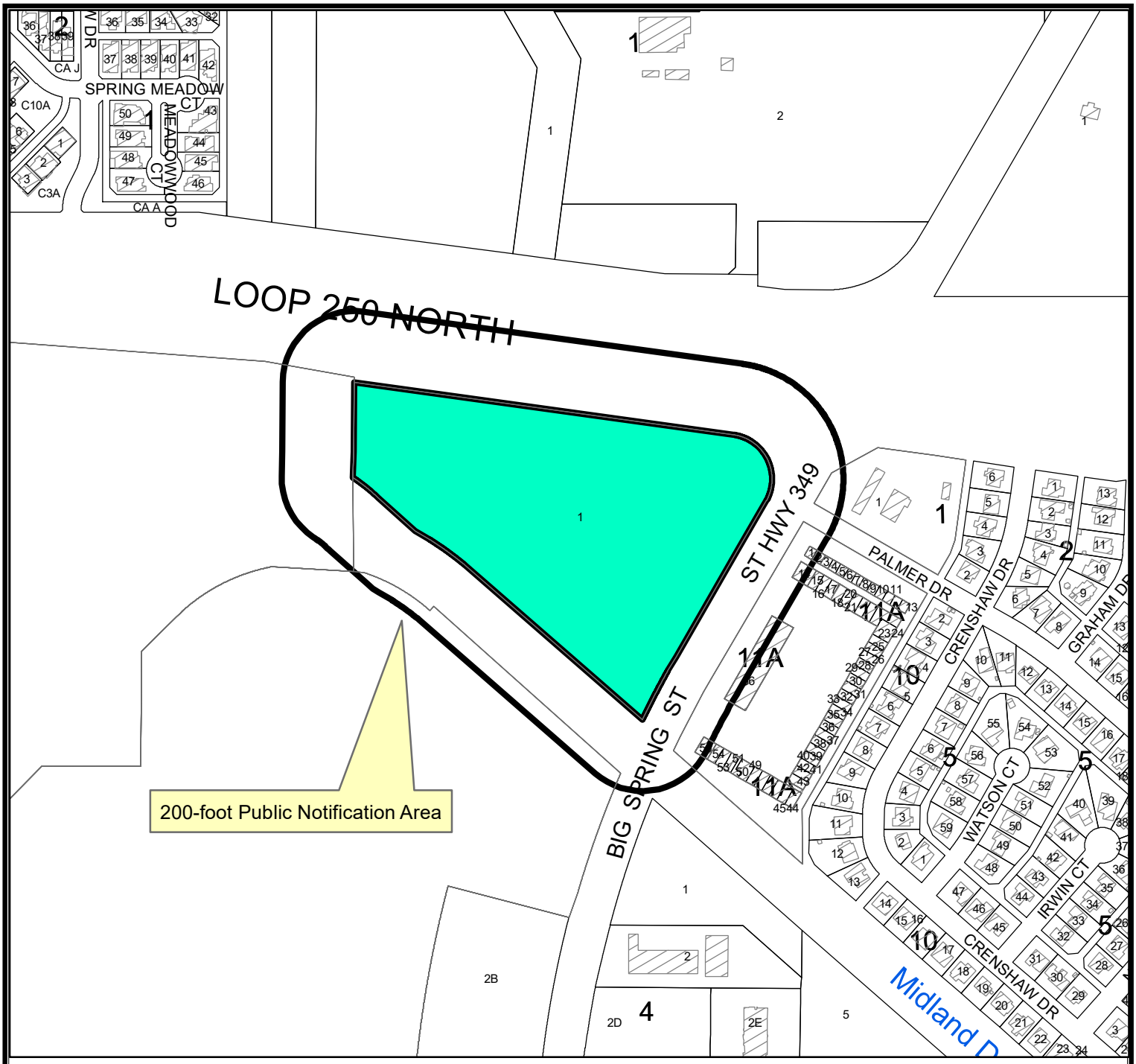
Subscribed and sworn to before me, this 9th day of June, 2021, to certify which witness my hand and seal of office.

DALIA SALINAS
My Notary ID # 128541568
Expires March 9, 2023

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
☐ Property Owner Authorization	☐ Dimensioned Site Plan
☐ Application Fee	☐ Site Plan in Digital Format (PDF/JPEG)
Check #_____	
Received By:	Date:

****Application will not be considered for scheduling until reviewed by a planner.****



LOCATION MAP

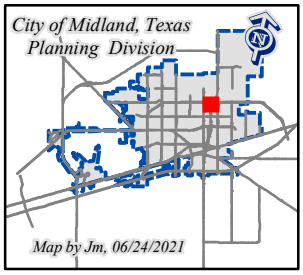
SUDwo-21-0022 **Scale: 1" = 400'**

Consider a request by Christopher Sean Elphick for a Specific Use Designation without term for a Mobile Food Vendor Park on Lot 1, Block 1, Claydesta Plaza North, Section 4, City and County of Midland, Texas.

Generally located on the southwest corner of the intersection of North Big Spring Street and West 250 Loop North. (Council District 3)

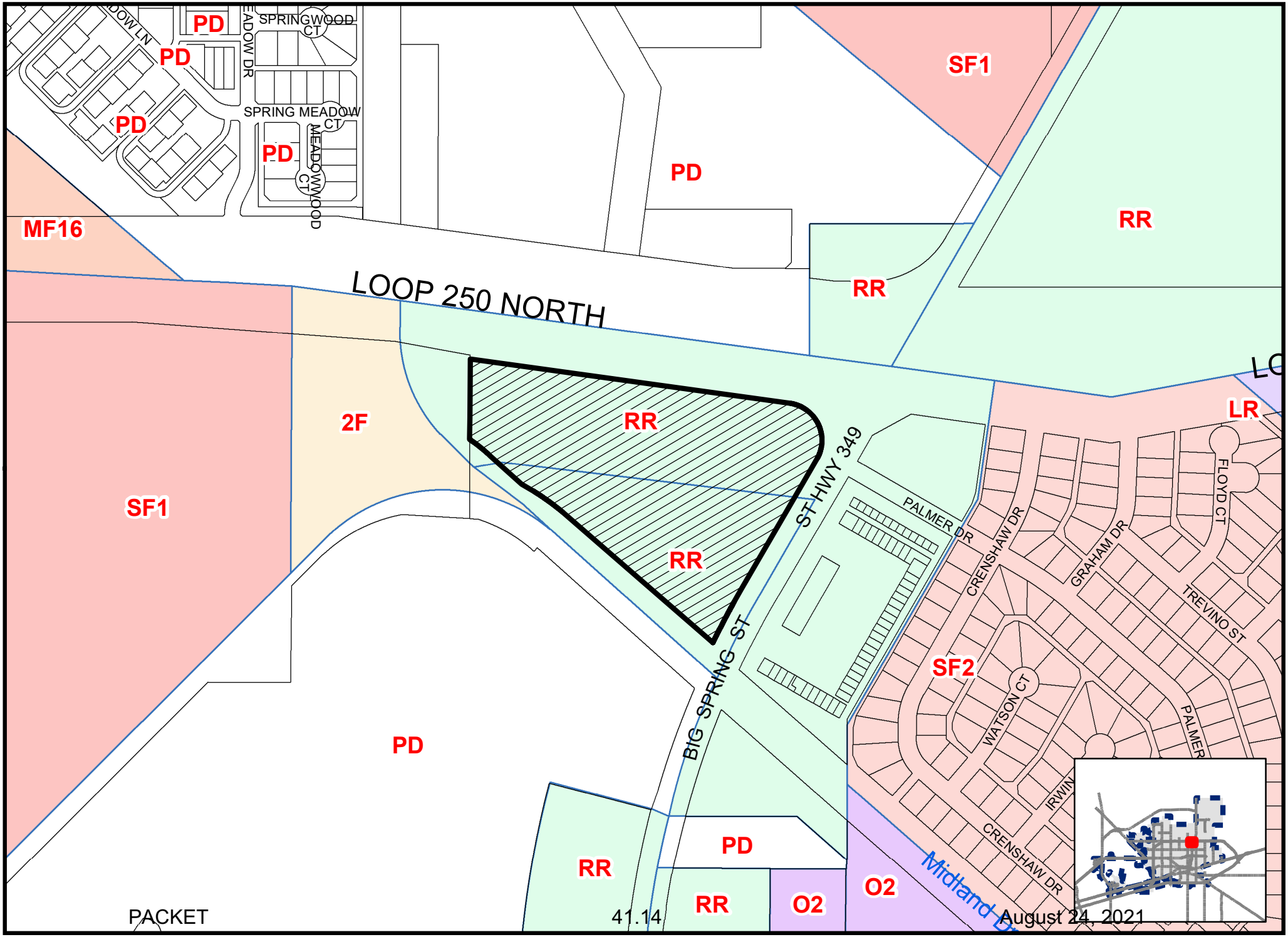
LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



PACKET 41.13

August 24, 2021



Map By JM, 06/29/2021

SUDwo-21-0022

Scale: 1" = 400'

ZONING MAP

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HAYASHI
JAPANESE HIBACHI & SUSHI


SOUTHBOUND
TRUCKS MUST
USE LOOP 250
ENTRANCE



City Council Meeting

Item Number: 42

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Elizabeth Shaughnessy, Planning Division Manager

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOT 1, BLOCK 1, CLAYDESTA PLAZA NORTH, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH BIG SPRING STREET AND WEST LOOP 250 NORTH), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A MOBILE FOOD VENDOR PARK FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION (DISTRICT 3) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Christopher Sean Elphick, is requesting a Specific Use Designation with Term for the sale of all alcoholic beverages, for on premises consumption, in a proposed mobile food vendor park located at 4401 North Big Spring Street.

Recommended City Council Action:

Approve

Fiscal Impact:

Processing this request does not require any City funds.

Discussion:

Current Zoning:

RR, Regional Retail District.

Surrounding Zoning and Land Use:

The property north is zoned PD, Planned Development District for a Recreation Center and the location of MISD softball fields. The property to the east is zoned RR, Regional Retail District and the location of a shopping center. The property to the south is zoned PD, Planned Development District for an Office Center and the location of vacant land. The property to the west is zoned 2F, Two-Family Dwelling District and the location of the Midland Executive Airpark.

Analysis:

The property is located in the RR, Regional Retail District. This zoning district permits the sale and on premises consumption of alcoholic beverages, with the approval of a Specific Use Designation with Term.

The site is located at 4401 N Big Spring St, and has an expired Specific Use Designation for the sale and on premises consumption of alcoholic beverages. The serviceable area of the mobile food vendor park will have a maximum area of 11,089 square feet. The site will have adequate parking and restroom facilities upon completion of construction. The applicant is requesting alcohol service hours as the following:

Monday through Sunday, 11:00 a.m. to 12:00 a.m. (midnight)

The proposed hours of operation are the same.

Per Midland City Code 5.4.4. –Prohibited place of business

The sale of any alcoholic beverage is hereby prohibited by any person, where the place of business of any such dealer is within 300 feet of any church, public school, public school ground, athletic stadium used by any public school or public hospital, the measurements to be along the property lines of the street fronts and from front door to front door and in a direct line across intersections where they occur.

There are no churches, private schools, public schools, public school grounds, athletic stadium, public hospital within 300 feet measurement along the property lines of the street fronts, and from the front door in a direct line across intersection where they occur within this site.

This project has been circulated to all City departments for review. Below are the department comments.

Fire: (Approved)

Road must have 20' clear path around food truck to provide for a fire lane and access for emergency vehicles.

Engineering: (Approved)

No objection.

Transportation: (Approved)

Driveway on Big Spring St to be signed to prohibit left turn out as per original driveway approval.

No objection to zone change.

Building Code: (Approved)

No issues. Any structures constructed must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2020 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, and floodplain requirements if necessary.

Planning:

The request is in compliance with the *Tall City Tomorrow Comprehensive Plan, Chapter 6-Character Plan Goal 4,* "Encourage the development of places where Midland residents can gather and socialize to build connections" (Tall City Tomorrow page 137). The Tailgate will create a vibrant atmosphere where residents can feel relaxed and enjoy alcoholic beverages with their food.

This request was recommended for approval at the July 6, 2021 Planning and Zoning Commission meeting; therefore, staff recommends approval of the request of the Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, subject to Condition A through I.

Conditions:

A. **That the serviceable area shall be limited to approximately 11,089 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.**

B. **That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.**

C. **That the establishment shall meet all requirements of the Fire Department and Code Administration.**

D. **That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.**

E. That the days and hours of alcoholic beverages sales and consumption shall be limited to:

Monday through Sunday, from 11:00 a.m. to 12:00 a.m. (midnight).

F. That signage will be placed at the driveway which prohibits a left turn on to North Big Spring Street.

G. That the applicant shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on premises consumption to ensure that the conditions of this permit are satisfied.

H. That in accordance with Section 9.07.E.3 of the zoning ordinance, the restaurant shall be in operation within 120 days from the final adoption date of this ordinance.

I. That a 20 foot wide fire lane shall be provided around the food trucks.

Letters of Objection:

As of August 19, 2021, staff has received two letter of objection.

Attachments:

Application
Site Plan (Exhibit A)
Maps

Robert Patrick

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR LOT 1, BLOCK 1, CLAYDESTA PLAZA NORTH, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH BIG SPRING STREET AND WEST LOOP 250 NORTH), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A MOBILE FOOD VENDOR PARK FOR ON-PREMISES CONSUMPTION; MAKING SAID DESIGNATION SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter, the City Code, and State law, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by granting a Specific Use Designation With Term for Lot 1, Block 1, Claydesta Plaza North, Section 4, City and County of Midland, Texas (the "Property"), as set out hereinafter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to grant the Property a Specific Use Designation With Term for the sale of all alcoholic beverages in a mobile food vendor park (the "Establishment") for on-premises consumption, together with the uses permitted in the present RR, Regional Retail District.

SECTION TWO. That the Property shall be subject to the following conditions and

restrictions:

A. That the serviceable area of the Establishment shall be limited to approximately 11,089 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.

B. That the sale and on-premises consumption of alcoholic beverages shall conform to all applicable state and local laws.

C. That the days and hours of operation of the Establishment shall be limited to Monday through Sunday from 11:00 a.m. to 12:00 a.m. (midnight).

D. That the occupancy of the Establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.

E. That the Establishment shall meet the requirements of the Fire Department and the Code Administration Division.

F That the operator of the Establishment shall place a sign at the driveway notifying drivers that a left turn onto North Big Spring Street is prohibited.

G. That the operator of the Establishment shall provide a 20-foot-wide fire lane around the mobile food vendors.

H. That the operator of the Establishment shall obtain a Certificate of Occupancy prior to the commencement of the sale of alcoholic beverages for on-premises consumption to ensure that the conditions of this Specific Use Designation With Term are satisfied.

I. That in accordance with Section 11-1-9.07.E.3 of the City Code, the Establishment shall be in operation within 120 days from the final adoption date of this ordinance.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more

sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT 'A'



OCCUPANCY: **400 PEOPLE**
GAME AREA: 2,590 SQFT
* 1 PERSON PER 50SQFT
* **52 PEROPLE**
FIXED SEATING: 8,499 SQFT
* 24' OF BENCH SEATING = 1 PERSON
* 6' PICNIC TABLE = 6 PEOPLE
* 58 PICNIC TABLES
* **348 PEOPLE**

SEATING:
* FIXED SEATING A1: 3,720 SQFT
* FIXED SEATING A2: 2,160 SQFT
* FIXED SEATING A3: 1,850 SQFT
* FIXED SEATING A4: 769 SQFT
* GAME AREA SEATING: 2,590 SQFT
* *TOTAL FIXED SEATING AREA: **11,089 SQFT***

RESTROOMS:
* 2 EXISTING RESTROOMS
* 4 NEW RESTROOMS

PARKING LOT:
* SPACES: 10'X22'
* DRIVES: 30' WIDE
* **NUMBER OF SPACES:100**

ALCOHOL SERVICEABLE AREA

EXISTING BUILDING

A PRELIM. SITE PLAN
100 PARKING SPACES, 4 H.C. SPACES N. T. S.

PREPARED BY:
JM DRAFTING & DESIGN
Email: jmertink@gmail.com Cell: (432) 425-5297

NEW SITE PLAN FOR:
THE TAILGATE
4401 N BIG SPRING ST
MIDLAND TEXAS

© COPYRIGHT, JM DRAFTING & DESIGN, 2021 FEDERAL COPYRIGHT PROTECTION EXTENDING TO DERIVATIVE PLANS, IS APPLICABLE TO INTENTIONAL AND UNINTENTIONAL INFRINGEMENTS AND PROVIDES FOR SPECIFIC STATUTORY DAMAGES BOTH CIVIL AND CRIMINAL. UNAUTHORIZED REPRODUCTION IN ANY FORM IS STRICTLY PROHIBITED AND FORBIDDEN.

DATE:
AUG. 02, 2021
DWG2021/SEANELPHC/THETAILGATE-A1
JOB # JM21072

August 24, 2021

MIDLAND
Planning Division

Specific Use Designation with Term for the Sale of Alcoholic Beverages for On-Premises Consumption

Project Number: SUP-21-0105

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Christopher Sean Elphick		Phone (432) 553-9250 Email sean_elphick@yahoo.com	
Address 3209 Cimmaron Ave	City Midland	State TX	Zip 79705
Property Owner Printed Name: John Elphick		Phone (432) 553-9253 Email jelphick@scirealty.com	
Address 500 W. Illinois Ste 200	City Midland	State TX	Zip 79701
Representative *(if different from Applicant or Property Owner)* Firm: Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 4401 N Big Spring St. Midland, TX 79705

Business Name: The Tailgate

Legal Description
Lot: Block: 39 T 15 Subdivision:

Current Zoning:

Reason for Request: Expired SUP / expanding seating / adding Bar

Type of Business *(restaurant, bar, lounge, nightclub, etc.)*: Food Truck Park

Proposed/Current Days and Hours of Operation: Mon - Sun 11am - 12am

Proposed Days and Hours of Alcohol Service: Mon - Sun 11am - 12am

Total Square Footage of Business:

Square Footage of Alcohol Serviceable Area: 7,362.5 sqft

Restroom Fixtures:	*Men*	**Toilets/Urinals:** 1 / 1	**Bathroom Sinks:** 1
	Women	**Toilets:** 1	**Bathroom Sinks:** 1

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Dimensioned Floor Plan showing:
  - Seating
  - Exits
  - Restrooms
  - Kitchen (if applicable)
  - Total Square Footage
  - Serviceable Square Footage
- Dimensioned Site Plan showing:
  - Parking
  - Business Footprint
- Digital Copies of Floor Plan & Site Plan (PDF/JPEG)

Signatures

Applicant (signature):	Date: 6/9/21
Applicant (printed): Christopher Sean Elphick	
Property Owner (signature):	Date: 6/9/21
Property Owner (printed) :	

The Specific Use Designation with Term for the sale of all alcoholic beverages shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

_____

Authorized Agent (*signature*)

Subscribed and sworn to before me, this _____ day of _____, 20 ___, to certify which witness my hand and seal of office.

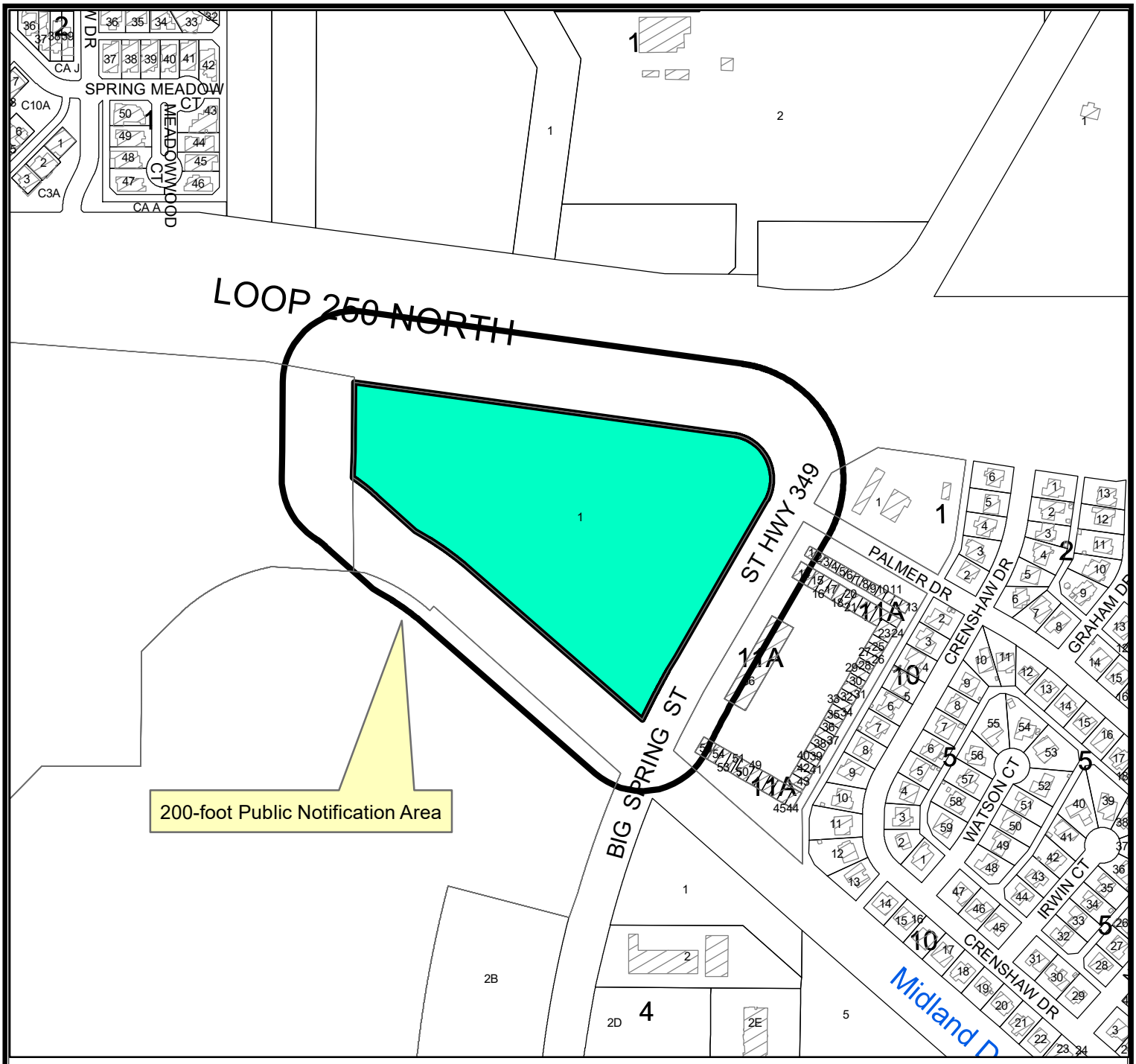
_____

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

****Application will not be considered for scheduling until reviewed by a planner.****

FOR OFFICE USE ONLY	
☑ Property Owner Authorization	☐ Dimensioned Floor Plan
☑ Application Fee	☐ Site Plan
Check # Credit Card	☐ Plans in Digital Format (PDF/JPEG)
Received By:_____	Date:_____

****Application will not be considered for scheduling until reviewed by a planner.****



LOCATION MAP

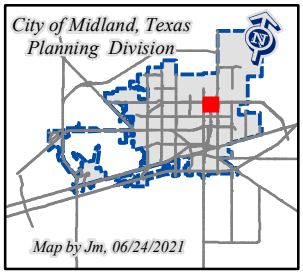
SUD-21-0105 **Scale: 1" = 400'**

Consider a request by Christopher Sean Elphick for a Specific Use Designation with term for the sale of all alcoholic beverages for on premises consumption in a Mobile Food Vendor Park on Lot 1, Block 1, Claydesta Plaza North, Section 4, City and County of Midland, Texas.
Generally located on the southwest corner of the intersection of North Big Spring Street and West 250 Loop North. (Council District 3)

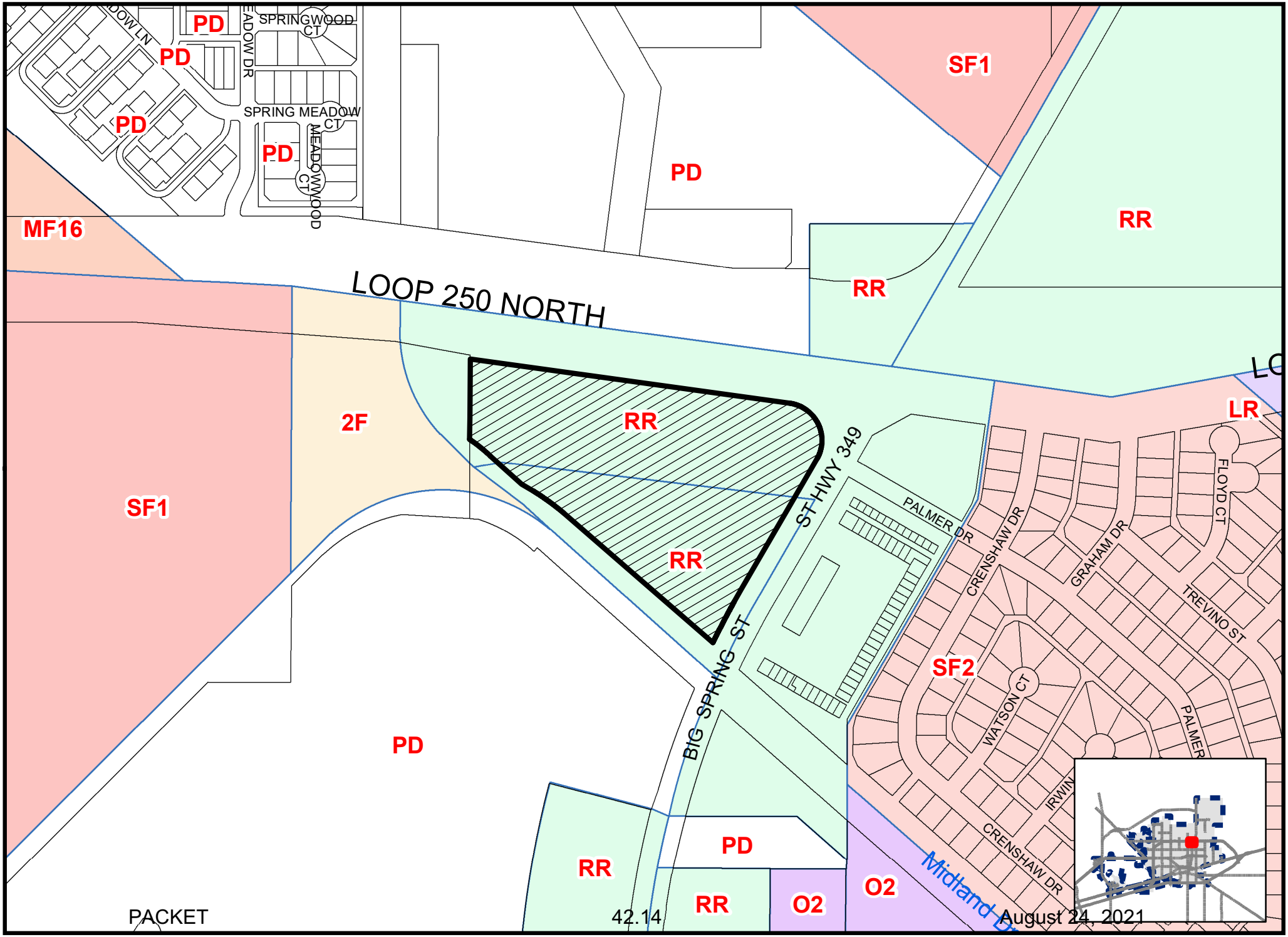
PACKET 42.13

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



August 24, 2021



Map By JM, 06/29/2021

SUD-21-0105

Scale: 1" = 400'

ZONING MAP

© THE CITY OF MIDLAND - 2020: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.




HAYASHI
JAPANESE HIBACHI & SUSHI


SOUTHBOUND
TRUCKS MUST
USE LOOP 250



MIDLAND
Planning Division

CALTAM LP
4400 N BIG SPRING ST STE C-24
MIDLAND TX 79705-4623

PUBLIC NOTICE

The **City Council** of the City of Midland, Texas, will hold a public hearing at **10:00 a.m.** on **Tuesday, August 24, 2021** in the Council Chamber, City Hall, 300 N. Loraine Street, Midland, TX 79702 and via videoconference, on a request by **Christopher Sean Elphick,** for a **Specific Use Designation with Term** on the following described property:

LEGAL DESCRIPTION: Lot 1, Block 1, Claydesta Plaza North, Section 4, City and County of Midland, Texas.

LOCATION: Generally located on the southwest corner of the intersection of North Big Spring Street and West 250 Loop North. (Council District 3)

CURRENT ZONING: RR, Regional Retail District

SPECIFIC USE: For the sale of all alcoholic beverages for on-premises consumption, at a Mobile Food Vendor Park.

Not to be considered a part of the Public Notice: 1) See reverse side for location map; 2) In order to be considered as an official objection to this request a response **must be submitted by mail or delivered *in writing*** to the Planning Division at the address listed above. An official objection may be filed by completing this notice and returning it to the address listed above.

I object to this request ✓

Comments:
Please see additional letter

Required Information:
Tammy Alvis — Property Owner's Signature
Tammy Alvis — Printed Name
4400 N Big Spring Suite C-24, Midland, TX 7970 — Property Address (No P. O. Boxes)

If any further information is desired, please contact the Planning Division at (432) 685-7400. Si ud. desea más información en Español sobre esta cuestión, llame al : (432) 685-7400.

Notices Mailed: 6
Date Mailed: August 6, 2021
Case Number: SUD-21-0105
Case Name: The Tailgate
JM Planner's Initials

Elizabeth Shaughnessy
Planning Division Manager
Department of Development Services

The meeting facility is accessible to disabled persons. A wheelchair entry ramp is located at the southeast entrance to City Hall. A parking space designated for use by disabled persons is available near the southeast entrance doors. Any disabled person needing special accommodations or hearing impaired persons wishing to have an interpreter should request services through the Administrative Services Department at least 48 hours prior to the scheduled meeting by contacting Compliance Coordinator for the City of Midland, at (432) 685-7251. If communication via TDD is required, please call 1-800-735-2989.
Videoconference information can be found by longing on to www.midlandtexas.gov/967/PrimeGov-Meetings.

www.MidlandTexas.gov
Planning Division ▪ 300 N. Loraine, Midland TX 79702 ▪ 432-685-7400

Mission Square objects to the sale of alcohol until midnight, how is he going to control how much his customers drink. Do all the food trucks serve alcohol or does just one? We all need to be held accountable for what takes place in our establishment especially when it comes to the sale of alcohol. How is he going to control if someone brings their own beer/liquor, it sounds like this is going to be an outside bar where people can come and go without going thru a door or gate to make sure they are capable of driving home or the next party. We already have a bar in our parking lot which on any given night bar patrons litter our parking lot with beer bottles and vomit, they back into our building and do burn outs in our parking lot. This behavior greatly concerns us. What we don't want to happen is when the party ends at midnight they come across the street to Rockin Rodeo and continue to party and end up killing someone on the way home. We have been drug into numerous law suits because the bar overserves their customers and they end up hurting themselves or someone else on the way home. We do not own the building Rockin Rodeo is occupying we just share the parking lot with them.
Thank you for your consideration,

Tammy Alvin

Tammy Alvin
Mission Square Shopping Center

Andrews man awarded $5.5M

Daniel Rawls filed a lawsuit against La Fogata Mexican Grill

By Caitlin Randle
CRANDLE@MRT.COM

An Andrews man was awarded $5.5 million on July 27 after he filed a civil suit against La Fogata Mexican Grill, claiming the restaurant and bar was negligent when they overserved him alcohol, which he alleges later caused him to be injured in an altercation with another customer.

Daniel Rawls filed a lawsuit through his attorney, Odessa-based Lane Haygood, on May 17 regarding an incident at the 708 E. Broadway St. restaurant (in Andrews) that occurred in May of 2019, according to court records.

Rawls was awarded a total of $5.5 million for five claims, including premises liability, negligence and damages arising from foreseeable criminal conduct. The Andrews County 109th District Court ruled in Rawls' favor in a default judgment, meaning the owner of La Fogata did not respond to the suit or attend the hearing. The court did not rule on whether Rawls' claims were true.

After drinking at La Fogata on May 21, 2019, Rawls was in an altercation with another customer, Robert Henrickson, in the parking lot of the restaurant, according to a copy of the lawsuit. Rawls alleges he sustained a head injury during the argument with Henrickson, who had also been drinking heavily.

The lawsuit states La Fogata, its owner Lourdes Galindo and an unknown bartender are responsible for the injury because they allowed the two men to drink excessively and leave the

Suit continues on A4

SUIT

From page A1

restaurant together. The restaurant was also negligent by not calling an ambulance after Rawls was injured, according to the suit.

The bartender, identified in the suit as John and/or Jane Doe, was not adequately trained by Galindo to detect when patrons had been overserved, according to the suit. Rawls also alleges that Galindo failed to ensure the parking lot didn't include obstacles "that would pose a tripping or falling hazard to intoxicated patrons."

Rawls sustained a "serious and debilitating" head injury after he was assaulted by Henrickson and fell over "an uneven parking lot," according to the suit.

La Fogata has 30 days to file a notice of appeal if they intend to seek a new trial, according to the Texas Rules of Appellate Procedure. Rawls allegedly has a history of excessive drinking. Andrews jail records show he was arrested twice, in February 2019 and May of this year, on charges of public intoxication.

From: Joseph Marynak
To: Elizabeth Shaughnessy
Subject: FW: The Tailgate
Date: Thursday, August 12, 2021 2:58:50 PM

From: Callie Stevens <callieshouses@gmail.com>
Sent: Thursday, August 12, 2021 12:15 PM
To: Joseph Marynak <jmarynak@midlandtexas.gov>
Subject: The Tailgate

Mr. Marynak,

I am one of the owners of Mission Square Shopping Center.
We are directly across Big Spring street from the proposed
The Tailgate outdoor venue.
I do not feel allowing food and alcohol sales until 12 am is good for the location.

Several reasons why:

1. Who will regulate the sale of alcohol at The Tailgate versus patrons just bringing their own alcohol? Will there be security checking cars as they enter?

2. Will there only be one vendor selling alcohol?
If not, who will be held accountable if someone is overserved?
We have been sued multiple times because drunks pass the accountability off to the bar owner.
We just own the property, not the bar.

3. What will the stage be used for? Concerts will disturb our surrounding neighborhood.

4. We already have issues with our parking lot filling with Rockin Rodeo patrons after hours.
They make a mess, speed around , and cause damage to our buildings. This will bring more people into our parking lot who have been drinking once The Tailgate closes.
As the property owner, I should not have to assume liability from across the street.

5. With the shortage of police officers in our city, issuing yet ANOTHER late hour permit for alcohol sales is irresponsible and unsafe for our citizens.

Please let me know you have received .
I have a few recommendations that may be agreeable.

--
Callie Stevens
Owner-Mission Square
Broker
Jan Melton & Associates
Office: 432-682-0000

Cell: 432-967-1059

CAUTION: This email originated from outside your organization — exercise caution when opening attachments or clicking links, especially from unknown senders.

City Council Meeting

Item Number: 43

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Elizabeth Shaughnessy, Planning Division Manager

Subject: RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A VENDOR MARKET AND CONCERT ON LOT 1A, BLOCK 54, ALL OF BLOCK 55, A 0.57-ACRE PORTION OF WEST WALL STREET RIGHT-OF-WAY, A 0.57-ACRE PORTION OF NORTH COLORADO STREET RIGHT-OF-WAY, AND A 0.57-ACRE PORTION OF THE WEST TEXAS AVENUE RIGHT-OF-WAY, ALL ADJACENT TO BLOCK 55, ALL OUT OF ORIGINAL TOWN ADDITION, SECTION 14, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF NORTH COLORADO STREET AND WEST TEXAS AVENUE) SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

Consider a request by Lauren Johnston for approval of a Temporary Land Use Permit for a Vendor Market and Street Concert.

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds are required to process this request.

Discussion:

Lauren Johnston is requesting a Temporary Land Use Permit for a vendor market event at Centennial Park, as shown on the site plan (Exhibit A). The proposed dates and times of the event are Saturdays, October 2, 2021, November 6, 2021, December 4, 2021, January 8, 2022, February 5, 2022, March 5, 2022, April 2, 2022, as well as Friday, December 3, 2021 and Sunday, December 5, 2021 from 8:00 a.m. to 10:00 p.m

This event will consist of a market, live music, and activity spaces.The Centennial Park restrooms will be open and avalable throughout all operating hours of the event.

This request has been circulated to all pertinent City departments for review. Below are the departments's comments:

Engineering: (Approved with Conditions)

Comply with Temporary Traffic Control Procedure per Traffic's comments.

Otherwise, no objection.

Transportation: (Approved with Conditions)

That the Applicant shall obtain approval from the Traffic Operations Division of a traffic control plan submitted by a qualified barricade company for the temporary closures of the portions of rights-of-way on which the Event will be operated, and the Event shall be operated in accordance with said traffic control plan. To the extent that portions of rights-of-way are closed during the operation of the Event, the intersections at each end of any such closure shall remain unobstructed and available for vehicular pedestrian traffic. The Applicant shall coordinate with businesses and property owners whose access may be impacted by the Event to ensure that access is available for such businesses and property owners during the operation of the Event.

That Event-related equipment, materials, and traffic control devices:

1.May be placed on the Property beginning at 10:00 p.m. on the day before each day of operation of the Event; provided, however, that the placement of equipment, materials, and traffic control devices on right-of-way shall be in accordance with the approved traffic control plan; and

2.Shall be completely removed from the Property no later that 5:00 a.m. on the day after each day of operation of the Event.

Fire: (Approved with Conditions)

Access to fire protection supply connections may not be blocked

Building Code: (Approved)

No objections. Sanitary facilities must be easily located by the public as well as maintained properly. Any tents, canopies, or trailers must be erected according to manufacturer's installation instructions and tied down to prevent any damage caused by adverse weather

Planning:

This temporary land use permit for a fundraising event complies with Goal #2 of Chapter 7 of the Tall City Tomorrow Comprehensive Plan, which is to "create a 'cultural core' in Downtown Midland that is a living, working, and entertainment destination," as it creates an opportunity for an entertainment event that residents and visitors of Midland can enjoy.

Based on staff observations presented to the Council on June 7, 2021, staff recommends allowing the sale and on-premises consumption of alcohol, creating some form of age verification system, creating a new site plan to include Centennial Park, requiring that the event meet contact agreements and requirements of Centennial Park, and post wayfinding signage for attendees.

Staff recommends that if this temporary land use permit is approved, it should be subject to conditions A through N.

A. That the day and hours of the Vendor Market and Street Concert shall be limited to

Saturdays, October 2, 2021, November 6, 2021, December 4, 2021, January 8, 2022, February 5, 2022, March 5, 2022, April 2, 2022, from 8:00 a.m. to 10:00 p.m.;

Friday, December 3, 2021, from 8:00 a.m. to 10:00 p.m.;

Sunday, December 5, 2021, from 8:00 a.m. to 10:00 p.m.

B. That the operation of the Event shall conform to the site plan, which is attached hereto as "Exhibit A" and incorporated herein for all purposes.

C. That the Applicant shall provide a minimum of 20 restrooms that shall be made available for use during all operating hours of the Event.

D. That the applicant shall provide:

1. **A minimum of two peace officers during all operating hours of the Event; and**

2. **One additional peace officer per 100 Event attendees who are on the Property at any time during the operating hours of the Event.**

E. That the following uses are specifically permitted:

1. **That live music shall be allowed during all operating hours of the Event.**

2. **The sale of alcoholic beverages for on-premises consumption shall be allowed during all operating hours of the Event in compliance with state and local laws and Subsection L below.**

F. That the Applicant shall obtain approval from the Traffic Operations Division of a traffic control plan submitted by a qualified barricade company for the temporary closures of the portions of rights-of-way on which the Event will be operated, and the Event shall be operated in accordance with said traffic control plan. To the extent that portions of rights-of-way are closed during the operation of the Event, the intersections at each end of any such closure shall remain unobstructed and available for vehicular pedestrian traffic. The Applicant shall coordinate with businesses and property owners whose access may be impacted by the Event to ensure that access is available for such businesses and property owners during the operation of the Event.

G. That Event-related equipment, materials, and traffic control devices:

1. **May be placed on the Property beginning at 10:00 p.m. on the day before each day of operation of the Event; provided, however, that the placement of equipment, materials, and traffic control devices on right-of-way shall be in accordance with the approved traffic control plan; and**

2. **Shall be completely removed from the Property no later that 5:00 a.m. on the day after each day of operation of the Event.**

H. That all tents, canopies, and booths must be erected according to manufacturer's installation instructions including tie downs that will resist our local estimated wind load.

I. That the event shall comply with all requirements of the Fire Code; the applicant shall call for an inspection by the Fire Marshal prior to commencing the event.

J. That the Code Administration Division and the Planning Division shall be notified no later than 48 hours preceding the event.

K. That the applicant shall obtain approval from the Solid Waste Department for a refuse collection and clean-up plan prior to the Event.

L. That the Applicant shall be responsible for coordinating with the Midland Downtown Park Conservancy (the "Conservancy") to ensure that the Conservancy's rules and conditions regarding the use of Centennial Park

for the Event are satisfied.

M. That Lauren Johnston shall be responsible for ensuring that the conditions of this permit are observed.

Letters of Objection:

As of August 19, 2021, staff has not received any letters of objection.

Attachments:

Site Plan (Exhibit A)
Application
Maps

Robert Patrick

City Manager's Office

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A VENDOR MARKET AND CONCERT ON LOT 1A, BLOCK 54, ALL OF BLOCK 55, A 0.57-ACRE PORTION OF WEST WALL STREET RIGHT-OF-WAY, A 0.57-ACRE PORTION OF NORTH COLORADO STREET RIGHT-OF-WAY, AND A 0.57-ACRE PORTION OF THE WEST TEXAS AVENUE RIGHT-OF-WAY, ALL ADJACENT TO BLOCK 55, ALL OUT OF ORIGINAL TOWN ADDITION, SECTION 14, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF NORTH COLORADO STREET AND WEST TEXAS AVENUE) SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS

WHEREAS, pursuant to Section 11-1-4.05 of the City Code of Midland, Texas, Lauren Johnston (the "Applicant") has applied for authorization to temporarily use Lot 1A, Block 54, all of Block 55, a 0.57-acre portion of West Wall Street right-of-way, a 0.57-acre portion of North Colorado Street right-of-way, and a 0.57-acre portion of the West Texas Avenue right-of-way, all adjacent to Block 55, all out of Original Town Addition, Section 14, City and County of Midland, Texas (the "Property") for a vendor market and concert (the "Event"); and

WHEREAS, the Council finds and determines that such temporary use shall be allowed;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the Applicant is hereby authorized by the City Council to temporarily use the Property for the Event subject to the following conditions and restrictions:

A. That the days and hours of operation of the Event shall be limited to the following:

October 2, 2021, November 6, 2021, December 3, 2021, December 4, 2021, December 5, 2021, January 8, 2022, February 5, 2022, March 5, 2022, and April 2, 2022, from 8:00 a.m. to 10:00 p.m.

B. That the operation of the Event shall conform to the site plan, which is attached hereto as Exhibit "A" and incorporated herein for all purposes.

C. That the Applicant shall provide a minimum of 20 restrooms that shall be made available for use during all operating hours of the Event.

D. That the Applicant shall provide:

1. A minimum of two peace officers during all operating hours of the Event; and

2. One additional peace officer per 100 Event attendees who are on the Property at any time during the operating hours of the Event.

E. That the following uses are specifically permitted:

1. Live music shall be allowed during all operating hours of the Event.

2. The sale and on-premises consumption of alcoholic beverages shall be allowed during all operating hours of the Event in compliance with state and local laws and Subsection L below.

F. That the Applicant shall obtain approval from the Traffic Operations Division of a traffic control plan submitted by a qualified barricade company for the temporary closures of the portions of rights-of-way on which the Event will be operated, and the Event shall be operated in accordance with said traffic control plan. To the extent that portions of rights-of-way are closed during the operation of the Event, the intersections at each end of any such closure shall remain unobstructed and available for vehicular and pedestrian traffic. The Applicant shall coordinate with businesses and property owners whose access may be impacted by the Event to ensure that access is available for such businesses and property owners during the operation of the Event.

G. That Event-related equipment, materials, and traffic control devices:

1. May be placed on the Property beginning at 10:00 p.m. on the day before each day of operation of the Event; provided, however, that the placement of equipment, materials, and traffic control devices on rights-of-way shall be in accordance with the approved traffic control plan; and

2. Shall be completely removed from the Property no later than 5:00 a.m. on the day after each day of operation of the Event.

H. That each tent, canopy, and booth shall be erected according to its manufacturer's instructions, including the use of tie-downs that will resist the local estimated wind load.

I. That the Event shall be operated in compliance with all requirements of the Fire Code. The Applicant shall call for an inspection by the Fire Marshal prior to commencing operation of the Event.

J. That the Applicant shall obtain approval from the Solid Waste Department for a refuse collection and clean-up plan prior to operation of the Event.

K. That the Code Administration Division and the Planning Division shall be notified no later than 48 hours preceding operation of the Event.

L. That the Applicant shall coordinate with the Midland Downtown Park Conservancy (the "Conservancy") to ensure that the Conservancy's rules and conditions regarding the use of Centennial Park for the Event are satisfied.

M. That the Applicant shall be responsible for ensuring that the conditions herein are observed and satisfied.

SECTION TWO. That the City Council reserves at all times the full right and power to revoke said temporary use for violation of any of its terms or any misrepresentations contained in the application, after a hearing of which the holder of said temporary use has been given at least one (1) day notice.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2021, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

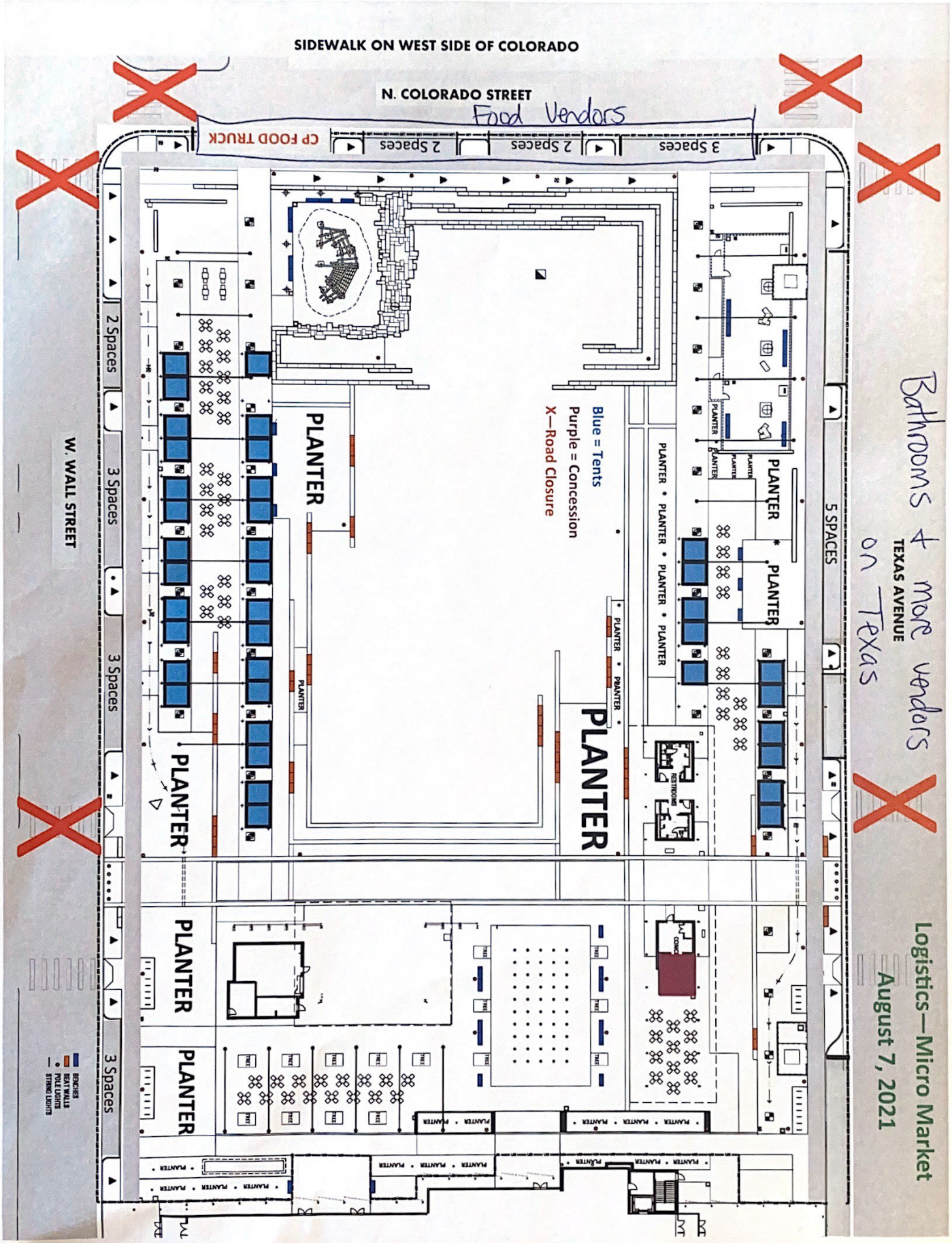
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"



BARRICADES VENDOR TENTS LIVE BAND FOOD VENOR

MIDLAND Planning Division

Temporary Land Use Application

Project Number: TLU-21-0087

Case Number: _____

Event Name: Lo. Street Market

Applicant *(if acting as Agent, see affidavit on page 2)*		Phone (432) 296-2727	
Printed Name: Lauren Johnston		Email micromarketmidland@gmail.com	
Address 3406 Sinclair Ave	City Midland	State TX	Zip 79707

Property Owner		Phone ( )	
Printed Name: City of Midland		Email	
Address	City	State	Zip

Representative *(if different from Applicant or Property Owner)*		Phone ( )	
Firm: _____		Email	
Printed Name:			
Address	City	State	Zip

Street Address:

Legal Description 200 W Wall + 200 W Texas + 100 N Colorado
Lot: Block: Subdivision:

Current Zoning:

Type of Temporary Use Requested:

Description of Event: vendor market, activity space, street concert

Duration of Temporary Use: 8 AM - 10 PM (one day) 1 year day to day
If event lasts for more than (1) day and is located within any residential district or is located within 1,000 feet of any residential district, then a public hearing is required. May 29,

Proposed Days and Hours: 8 AM - 10 PM June 5, July 3, August 7, September 4, October 2, November 6, December 3, 4, 5 Jan 8, Feb 5, March 5, April 2

Will alcoholic beverages be sold? ☐ Yes ☑ No
If yes, you must comply with all Texas Alcoholic Beverage Commission (TABC) regulations for the event.

Are you requesting the temporary closure of any streets? ☑ Yes ☐ No
If yes, you must:

A. Complete the "**Special Event and Street Closure Application**", available from the Planning Division (4th Floor, City Hall), as well as submit a "**Traffic Control Plan**" to the Transportation Division (5th Floor, City Hall).
B. Provide the City with a **general liability insurance certificate**, naming the **City** as an **Additional Insured**, in the amount of one million dollars ($1,000,000) for the term of the closure.

RECEIVED
MAY 11 2021
BY: ES

Number of Peace Officers Provided: _____ *Contact the Midland Police Department to schedule off-duty police officers.*			
Type of Music (*carnival, live, etc.*): live, bluetooth speaker			
Showmobile (*portable stage*) **Requested:** ☐ Yes ☒ No		Days & Hours:	
Number of Restroom Fixtures Provided:	*Men*	**Toilets/Urinals:** 2 / 2	**Bathroom Sinks:** 2
Centennial Park has public restrooms!	*Women*	**Toilets:** 4	**Bathroom Sinks:** 2
	Unisex	**Toilets:**	**Bathroom Sinks:**

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Damage Deposit
- Clean-Up Deposit
- 1 FOLDED Copy of Site Plan*
- Digital Copies of Site Plan (PDF/JPEG)

**Should show existing buildings, parking, access arrangements, surrounding streets, activity areas, areas of alcoholic beverage sales, proposed street closures, etc.*

Signatures	
Applicant (signature): CJohnston	Date: 5-11-2021
Applicant (printed):	
Property Owner (signature):	Date:
Property Owner (printed):	
Representative (signature):	Date:
Representative (printed) :_____	

The Temporary Land Use Permit shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

****Application will not be considered for scheduling until reviewed by a planner.****

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Lauren Johnston who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Johnston
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 11th day of May, 2021, to certify which witness my hand and seal of office.

DENISE HUBBARD
NOTARY PUBLIC - STATE OF TEXAS
ID# 3312551
COMM. EXP. 06-18-2023

Denise Hubbard
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

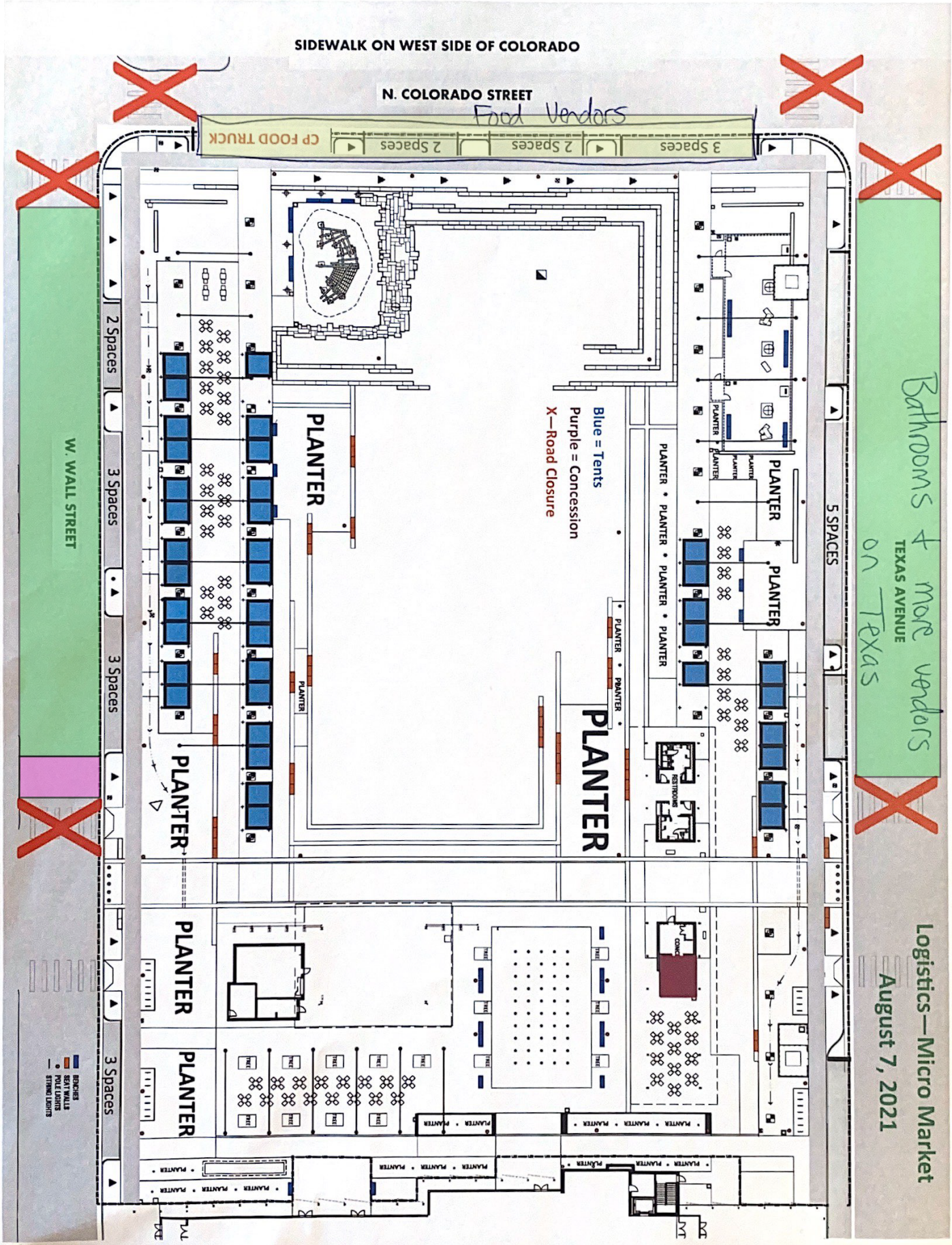
FOR OFFICE USE ONLY

☑ Property Owner Authorization	☑ Liability Insurance (Street Closure)
☑ Dimensioned Site Plan	☐ Traffic Control Plan (Street Closure)
☑ Plans in Digital Format (PDF/JPEG)	☑ Clean-Up Deposit
☑ Application Fee	Check #_____
Check #1122	☑ Damage Deposit
☐ Administrative Approval	Check #1122
Received By: ES	Date: 5/11

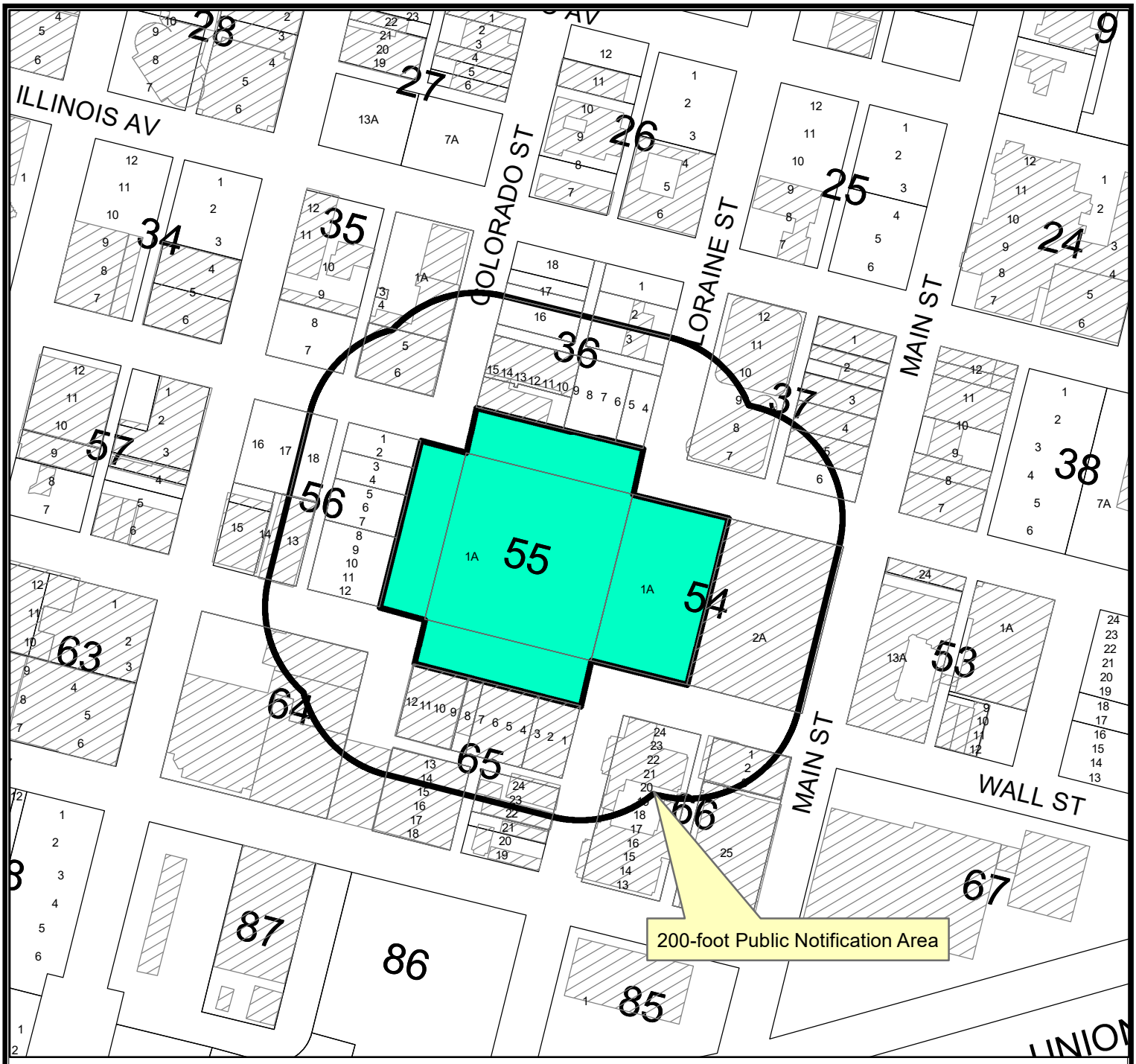
RECEIVED
MAY 11 2021
BY: ES

****Application will not be considered for scheduling until reviewed by a planner.****

EXHIBIT "A"



BARRICADES VENDOR TENTS LIVE BAND FOOD VENOR



LOCATION MAP

TLU-21-0087 **Scale: 1" = 250'**

Consider a request by Lauren Johnston for a Temporary Land Use Permit for a Vendor Market and Street Concert on Lot 1A, Block 54, all of Block 55, a 0.57 acre portion of the W Wall Street right-of-way, a 0.57 acre portion of the N Colorado Street right-of-way, and a 0.57 acre portion of the W Texas Avenue right-of-way, all out of Original Town Addition, Section 14, City and County of Midland, Texas.

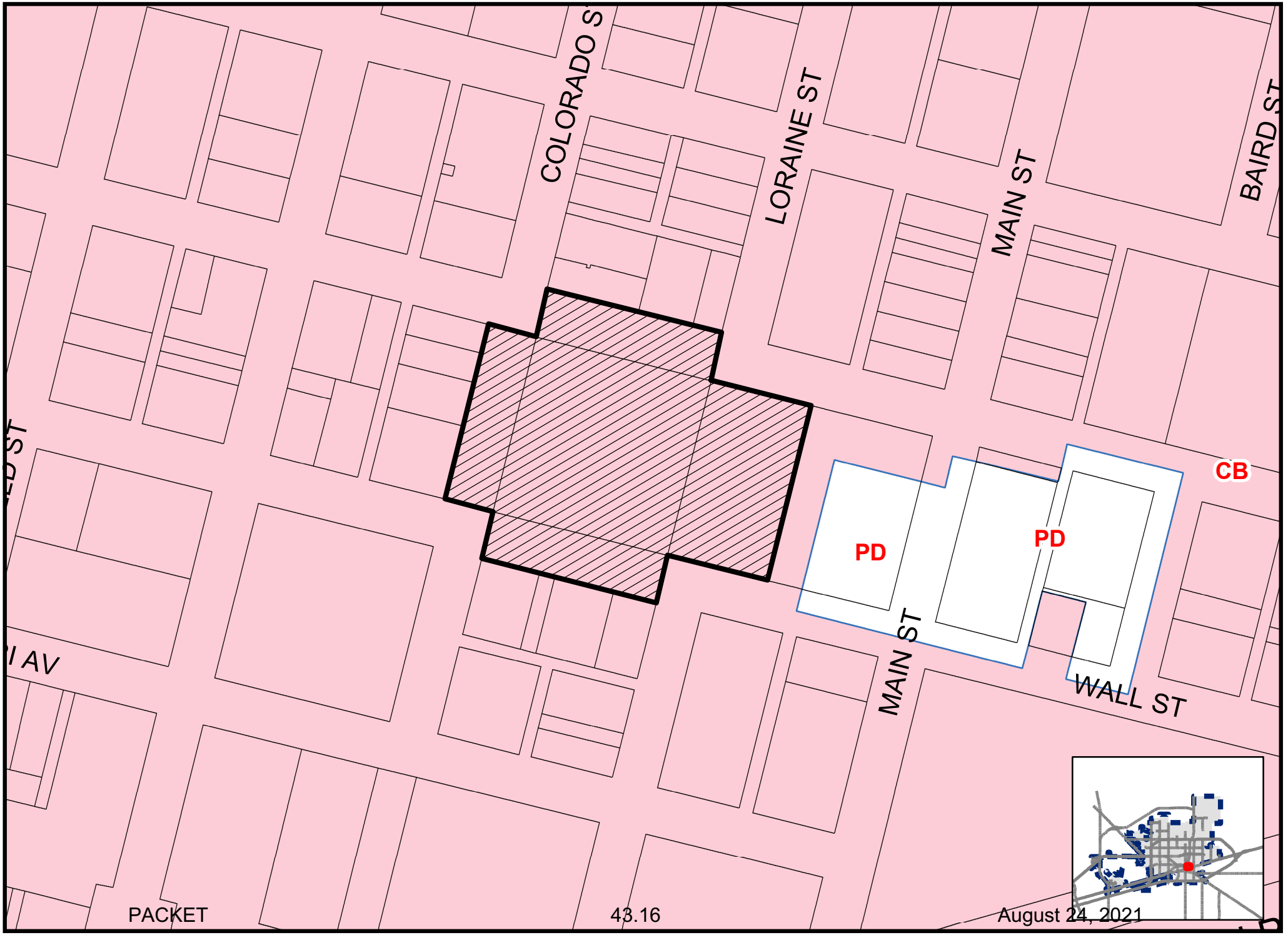
Generally located on the southeast corner of the intersection of North Colorado Street and West Texas Avenue. (Council District 2).

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



August 24, 2021



Map By JM, 05/12/2021

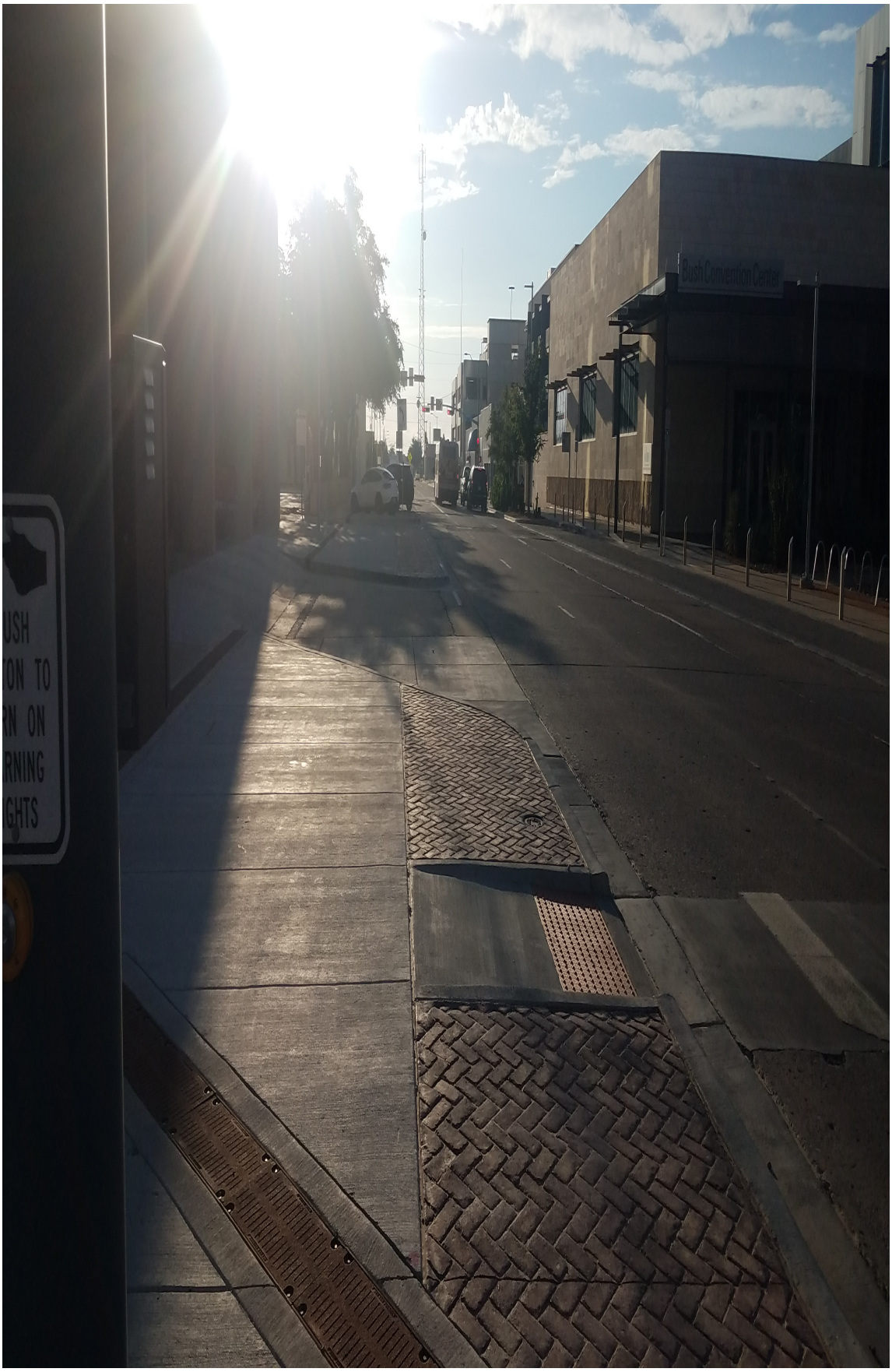
TLU-21-0087

Scale: 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2021: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.




Bush Convention Center





City Council Meeting

Item Number: 44

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Cole Furqueron,

Subject: RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A STAIR CLIMB AND CONCERT EVENT ON LOT 1A, BLOCK 54, ALL OF BLOCK 55, AND A 0.57-ACRE PORTION OF THE NORTH COLORADO STREET RIGHT-OF-WAY LOCATED ADJACENT TO BLOCK 55, ALL OUT OF ORIGINAL TOWN ADDITION, SECTION 14, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH COLORADO STREET AND WEST TEXAS AVENUE) SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

Consider a request by Lyndal Watkins for approval of a Temporary Land Use Permit for a 9/11 Memorial Event and Concert.

Recommended City Council Action:

Approve

Fiscal Impact:

No City funds are required to process this request.

Discussion:

Lyndal Watkins is requesting a Temporary Land Use Permit for a memorial fundraising event benefiting Professional Firefighters Association of Midland. The event will take place at Centennial park as shown on the site plan (Exhibit A). The proposed dates and times of the event are Friday, September 10, 2021 from 5:00 p.m. for set up, Saturday, September 11, 2021 from 8:00 a.m. to 12:00 a.m. (midnight) for the event, and Sunday, September 12, 2021 from 8:00 a.m. to 12:00 p.m. (noon) for tear down.

This event will consist of a stair climb in the morning, and a concert in the evening.

This request has been circulated to all pertinent City departments for review. Below are the departments's comments:

Engineering: (Approved with Conditions)

Comply with Transportation's comment regarding the submitting of a Temporary Traffic Control Plan.

Otherwise, no objection.

Traffic: (Approved with Conditions)

A Temporary Traffic Control Plan must be submitted by a qualified barricade company and approved by Engineering Services prior to the event or activity. The event organizer shall be responsible for coordinating with businesses or property owners whose access will be impacted.

Fire: (Approved)

No comments.

Code Compliance: (Approved)

No Oil and Gas issues.

Building Code: (Approved)

No issues. All tents, canopies, and trailers must be erected and placed according to manufacturer's installation instructions and secured to prevent damage to itself or the public in the event of adverse weather. All sanitary facilities must be reasonably maintained and easily located by the public.

Planning:

This temporary land use permit for a fundraising event complies with Goal #2 of Chapter 7 of the Tall City Tomorrow Comprehensive Plan, which is to "create a 'cultural core' in Downtown Midland that is a living, working, and entertainment destination," as it creates an opportunity for an entertainment event that residents and visitors of Midland can enjoy.

Staff recommends approval of this Temporary Land Use Permit subject to conditions A through L.

Conditions:

A. **That the operation of the Event shall conform to the attached Site Plan (Exhibit**

A).

B. That the day and hours of the Event and Concert shall be limited to

1. **Friday, September 10, 2021 from 5:00 p.m. (set up)**

2. **Saturday, September 11, 2021 from 8:00 a.m. to 12:00 a.m. (midnight) (event day)**

3. **Sunday, September 12, 2021 from 8:00 a.m. to 12:00 p.m. (noon) (tear down)**

C. That a minimum of fifteen (15) restrooms shall remain available during all operating hours of the event.

D. That a minimum of fifteen (15) peace officers shall be present during all operating hours of the event.

E. That the following uses are specifically permitted:

a. **Live music shall be allowed during all operating hours.**

b. **The sale and on-premises consumption of alcoholic beverages shall be allowed during all operating hours of the event and shall be in compliance with state and local laws.**

F. That the applicant shall obtain approval from the Transportation Division of a Traffic Control Plan for the temporary closures of N. Colorado Street between W. Texas Avenue and W. Wall Street prior to the event, and the event shall be operated in accordance with said traffic control plan. The Applicant shall coordinate with businesses and property owners whose access may be impacted by the Event to ensure that access is available for such businesses and property owners during the operation of the Event.

G. That event-related equipment, materials, and traffic control devices:

1. **May be placed on N. Colorado Street in accordance with the approved traffic control plan beginning at 5:00 p.m. on Friday, September 10, 2021.**

2. **Shall be completely removed from N. Colorado Street no later than 12:00 p.m. (noon) on Sunday, September 12, 2021.**

H. That all tents, canopies, and booths must be erected according to manufacturer's installation instructions including tie downs that will resist our local estimated wind load.

I. **That the event shall comply with all requirements of the Fire Code; the applicant shall call for an inspection by the Fire Marshal prior to commencing the event.**

J. **That the applicant shall obtain approval from the Solid Waste Department for a refuse collection and clean-up plan prior to the Event.**

K. **That the Code Administration Division and the Planning Division shall be notified no later than 48 hours preceding the event.**

L. **That Lyndal Watkins, shall be responsible for ensuring that the conditions of this permit are observed.**

Letters of Objection:

As of August 19, 2021, staff has not received any letters of objection.

Attachments:

Site Plan (Exhibit A)
Application
Maps

Robert Patrick

City Manager's Office

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A STAIR CLIMB AND CONCERT EVENT ON LOT 1A, BLOCK 54, ALL OF BLOCK 55, AND A 0.57-ACRE PORTION OF THE NORTH COLORADO STREET RIGHT-OF-WAY LOCATED ADJACENT TO BLOCK 55, ALL OUT OF ORIGINAL TOWN ADDITION, SECTION 14, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH COLORADO STREET AND WEST TEXAS AVENUE) SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS

WHEREAS, pursuant to Section 11-1-4.05 of the City Code of Midland, Texas, Lyndal Watkins (the "Applicant") has applied for authorization to temporarily use Lot 1A, Block 54, all of Block 55, and a 0.57-acre portion of the North Colorado Street right-of-way located adjacent to Block 55, all out of Original Town Addition, Section 14, City and County of Midland, Texas (the "Property") for a stair climb and concert event (the "Event"); and

WHEREAS, the Council finds and determines that such temporary use shall be allowed;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. That the Applicant is hereby authorized by the City Council to temporarily use the Property for the Event subject to the following conditions and restrictions:

A. That the day and hours of operation of the Event shall be limited to Saturday, September 11, 2021, from 8:00 a.m. to 12:00 a.m. (midnight).

B. That the operation of the Event shall conform to the site plan, which is attached hereto as Exhibit "A" and incorporated herein for all purposes.

C. That the Applicant shall provide a minimum of 15 restrooms that shall be made available for use during all operating hours of the Event.

D. That the Applicant shall ensure that 15 peace officers are present on the Property during all operating hours of the Event.

E. That the following uses are specifically permitted:

1. Live music shall be allowed during all operating hours of the Event.

2. The sale and on-premises consumption of alcoholic beverages shall be allowed during all operating hours of the Event in compliance with state and local laws.

F. That the Applicant shall obtain approval from the Traffic Operations Division of a traffic control plan submitted by a qualified barricade company for the temporary closure of each portion of right-of-way on which the Event will be operated, and the Event shall be operated in accordance with said traffic control plan. To the extent that a portion of right-of-way is closed during the operation of the Event, the intersections at each end of such closure shall remain unobstructed and available for vehicular and pedestrian traffic. The Applicant shall coordinate with businesses and property owners whose access may be impacted by the Event to ensure that access is available for such businesses and property owners during the operation of the Event.

G. That Event-related equipment, materials, and traffic control devices:

1. May be placed on the Property beginning at 5:00 p.m. the day before the day of operation of the Event; provided, however, that the placement of equipment, materials, and traffic control devices on rights-of-way shall be in accordance with the approved traffic control plan; and

2. Shall be completely removed from the Property no later than 12:00 p.m. (noon) the day after the day of operation of the Event.

H. That each tent, canopy, and booth shall be erected according to its manufacturer's instructions, including the use of tie-downs that will resist the local estimated wind load.

I. That the Event shall be operated in compliance with all requirements of the Fire Code. The Applicant shall call for an inspection by the Fire Marshal prior to commencing operation of the Event.

J. That the Applicant shall obtain approval from the Solid Waste Department for a refuse collection and clean-up plan prior to operation of the Event.

K. That the Code Administration Division and the Planning Division shall be notified no later than 48 hours preceding operation of the Event.

L. That the Applicant shall be responsible for ensuring that the conditions herein are observed and satisfied.

SECTION TWO. That the City Council reserves at all times the full right and power to revoke said temporary use for violation of any of its terms or any misrepresentations contained in the application, after a hearing of which the holder of said temporary use has been given at least one (1) day notice.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2021, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

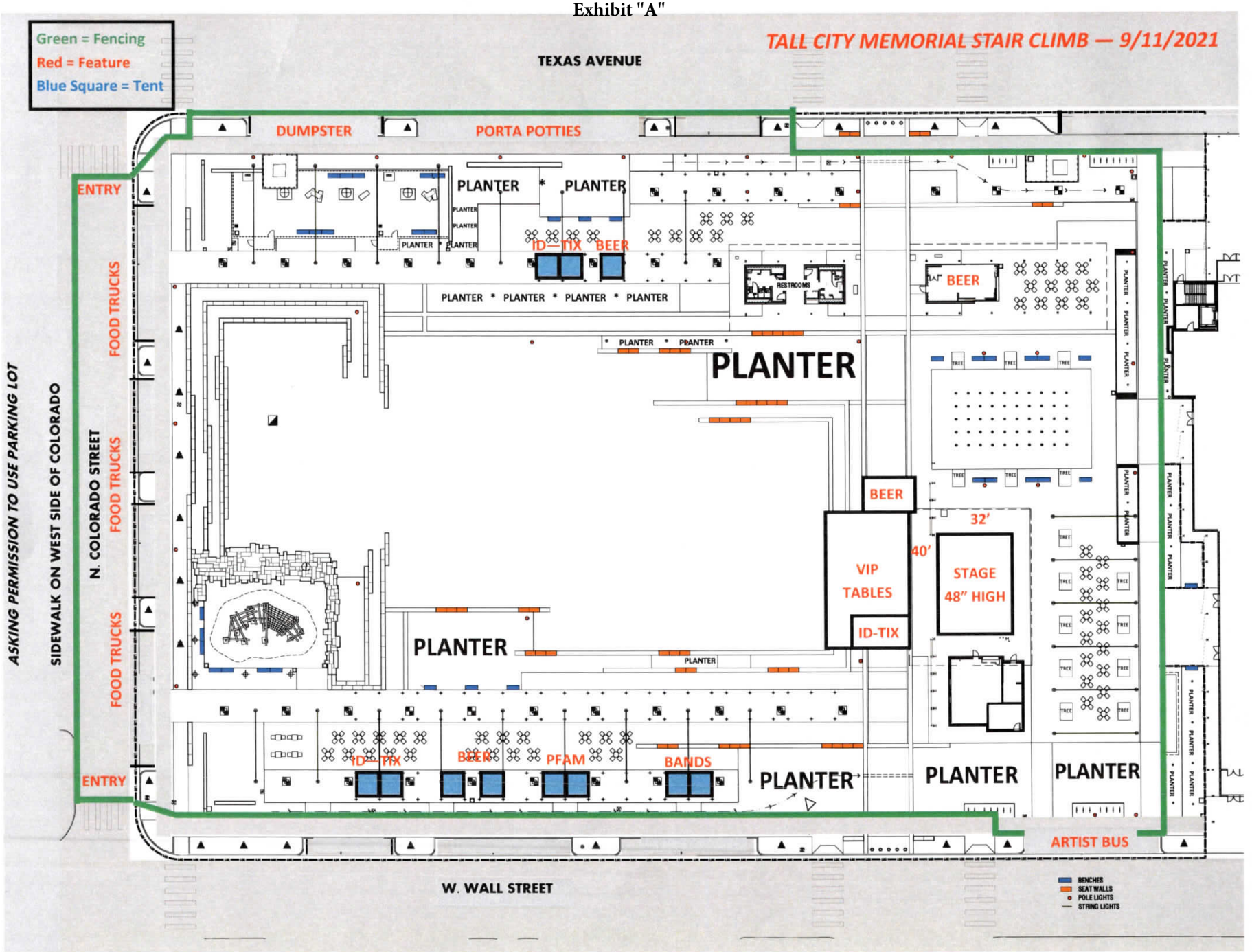
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

Exhibit "A"


Green = Fencing
Red = Feature
Blue Square = Tent
TALL CITY MEMORIAL STAIR CLIMB — 9/11/2021
TEXAS AVENUE
DUMPSTER
PORTA POTTIES
ENTRY
FOOD TRUCKS
FOOD TRUCKS
FOOD TRUCKS
ENTRY
ASKING PERMISSION TO USE PARKING LOT
SIDEWALK ON WEST SIDE OF COLORADO
N. COLORADO STREET
PLANTER
PLANTER
ID—TIX
BEER
RESTROOMS
BEER
PLANTER
PLANTER
BEER
32'
40'
VIP
TABLES
STAGE
48" HIGH
ID-TIX
PLANTER
ID—TIX
BEER
PFAM
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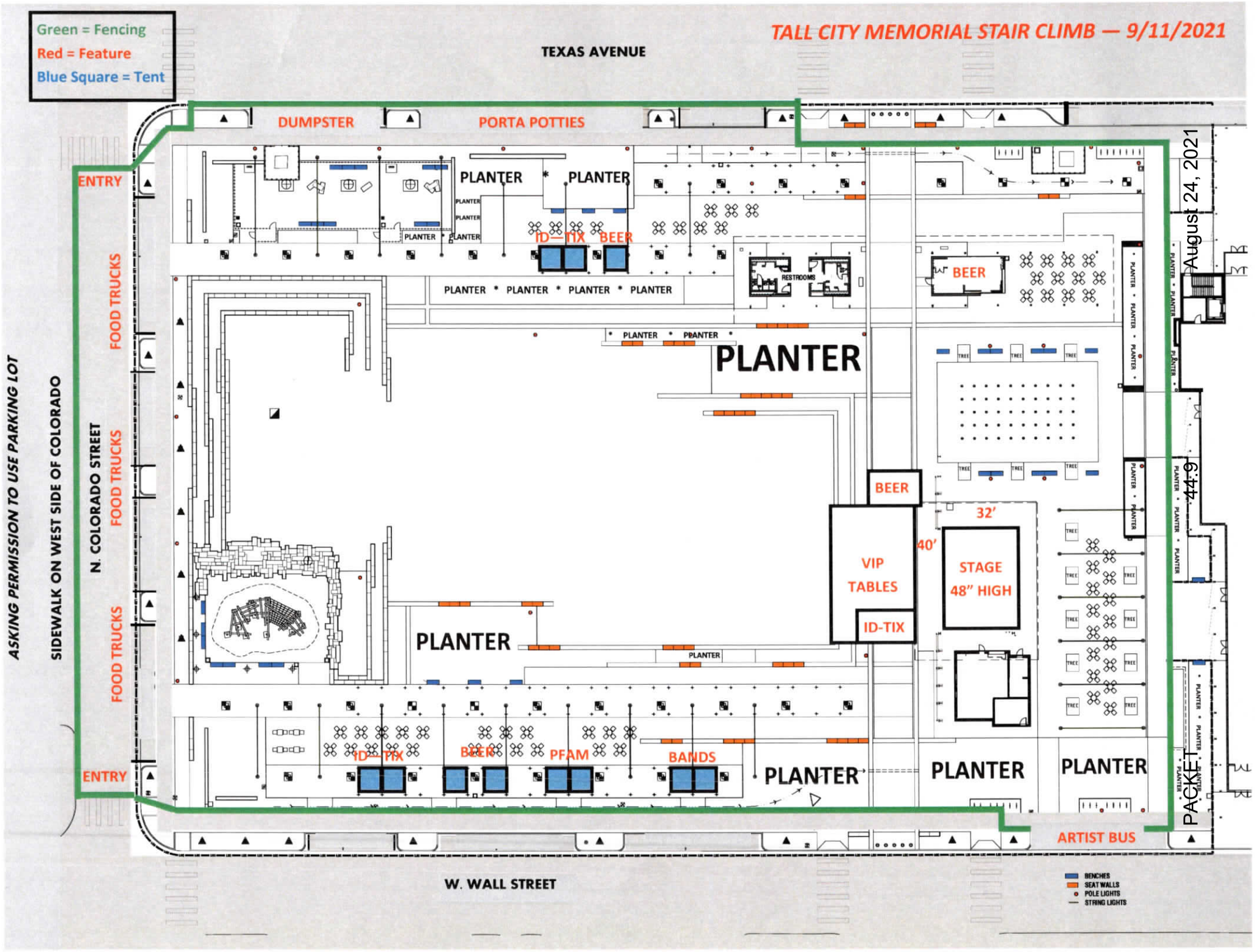
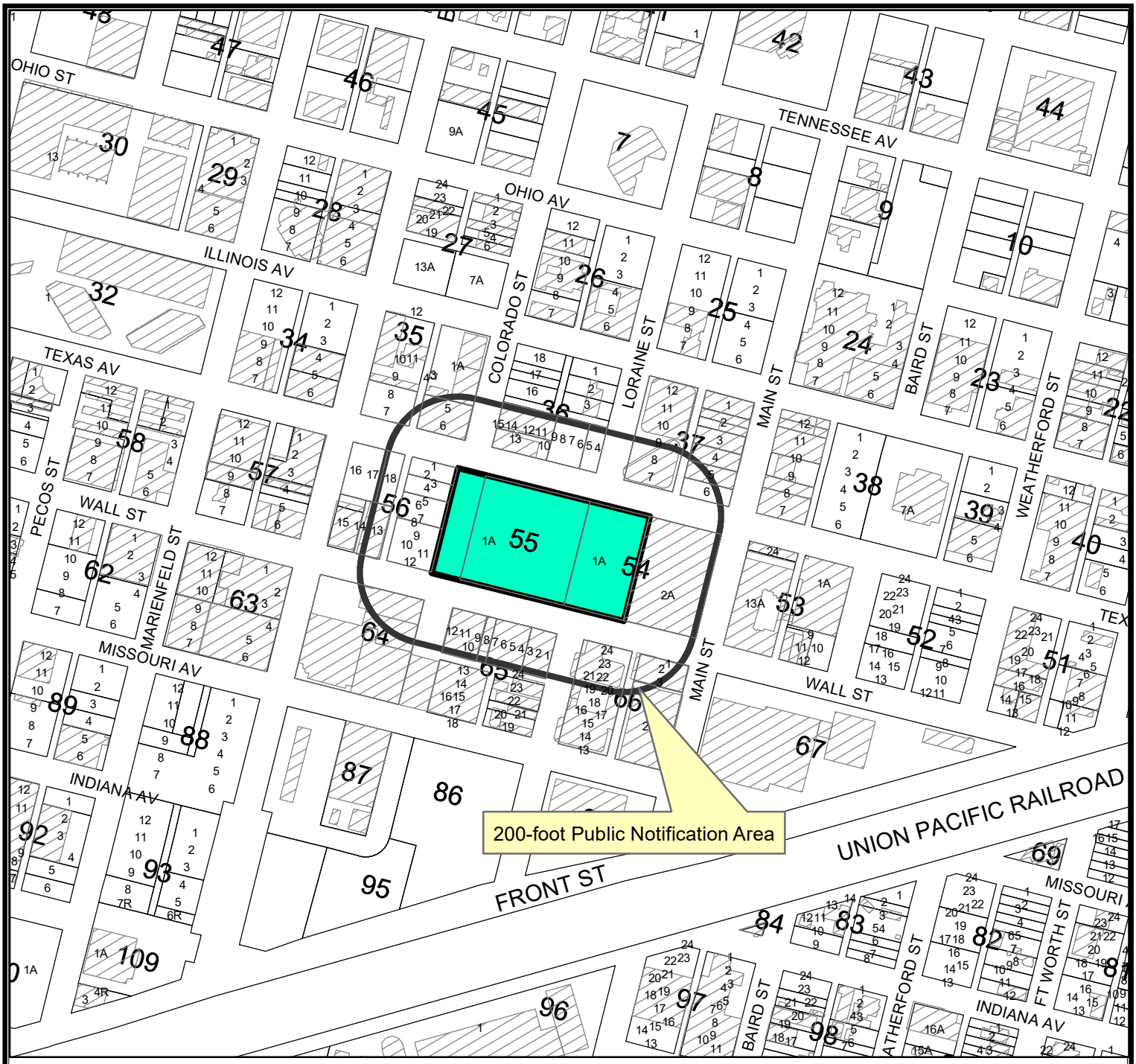
POLE LIGHTS
STRING LIGHTS



August 24, 2021
PACKET 44-9



LOCATION MAP

TLU-21-0091 **Scale: 1" = 400'**

A request by Lyndal Watkins for a Temporary Land Use Permit for a Stair Climb and Concert on Lot 1A, Block 54, all of Block 55, a 0.57 acre portion of the N Colorado Street right-of-way, all out of Original Town Addition, Section 14, City and County of Midland, Texas.
(Generally located on the southwest corner of the intersection of North Colorado Street and West Texas Avenue. Council District 2).

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ANY ACTION IT IS DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

MIDLAND
Planning Division

Temporary Land Use Application

Project Number: TLU-21-0091

Case Number: _____

Event Name: Tall City Memorial Stair Climb

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Lyndal Watkins		Phone (432) 634-8294 Email LWatkins@midlandtexas.gov	
Address 1500 W. Wall	City Midland	State TX	Zip 79701

Property Owner Printed Name: Midland Downtown Park Conservancy		Phone (432) 687-8200 Email	
Address 200 W. Wall Street	City Midland	State TX	Zip 79701

Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address:

Legal Description
Lot: 1A Block: 54+55 Subdivision:

Current Zoning:

Type of Temporary Use Requested:

Description of Event: Saturday morning is A memorial Stairclimb for first responders. Saturday evening is a memorial concert benefitting the Professional Fire Fighters Association of Midland Benevolence Fund.

Duration of Temporary Use: _____
If event lasts for more than (1) day and is located within any residential district or is located within 1,000 feet of any residential district, then a public hearing is required.

Proposed Days and Hours: Friday Sept 10 is set up 5pm - 10pm. Saturday Sept 11 8am - 12am. Sunday Sept 12 (tear down) 8am - 12pm.

Will alcoholic beverages be sold? ☑ Yes ☐ No
If yes, you must comply with all Texas Alcoholic Beverage Commission (TABC) regulations for the event.

Are you requesting the temporary closure of any streets? ☐ Yes ☑ No

If yes, you must:

A. Complete the "**Special Event and Street Closure Application**", available from the Planning Division (4th Floor, City Hall), as well as submit a "**Traffic Control Plan**" to the Transportation Division (5th Floor, City Hall).
B. Provide the City with a **general liability insurance certificate**, naming the **City** as an **Additional Insured**, in the amount of one million dollars ($1,000,000) for the term of the closure.

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BY: DC

Number of Peace Offices Provided: 15 *Contact the Midland Police Department to schedule off-duty police officers.*			
Type of Music (*carnival, live, etc.*): Live			
Showmobile (*portable stage*) **Requested:** ☐ Yes ☑ No		Days & Hours:	
Number of Restroom Fixtures Provided:	*Men*	**Toilets/Urinals:** 7	**Bathroom Sinks:** 2-4
	Women	**Toilets:** 8	**Bathroom Sinks:**
	Unisex	**Toilets:**	**Bathroom Sinks:**

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Damage Deposit
- Clean-Up Deposit
- 1 FOLDED Copy of Site Plan*
- Digital Copies of Site Plan (PDF/JPEG)

**Should show existing buildings, parking, access arrangements, surrounding streets, activity areas, areas of alcoholic beverage sales, proposed street closures, etc.*

Signatures	
Applicant (signature):	Date: 6/30/21
Applicant (printed): Lyndal Watkins	
Property Owner (signature):	Date: 7/2/2021
Property Owner (printed): Stephanie Martin	RECEIVED JUL 27 2021
Representative (signature):	Date:
Representative (printed) :	

The Temporary Land Use Permit shall be considered officially received in the Planning office only when it has been submitted in full compliance with the provisions of Section 212 of the Texas Local Government Code and the Zoning Code of Ordinances of the City of Midland and when such required items for the application are also received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

****Application will not be considered for scheduling until reviewed by a planner.****

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

_____
Authorized Agent (*signature*)

Subscribed and sworn to before me, this _____ day of _____, 20 ___, to certify which witness my hand and seal of office.

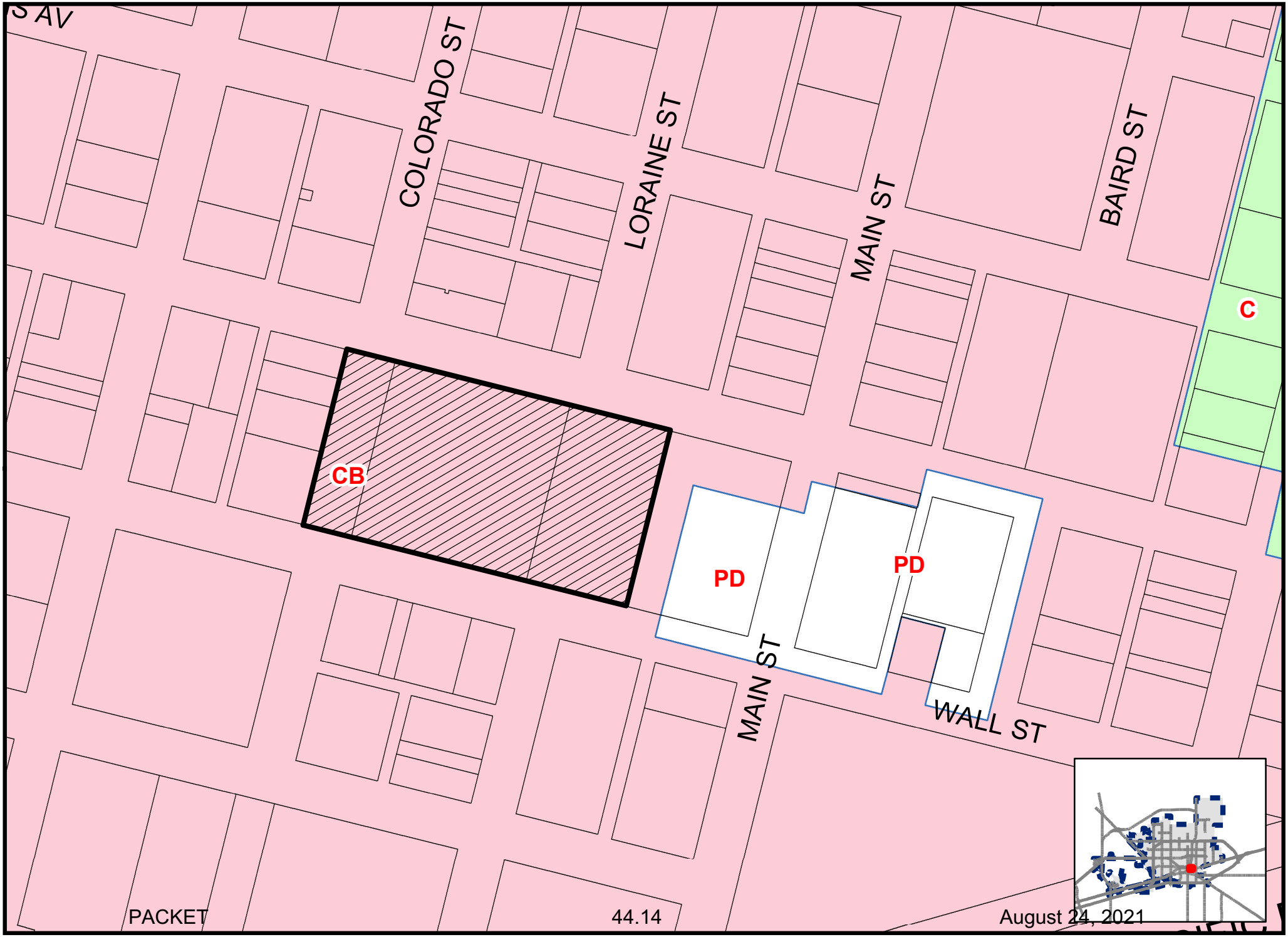
_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☐ Property Owner Authorization	☐ Liability Insurance (Street Closure)
☒ Dimensioned Site Plan	☐ Traffic Control Plan (Street Closure)
☐ Plans in Digital Format (PDF/JPEG)	☐ Clean-Up Deposit
☒ Application Fee Check # Waived by Chuck	Check # _____
☐ Administrative Approval	☐ Damage Deposit Check # _____
Received By:	Date:

RECEIVED
JUL 27 2021
BY: .....

****Application will not be considered for scheduling until reviewed by a planner.****



Map By JM, 08/09/2021

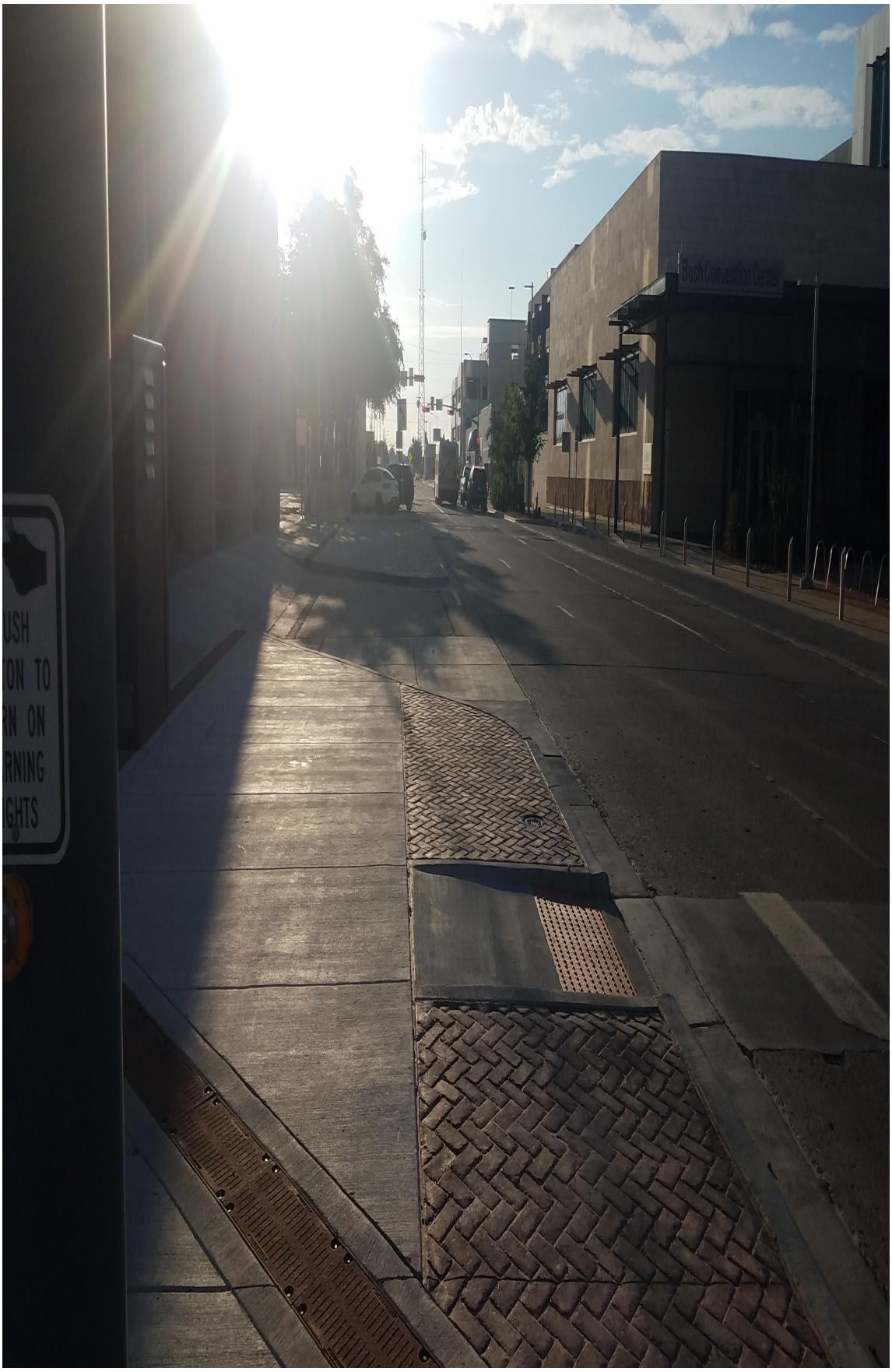
TLU-21-0091

Scale: 1" = 200'

ZONING MAP

© THE CITY OF MIDLAND - 2021: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN. THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.




Bush Convention Center





City Council Meeting

Item Number: 45

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Jamie Radcliff, Budget Manager

Subject: AN ORDINANCE ADOPTING A FEE SCHEDULE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING AN APPEAL PROCESS; AND ORDERING PUBLICATION (FINANCE)

Purpose:

Revise an Ordinance establishing regulatory and user fees collected by the City of Midland in order to adequately cover the costs and expenses incurred by the City in connection with providing the services associated with said fees.

Recommended City Council Action:

Approve

Fiscal Impact:

Regulatory and User Fees generate revenue designed to cover the cost of the service being provided by the City of Midland

Discussion:

Fee revisions are from three separate departments:

Due to increased cost and changes in available products, the Health Department is updating the vaccination schedule and costs associated with the following services:

Vaxelis (DTaP, HIB, Polio & HEP B) (NEW)	$150.00
Proquad (MMR & Varicella) (was $240)	$250.00
PCV 13 (Pneumococcal Conjugate) (was $200)	$260.00
PPSV23 (Pneumococcal Conjugate) (was $120)	$145.00
Menqaudfi (Meningitis) (NEW)	$200.00

The Fire Department evaluated their historically low EMS fees, having not been updated since 2009. The new fee structure is below the midpoint, yet comparable to the surrounding communities.
Additionally, the Fire Department included a fee to cover Food Truck Inspections. Historically a free service, the fee has been introduced to reflect the time-consuming cost of providing the service equivalent to other EMS agencies.

In addition, the Sanitation Fee Schedule has been updated to reflect an increase in residential and commercial rates.

Please see attached memos for further information.

Robert Patrick

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE ADOPTING A FEE SCHEDULE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING AN APPEAL PROCESS; AND ORDERING PUBLICATION

WHEREAS, the City Council finds it to be in the public interest to establish fees collected by the City of Midland in order to adequately cover the costs and expenses incurred by the City in connection with providing the services associated with said fees; and

WHEREAS, the City Manager's designees have prepared Exhibits "A" through "O", which are attached hereto and incorporated herein for all purposes, identifying said fees (collectively, the "Fee Schedule"); and

WHEREAS, the City Council of the City of Midland, Texas, finds it to be in the public interest to adopt the Fee Schedule and to establish the fees identified therein as the fees to be collected by the City of Midland, said fees being reasonably related to the costs and expenses incurred by the City in connection with providing the services associated with said fees;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS;

SECTION ONE. That the facts and recitations contained in the preamble of this ordinance are hereby found and declared to be true and correct and are adopted as part of this ordinance for all purposes.

SECTION TWO. That the Fee Schedule is hereby approved and adopted. The fees identified in the Fee Schedule are hereby established as the fees to be collected by the City of Midland except for the following types of fees: a fee charged to a requestor who submits a request for information under the Texas Public Information Act; a fee assessed by the Municipal Court that is not identified in the Fee Schedule; a fee established by a contract, to the extent that the fee established by the contract conflicts with or is not identified in the Fee Schedule; a drainage charge; an impact fee; a fee prescribed by a state law, rule, or

regulation; or a fee for which a state law, rule, or regulation, or the City Charter requires a procedure to be followed to establish the fee other than the procedure that was followed to adopt the Fee Schedule.

To the extent that a fee identified in the Fee Schedule conflicts with a fee that was previously established by ordinance (including an ordinance that has been codified in the City Code), resolution, or other City of Midland instrument, this ordinance shall supersede such previous ordinance, resolution, or other instrument, and the fee identified in the Fee Schedule shall be the applicable fee.

To the extent that a fee identified in the Fee Schedule conflicts with a fee prescribed by a state law, rule, or regulation, the fee prescribed by the state law, rule, or regulation shall be the applicable fee.

To the extent that a fee identified in the Fee Schedule is a fee for which a state law, rule, or regulation, or the City Charter requires a procedure to be followed to establish the fee other than the procedure that was followed to adopt the Fee Schedule, such fee that was previously established by following the applicable procedure shall be the applicable fee.

SECTION THREE. Any person wishing to appeal the payment of a fee identified in the Fee Schedule may do so in accordance with the law, rule, regulation, or ordinance that established the procedure for appealing such fee. To the extent no such appeal procedure has been established for a fee identified in the Fee Schedule that is not a fee assessed by the Municipal Court, the following appeal procedure shall apply:

A. Any person may appeal in writing to the City Manager, or the City Manager's designee, prior to paying the fee or after paying the fee. Any person may appeal in writing to the City Manager, or the City Manager's designee, if the person believes that he or she cannot afford the fee. The person may seek an exemption from all or part of the fee. The City Manager, or the City Manager's designee, shall make certain that the fee is not paid under duress.

If a person wishes to appeal after payment of the fee, the person shall appeal in writing to the City Manager, or the City Manager's designee, within ten (10) calendar days of paying the fee.

B. The City shall not file criminal charges against any person related to non-payment of the fee if the fee is not paid. The City shall not file criminal charges against a person in an attempt to collect the fee.

C. The City Manager, or the City Manager's designee, shall provide a full and meaningful review process. The City Manager, or the City Manager's designee, shall provide a fair opportunity for a person to challenge the accuracy and legal validity of his or her fee obligation. The City Manager, or the City Manager's designee, shall also provide a clear and certain remedy for any erroneous or unlawful fee collection to ensure that the opportunity to contest the fee is a meaningful one. Options that the City Manager, or the City Manager's designee, shall consider in providing a clear and certain remedy are a refund of any excess fee paid, as well as other factors, such as ensuring that a person may continue the operation of his or her business.

D. The City Manager, or the City Manager's designee, shall make his or her decision within ten (10) days of receiving the written notice of appeal. The City Manager, or the City Manager's designee, shall ensure that a person has all rights under any applicable law. A person shall incur no financial hardship by exercising his or her right to appeal.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid

SECTION SIX. That this ordinance shall become effective immediately upon final passage and approval.

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2021; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2021, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2021.

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Robert Patrick, City Manager

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

Exhibit A

City Secretary

	Fee
Business Regulations	
Junk and secondhand goods license	$25.00
Renewal of junk and secondhand good	$10.00
Alcoholic Beverage License Fee	1/2 of State Fee
Taxicab annual operating fee (each)	$200.00
Limo or Motorbus operating fee (each)	$100.00
Passports	
Execution Fee (DS-11)	$35.00
Renewal Mailing Fee (DS-82)	$10.00
Passport Photograph	$18.00
Expedited Shipping Fee (DS-11)	$26.40
Expedited Shipping Fee (DS-82)	$32.95
Notarization Fee	$10.00
Copies	$0.25

Exhibit B

Parks

	Fee
TEMP FENCING	
Deposit	$200.00
Rental Fee (per panel)	$10.00
SHOWMOBILE	
Deposit	$1,000.00
4 Hours	$250.00
8 Hours	$500.00
Extensions	$100.00
Show Lights	$200.00
PORTABLE BLEACHERS	
Deposit	$100.00
Rental Fee	$100.00
PORTABLE STAGE	
Deposit	$100.00
Rental Fee	$100.00
TRASH CANS	
Deposit	$100.00
Rental Fee (10 cans)	$50.00
PARK PAVILION RENTAL	
Deposit	$100.00
Rental Fee 9am-12am	$60.00
Rental Fee 9am-3pm	$30.00
Rental Fee 4pm-12am	$40.00
BEAL RANCH HOUSE	
Deposit no Alcohol	$300.00
Deposit w/Alcohol	$500.00
Rental Fee Per Hour	$50.00
GAZEBO RENTAL WADLEY	
Deposit	$100.00
Rental Fee 9 am- 3 pm	$50.00
Rental Fee 4 pm-10 pm	$50.00
Rental Fee 9 am-10 pm	$100.00
GAZEBO RENTAL BEAL	
Deposit	$100.00
Rental Fee 9 am- 3 pm	$50.00
Rental Fee 4 pm-10 pm	$50.00
Rental Fee 9 am-10 pm	$100.00

Exhibit C

Recreation

		Fee
CITY POOL RATES		
Entry Fee		$3.00
Children under 2		Free
10 Punch Card		$15.00
25 Punch Card		$35.00
75 Punch Card		$75.00
Personal Cooler Admission		$10.00
Soda/Drinks		$2.00
Snacks		$1.00
Life Jacket Rental		$1.00
Life Jacket Deposit		$1.00
PRIVATE RENTALS		
DEPOSIT		$250.00
RENTAL		$700.00
POOL PAVILION RENTALS		
(Doug Russell Only)		
DEPOSIT		$100.00
RENTAL		$100.00
MARTIN LUTHER KING RECREATION CENTER	per hour	
Activity Room		
During Operation		$25.00
After Hours		$35.00
Deposit		$100.00
Activity Rm/with Gameroom	per hour	
During Operation		$35.00
After Hours		$70.00
Deposit		$300.00
Auditorium	per hour	
During Operation		$50.00
After Hours		$75.00
Deposit No Alcohol		$500.00
Deposit Alcohol		$750.00
Gymnasium	per hour	
Sporting Events ONLY		
During Operation		$25.00
After Hours		$50.00
Deposit		$200.00
Training Room	per hour	
Sporting Events ONLY		

Exhibit C

Recreation

	Fee
During Operation	$50.00
After Hours	$75.00
Deposit	$1,000.00
Daily	$1.00
Monthly Membership	$15.00
MLK Volleyball Net Setup Fee	$15.00
MOVIE SCREEN	
Deposit	$1,000.00
Fee	$500.00
BUBBLE SOCCER AT MLK Gym Only	
Deposit	$300.00
During Hrs	$100.00
After Hours	$125.00
Bubble Soccer at MLK Gym/Activity Rm	
Deposit	$300.00
During Hrs	$125.00
After Hours	$135.00
BUBBLE SOCCER AT MLK Gym/Act Rm/Game Rm	
Deposit	$300.00
During Hrs	Not Avaliable
After Hours	$170.00
BUBBLE SOCCER NOT @MLK	
Deposit	$500.00
Fee Per Hr (must be 2 hour rental)	$200.00
AUXILIARY FIELDS	
Per Hour	$50.00
Tournament (per game)	$30.00
Deposit	$100.00
Tournament Deposit ($125 non refundable)	$250.00
Field Marking	$75.00
Lights for Practice field (per field per hour)	$25.00

Exhibit D

Health and Senior Services

	Fee
Environmental Section	
Mobile Food Vendor	
Mobile Food Vendor	$175.00
Mobile Food (Seasonal)	$105.00
Temporary Permit	$70.00
Food Services Establishments	
1 thru 5 employees	$150.00
6 thru 10 employees	$200.00
11 or more employees	$250.00
Deli/Meat Market/Bakery	$75.00
Farmers Market	$50.00
Retail Food Store	
1 thru 5 employees	$150.00
6 thru 10 employees	$200.00
11 or more employees	$250.00
Temporary Permit	$70.00
Child Care Programs	
Day Care	$100.00
Foster Care	$50.00
Child Care Program for after School	$50.00
Swimming Pool, Spa, or Water Feature Permit	
Swimming Pool or Spa Permit	$100.00
Water Feature Permit	$100.00
Non-Profit Yearly	$30.00
Non-Profit Temporary	$30.00
Re-inspection (When Establishment is shut down)	$75.00
Septic System Inspections	
Septic System Residential	$150.00
Septic System Commercial	$210.00
Septic re-inspection (When fails initial inspection)	$50.00
Late Fee (When not paid by specified date)	25% of Permit Fee

Clinical Section

Health Department Services	
DTaP	$45.00
Kinrix (DTaP & Polio)	$100.00
Pentacel (DTaP & Polio & Flu Type B)	$140.00
IPV (Polio)	$50.00
Pedi HEP A	$40.00
Pedi HEP B	$35.00
HIB (Flu Type B)	$40.00

Exhibit D

Health and Senior Services

	Fee
Vaxelis (DTaP, HIB, Polio & HEP B)	$150.00
Rototeq/Rotarix (Rotavirus)	$140.00
Proquad (MMR & Varicella)	$250.00
PCV 13 (Pneumococcal Conjugate)	$260.00
PPSV23 (Pneumococcal Conjugate)	$145.00
MMR	$90.00
Varicella	$150.00
TD (Tetanus & Diptheria)	$50.00
TDAP (Tetanus Diptheria and Pertussis)	$60.00
HPV 9	$240.00
MCV4 (Meningitis)	$150.00
Menqaudfi (Meningitis)	$200.00
Trumenba (Meningococcal Group B)	$140.00
Bexsero (Meningococcal Group B)	$130.00
Adult Hep A	$60.00
Adult Hep B	$65.00
Shingrix (Shingles)	$170.00
Infant flu	$25.00
Flu	$30.00
High Dose Flu	$65.00
Flublok	$60.00
Yellow Fever	$130.00
STD Testing	$10.00
HIV Testing	$10.00
STD Clinic Treatment	$10.00
STD Clinic Retreatment	$10.00
Pregnancy Test-Urine	$10.00
Pregnancy Test - Blood	$15.00
TB Test	$15.00
TB Clinic	$10.00
Administration Fees	
Insured	$25.00
TVFC 1=$10, 2=$20, >or= 3 = $30	
Refugee	$0.00
Medicaid/CHIP	$14.85
Medicare Flu or Pneumonia	$25.00

Exhibit E

Animal Services

	Fee
Adoption Fees	
Adoption Fees (includes micro chipping)	$35.00
Ducks, Rabbits, Other	$5.00
Humane Coalition Transfer Fee (with micro chipping) Range $17 to $25	$25.00
Animal Service Discount	$6.73
Impoundment Fees	
Impoundment - 1st Offense (altered)	$25.00
Impoundment - 1st Offense (unaltered)	$100.00
Impoundment - 2nd Offense (altered)	$50.00
Impoundment - 2nd Offense (unaltered)	$100.00
Impoundment - 3rd+ Offense (altered)	$60.00
Impoundment - 3rd+ Offense (unaltered)	$100.00
Livestock Impoundment	$100.00
Boarding & Quarantine	
Boarding (per day)	$6.00
Quarantine Fees ($8/day for 10 days)	$8.00
Home Quarantine Fees ($3/day for 10 days)	$30.00
Pick-up Fees	
Pickup Fee - Owner release	$15.00
Pickup Fee - Deceased	$10.00
Pickup Fee - Dead Small Livestock	$25.00
Pickup Fee- Deceased Livestock	$75.00
Transfer to Vet Fee	$15.00
Rabies Specimen Prep Fee	$15.00
Rabies Specimen Shipping	$45.00
Microchipping	
Microchips	$15.00
Pet Services	
Flea/Tick Dip	$15.00
Euthanasia	
Euthanasia	$15.00
Pet Licenses	
Pet License (yearly) ($7 reg, $10 Spec Event)	$7 or $10
Pet License (replacement)	$1.00
Wild Animal Permit	$25.00
Dangerous Dog Yearly Registration	$50.00
Off Leash Training Permit	$5.00
Pigeons	
Loft Permit for Pigeons	$3.00
Renewal of Loft Permit	$2.00

Exhibit F

Golf Course

	Fee
Green Fee - Weekday	$20.25
Green Fee - Weekdays after 4:00	$11.25
Green Fee - Weekend	$25.25
Green Fee - Weekend after 4:00	$15.00
Weekend AM - 9 Holes	$14.00
Green Fee - Senior	$15.25
Green Fee - Junior	$9.50
Cart Fee (90%)	$12.75

Exhibit G

Planning

	Fee
Preliminary Plat Application	
Sketch Plan Application (1st review)	$225.00
Sketch Plan Application (2nd review)	$100.00
Preliminary Plat Application (up to 50 acres)	$350.00
Preliminary Plat Application (over 50 acres)	$500.00
Final Plat Application	
Standard Plat or Residential Up to 50 acres	$350.00
Standard Plat or Residential over 50 acres Max	$500.00
Administrative Plat	$250.00
Digital File Conversion Fee	$50.00
Recording Fees- Plats up to 18"x24"	$61.00
Recording Fees- Plats over 18"x24"	$81.00
Related Documents	$26.00
Replat	
Replat with Public Hearing	$250.00
Replat without Public Hearing	$250.00
Annexation/Zone Change Application	
Standard Zone Change	$500.00
Planned District Zone Change	$650.00
Multiple PD Proposal Basic	$550.00
Multiple PD Proposal Per Additional District	$100.00
Additional PD Regulations	$75.00
Site Plan in PDF Format for City Council	$50.00
Application Fee	$500.00
Zoning Board of Appeal Fee	$600.00
Special Exception Application Fee	$500.00
Oil and Gas	
Application for Oil and Gas Permit	$4,000.00
Credit Access Businesses	
Application Fee	$50.00
Specific Use Permit (SUP) / Specific Use Designation (SUD)	
Application for SUP/SUD with Term for Alcoholic Beverage	$300.00
Application for General SUP/SUD	$400.00
Renewal SUP/SUD	$75.00
Temporary Mobile Home	
Special Temporary Permit for Manufactured Home App (Based on Genuine Hardship Condition)	$50.00
Special Temporary Permit for Manufactured Home App (For Occupancy by a Caretaker, Manager, or Guard)	$100.00
Temporary Land Use	
Application Fee	$300.00
For each additional event date	$25.00
Clean-Up Deposit	$500.00

Exhibit G

Planning

		Fee
	Damage Deposit	$500.00
	Outside sale of dogs	$20.00
Site Plan Review		
	Single PD Amendment	$550.00
	Multiple PD Amendment	$650.00
Dedications		
	Review Fee	$400.00
Vacation		
	Application Fee	$400.00
Creation of a Building Site		
	Application Fee	$400.00
Master Sign Plan		
	Application Fee	$300.00
Traffic Impact		
	Traffic Impact (Staff Study)	$350.00
	Traffic Impact (Review of Submittal)	$600.00
Portable Storage Containers		
Freight or Portable storage cont.- permit fee		$125.00
	Each add'l on same property	$25.00
90- day permit fee for storage container		$150.00
	Each add'l container	$25.00
45- day permit fee for storage container		$125.00
	Each add'l container	$25.00
30 day permit fee for storage container		$75.00
Certificate of occupancy and compliance		
Certificate of occupancy and compliance		$10.00

Exhibit H

Code Enforcement

	Fee
Building Permits	
Construction Permit Fee	31.5 cents per square foot
Sidewalk/ROW Residential (No building permit)	$50.00
Sidewalk/ROW Commercial (No building permit)	$200.00
Street Improvement Fee	23 cents per square foot
Fence Fee	$50.00
Manufactured Home	$200.00
Manufactured Home Skirting Deposit	$100.00
Moving Fee	$200.00
Non-Profit Residential	$150.00
Temporary Structure	$100.00
Detached Assessory (120Sq.ft or less)	$50.00
Detached Assessory (120Sq.ft to 200 sq.ft.)	$100.00
Demolition Permits	
Commercial Demo Fee - Building	$500.00
Commerical Demo Fee - Interior	$100.00
Residential or Accessory Bldg	$50.00
Temporary Sign Permits	
Permanent Sign Permits	$50.00
Temporary sign annual permit fee	$50.00
Failure to remove sign- hauling fee	$50.00
Failure to remove sign- daily storage fee	$10.00
Oil & Gas Drilling Permits	
Amendment Fee	$1,000.00
Certification Fee & Inspection	$300.00
Oil & Gas Application Fee	$4,000.00
Well Tranfer Fee	$500.00
***TX State HB-40 recognizes Ordinance 8769 including fees and may not be amended**	
Mobile Home Park Licenses	
Mobile Home Park Licenses	$25.00 plus $1 ea/addl
Certificate of Occupancy	
Certificate of Occupancy	$50.00
Lot Deposits	
Clearing Deposits (Floor & Foundation) Commercial	$2,000.00
Clearing Deposits (Floor & Foundation) Residential	$600.00
Clearing Deposits (Rubbish, Litter, Lot)	$200.00
Clearing Deposit (Accessory Bldg, Debris, Material	$200.00
Lot Clearing	
Administrative Fee	$100.00
Tree Removal	$70.00
Debris Charge	$110 per ton

Exhibit H

Code Enforcement

	Fee
Mow Vacant Lot	$0.05 per sq. yd.
Mow Lot with Structure	$0.055 per sq. yd.
Mow Acreage	$70 per acre
Mowing Fee	$0.10 per sq. yd.
Special Project	$165.00
Minimum Lot Charge	$45.00
Tires	Reimbursemt+$2.00/tire
Electrical Fees	
Minimum Fee	$50.00
Temporary Service	$50.00
Temporary Construction Pole	$50.00
Parking Lot Wiring	$50.00
Building Wiring	$0.05 per sq.ft
Service Change	$50.00
Sign Electrical Fee	$50.00
Electrical Fixture Fee (for first, $1.00 each after)	$15.00
Mobile Home Rewiring ($5 for each add'l)	$50.00
Clearance for Elec Connect/Disconnect Residential	$50.00
Reinspection (Red Tag)	$50.00
Mechanical Fees (when not part of bldg.permit)	
Minimum Fee	$50.00
Inspection for Heating, AC,Venting,Ductwork,Fridge ($5 for each add'l inspection)	$50.00
Fire Extinguishing Permit	$50.00
Boiler Inspections (33K to 1165 BTU)	$50.00
Boiler Inspections (1165K to 3300 BTU)	$50.00
Boiler Inspections (over 3300 BTU)	$50.00
Reinspection (Red Tag)	$50.00
Gas Fees (when not part of bldg.permit)	
Minimum Fee	$50.00
Floor Furnace, Boiler	$50.00
Vented Recessed Heater	$50.00
Gas line service	$50.00
Vented Appliance ($10 each add'l)	$50.00
Temporary Connection	$50.00
Reinspection (Red Tag)	$50.00
Plumbing Fees (when not part of bldg.permit)	
Minimum Fee	$50.00
Furnace, unit or wall heater ($10 each add'l)	$50.00
Water heater ($10 each add'l)	$50.00
Water softener	$50.00
Lawn Sprinkler	$50.00

Exhibit H

Code Enforcement

	Fee
Water Line Service	$50.00
Sewer Line Service	$50.00
Replumb Bldg	$0.05 Sq. Ft.
Fire Sprinker	$0.05 Sq. Ft.
Backflow Assembly Device ($10 each add'l)	$50.00
Reinspection (Red Tag)	$30.00
Vendor Permit	
Vendor Permit	$100.00
Water Well Fee	
Drill new well	$50.00
Reinspection Fee	
Reinspection (All Permits)	$100.00
Application to Board of Appeals	
Application	$200.00
Public Ways and Property	
House moving permit fee	$25.00
Network Nodes-5 in same application	$500.00
Each additional node in application	$250.00
Node Support Pole Application	$1,000.00
Fee to attach network node to public ROW pole	$20.00

Exhibit I

Engineering

	Fee
Traffic	
Street Name and Traffic Control Sign Fee	$500/intersection
Right of Way Use Permit Fee	$350.00

Exhibit J

Water & Sewer Fees

	Fee (as of July 1, 2020)
Water Rates Inside City:	
Base Rate for All Except Apartments for First 2,000 gallons	$21.61
Base Rate for Apartments per Unit for first 2,000 gallons per Unit	$17.60
Rate per 1,000 gallons over base of 2,000 up to 10,000	$6.11
Rate per 1,000 gallons from 10,001 up to 25,000	$8.03
Rate per 1,000 gallons from 25,001 up to 50,000	$10.80
Irrigation)	$13.50
Sewer Rates Inside City:	
All Customers Base Rate (First 2,000 gallons)	$21.79
All Customers Rate per 1,000 after Base Rate	$0.88
Water Rates Outside City:	
Base Rate for All Except Apartments for First 2,000 gallons	$32.42
Base Rate for Apartments per Unit for first 2,000 gallons per Unit	$26.40
Rate per 1,000 gallons over base of 2,000 up to 10,000	$9.17
Rate per 1,000 gallons from 10,001 up to 25,000	$12.05
Rate per 1,000 gallons from 25,001 up to 50,000	$16.20
Irrigation)	$20.25
Sewer Rates Outside City:	
Residential Base Rate (First 2,000 gallons)	$32.69
Residential Rate per 1,000 after Base Rate	$1.32
Miscellaneous:	
Septage waste hauler discharges and fees (per gallon)	$0.30

Exhibit K

Customer Service/Utility Billing

	Fee
Account Billing	
Residential Utility Deposit	$75.00
Re-read of Water Meter (2nd time)	$25.00
Test of Water Meter (2nd time)	$25.00
Non-sufficient fund check	$30.00
Reconnect-Disconnect fee	$30.00
Application Fee	$20.00
Transfer Fee	$20.00
Tampering/Straight Fee (1st time)	$200.00
Tampering/Straight Fee (2nd time)	$300.00
Water Meters & Tap Fees	
3/4" water meter-with existing meter box	$40.00
1" water meter-with existing meter box	$100.00
1" water meter tap (no paving cut or meter installation)	$390.00
1" service charge for tap and meter with meter box	$425.00
2" water meter- with existing meter box	$240.00
2" water meter tap (no paving cut or meter installation)	$564.00
2" service charge for tap and meter with meter box	$710.00
3" water meter	$375.00
4" water meter	$375.00
4" sewer tap	$350.00
6" sewer tap	$400.00
Replacement sewer tap (per line)	$300.00
Fee to abandon line for replacement	$150.00
Paving cut/Boring & Casing Fee	$400.00
Fire hydrant meter setting or moving	$200.00
Fire Hydrant meter deposit setting	$2,400.00
Drinking Water Testing- Total Coliform (Presence or absence)	$18.00
Non-Potable H2O testing- Total Coliform & E.Coli (MPN)	$25.00
Non-Potable H2O testing- Total Coliform & Fecal Coliform (MPN)	$25.00
Move a service line no more than 5 feet	$150.00

Exhibit L

Sanitation Fees

Inside City Limits

# of Containers	Number of pickups per week			
	2X	3X	4X	5X
Residential				
0.25	$18.45			
0.5	$36.90			
0.75	$55.35			
1	$73.80			
Commercial				
0.25	$24.68	$37.02	$49.36	$61.70
0.5	$49.36	$74.04	$98.72	$123.40
0.75	$74.04	$111.06	$148.08	$185.10
1	$98.70	$148.05	$197.40	$246.75
2	$187.53	$281.30	$375.06	$468.83
3	$276.36	$414.54	$552.72	$690.90
4	$365.19	$547.79	$730.38	$912.98
5	$454.02	$681.03	$908.04	$1,135.05
6	$542.85	$814.28	$1,085.70	$1,357.13
7	$631.68	$947.52	$1,263.36	$1,579.20
8	$720.51	$1,080.77	$1,441.02	$1,801.28
9	$809.34	$1,214.01	$1,618.68	$2,023.35
10	$898.17	$1,347.26	$1,796.34	$2,245.43
11	$987.00	$1,480.50	$1,974.00	$2,467.50
12	$1,075.83	$1,613.75	$2,151.66	$2,689.58
13	$1,164.66	$1,746.99	$2,329.32	$2,911.65
14	$1,253.49	$1,880.24	$2,506.98	$3,133.73
15	$1,342.32	$2,013.48	$2,684.64	$3,355.80
16	$1,431.15	$2,146.73	$2,862.30	$3,577.88
17	$1,519.98	$2,279.97	$3,039.96	$3,799.95
18	$1,608.81	$2,413.22	$3,217.62	$4,022.03
19	$1,697.64	$2,546.46	$3,395.28	$4,244.10
20	$1,786.47	$2,679.71	$3,572.94	$4,466.18
21	$1,875.30	$2,812.95	$3,750.60	$4,688.25
22	$1,964.13	$2,946.20	$3,928.26	$4,910.33
23	$2,052.96	$3,079.44	$4,105.92	$5,132.40
24	$2,141.79	$3,212.69	$4,283.58	$5,354.48
25	$2,230.62	$3,345.93	$4,461.24	$5,576.55
Per Month				
Recycling fee	$0.50			
Litter Abatement Fee	$1.00			

Exhibit L

Sanitation Fees

Outside City Limits - Sanitation Fees

# of Containers	Number of pickups per week			
	2X	3X	4X	5X
Residential				
0.25	$27.68			
0.5	$55.36			
0.75	$83.04			
1	$110.72			
Commercial				
0.25	$37.02	$55.53	$74.04	$92.55
0.5	$74.04	$111.06	$148.08	$185.10
0.75	$111.06	$166.59	$222.12	$277.65
1	$148.05	$222.08	$296.10	$370.13
2	$281.30	$421.94	$562.59	$703.24
3	$414.54	$621.81	$829.08	$1,036.35
4	$547.79	$821.68	$1,095.57	$1,369.46
5	$681.03	$1,021.55	$1,362.06	$1,702.58
6	$814.28	$1,221.41	$1,628.55	$2,035.69
7	$947.52	$1,421.28	$1,895.04	$2,368.80
8	$1,080.77	$1,621.15	$2,161.53	$2,701.91
9	$1,214.01	$1,821.02	$2,428.02	$3,035.03
10	$1,347.26	$2,020.88	$2,694.51	$3,368.14
11	$1,480.50	$2,220.75	$2,961.00	$3,701.25
12	$1,613.75	$2,420.62	$3,227.49	$4,034.36
13	$1,746.99	$2,620.49	$3,493.98	$4,367.48
14	$1,880.24	$2,820.35	$3,760.47	$4,700.59
15	$2,013.48	$3,020.22	$4,026.96	$5,033.70
16	$2,446.73	$3,220.09	$4,293.45	$5,366.81
17	$2,279.97	$3,419.96	$4,559.94	$5,699.93
18	$2,413.22	$3,619.82	$4,826.43	$6,033.04
19	$2,546.46	$3,819.69	$5,092.92	$6,366.15
20	$2,679.71	$4,019.56	$5,359.41	$6,699.26
21	$2,812.96	$4,219.43	$5,625.90	$7,032.38
22	$2,946.20	$4,419.29	$5,892.39	$7,365.49
23	$3,079.44	$4,619.16	$6,158.88	$7,698.60
24	$3,212.69	$4,819.03	$6,425.37	$8,031.71
25	$3,345.93	$5,018.90	$6,691.86	$8,364.83

Exhibit L

Sanitation Fees

Open Top/Compactor Fees	
One-time set up fee (Delivery fee)	$33.15 + Tax
Daily Rental	$6.63 + Tax
Haul Charge	$165.81 + Tax
Per Ton Disposal Fee (Landfill Charge)	$34.93 per

Removal of Garbage by Other Entity	
Garbage Hauler's Permit	$500.00

Landfill- Dumping and Unloading Charges	
Landfill Access Fee-	$25.00
Unlimited Landfill Access Fee-year	$500.00
Minimum Fee under 1 Ton	$17.46
Per ton Disposal Fee	$34.93
Materials not contained	$15.00
Pull off Fee	$75.00
Special Waste/Minor or TDH permit	
Special Waste Fee- Per Ton	$69.86
Minimum Fee under 1 Ton	$34.92

(1) Pursuant to Section 8-6-24 (A), Code of Ordinances, all Landfill Charges referenced in this Subsectioin (A) shall increase by two percent on February 1, 2017, and each February 1 thereafter, Unless otherwise modified by the City Council.

Exhibit M

Airport

	Fee
Landing Fees (per 1000 pounds of gross landing weight)	$0.70
Air carrier fees (per 1000 pounds of gross landing weight)	$0.70
Public Aircraft parking – locally based aircraft (month)	$25.00
Public Aircraft parking – transient aircraft (day)	$1.50
Public Parking – CI (Covered)	
0-30 minutes	Free
31-60 minutes	$3.00
Every additional hour	$2.00
Maximum per 24-hour period	$15.00
Public Parking – P1 & P3 (Close-In)	
0-30 minutes	Free
31-60 minutes	$2.00
Every additional hour	$1.00
Maximum per 24-hour period	$12.00
Public Parking – P2 &P4 (Economy)	
0-30 minutes	Free
31-60 minutes	$2.00
Every additional hour	$1.00
Maximum per 24-hour period	$9.00
Public Parking – C2 (Remote Covered)	
0-30 minutes	Free
31-60 minutes	$2.00
Every additional hour	$1.00
Maximum per 24-hour period	$11.00
Public Parking – P5 (Remote Economy)	
0-30 minutes	Free
31-60 minutes	$2.00
Every additional hour	$1.00
Maximum per 24-hour period	$7.00
Ground Transportation Permits -per month, per vehicle	
Taxicab	$25.00
Buses	$25.00
Courtesy vehicles for off-aiport hotel	$25.00
Courtesy vehicles for off-aiport car rental (plus 10% airport revenue)	$25.00
Courtesy vehicles for off-aiport parking lot (plus 10% airport revenue)	$25.00
Employee Parking	
Annual Employee Parking media (prorated monthly)	$40.00

Exhibit M

Airport

	Fee
Special assessments	
1. Should any person upon driving a vehicle from the paid parking areas of the airport not be able to present an officially issued ticket indicating where that person's vehicle was parked and at what time, then the charge assessed for the parking of that vehicle shall be at least $12.00. In addition to that fee, there shall also be a fee assessed for the parking of that vehicle equal to the amount of the daily rate, times number of days, for the area in which that vehicle was parked as is indicated by the daily lot inventory taken by the airport administration.	
2. Whenever a person or an entity shall pay for the parking fees assessed by this Section with a check or draft, and that check or draft is dishonored, then there shall be an additional $25.00 assessed against that person or entity.	

Exhibit N

Sports Complex

	Fee
Grande Stadium - Football/Soccer Field-Events	
Schools that are Members of the Texas Association of Private and Parochial Schools	$500.00
Up to 3A Schools	$500.00
4A and 5A	$1,500.00
Per 5000+ attendees after	$500.00
Security Bank Ballpark - Baseball Field	
Baseball Events-Flat Rate	$500.00
Grande Stadium - Stadium Rental	
Non-profits Deposit	$500.00
Non-profits Daily Rate	$1,000.00
Commercial Deposit	$1,000.00
Commercial Daily Rate vs. 1.5% of gross gate receipts	$1,500.00
SSC - Parking Lot Rental	
Multiple Day Events- Deposit	$1,000.00
Multiple Day Events- Daily Rate	$1,000.00
Light Use- Single Day- Deposit	$500.00
Light Use- Single Day- Daily Rate	$500.00
SSC - Auxiliary Fields	
Field Per Hour	$50.00
Lights Per Hour	$25.00
Deposit	$100.00
Auxiliary Fields - Tournament Fee Per Game (Includes Lights)	
Game	$30.00
Depost/Clean Up Fee (per day per field. Half deposit is refundable is field is left in good condition)	$250.00
Field Alteration (per field)	$75.00

Exhibit O

Miscellaneous

	Fee
Court Fees	
Municipal Court Building Security Fee	$3.00
Municipal Court Technology Fee	$4.00
Municipal Court Copy Fee	$1.00 per page
Business Regulations	
Closing out sale license fees - 30 days	$100.00
Closing out sale license fees - 60 days	$125.00
Closing out sale license fees - 90 days	$150.00
Peddler license	$4.00
Mobile Home/Travel Trailer Park App Fee	$10.00
Mobile Home/Travel Trailer Park License	$25 plus $1 ea.space
Mobile Home Mini Park location app	$10.00
Mobile Home Mini Park revised site plan	$10.00
City Chauffeur's license app fee	$25.00
Airport Cabstand Permit fee (per month)	$25.00
Special police officer license fee (individual)	$10.00
Special police officer license fee (firm)	$50.00
Carnival operator's license	$50.00
Carnival employee's license	$6.00
Side walk sale application fee	$4.00
Police Regulations	
Ambulance Services- Basic Life Support	$650 + $10 per mile
Ambulance Services- Advanced Life Support	$750 + $10 per mile
Ambulance Services- Advanced Level II	$850 + $10 per mile
Ambulance Waiting Charge	$200 per hour
Ambulance Service- Outside Midland County	$100.00
Food Truck Fire Inspection	$50 per inspection annually
Alarm Permit Application Fee-Commercial	$25.00
Alarm Permit Application Fee-Residential	$20.00
Alarm Permit Renewal Fee -Commercial	$20.00
Alarm Permit Renewal Fee - Residential	$15.00
Alarm Permit Service fee	$50.00
Franchises	
Telecomm Carrier on public ROW Reg. Fee-	$25.00
Franchise application and review fee	$500.00
Franchise renewal application and review fee	$500.00

INTEROFFICE MEMORANDUM

TO: **Christy Weakland, Finance Director**

FROM: **Jeffery Ahrlett, Director of Solid Waste**

SUBJECT: **Update Sanitation Fee Ordinance**

DATE: **August 9, 2021**

CC: **Tina Jauz, Assistant City Manager**

Staff is seeking city council approval of an update to the current Sanitation Fee Ordinance. This includes the approval of an increase in sanitation rates.

- $2.00 per month increase residential
- $32.90 plus tax per month increase per commercial container

The proposed rates remain among the lowest in comparison to other municipalities with similar services. See attached tables.

Increased revenue from the proposed sanitation rates would yield approximately an additional $1,000,000 in commercial collection and approximately $900,000 additional in residential collection.

Council last approved an increase in sanitation fees in November 2016. This established an increase of 2% each year for three consecutive years. During 2020, staff did not recommend an increase. The proposed rates would help the rising cost of delivering sanitation services.

The proposed rates would be effective October 1, 2021.

Exhibit A

City Secretary

	Fee
Business Regulations	
Junk and secondhand goods license	$25.00
Renewal of junk and secondhand good	$10.00
Alcoholic Beverage License Fee	1/2 of State Fee
Taxicab annual operating fee (each)	$200.00
Limo or Motorbus operating fee (each)	$100.00
Passports	
Execution Fee (DS-11)	$35.00
Renewal Mailing Fee (DS-82)	$10.00
Passport Photograph	$18.00
Expedited Shipping Fee (DS-11)	$26.40
Expedited Shipping Fee (DS-82)	$32.95
Notarization Fee	$10.00
Copies	$0.25

Exhibit B

Parks

	Fee
TEMP FENCING	
Deposit	$200.00
Rental Fee (per panel)	$10.00
SHOWMOBILE	
Deposit	$1,000.00
4 Hours	$250.00
8 Hours	$500.00
Extensions	$100.00
Show Lights	$200.00
PORTABLE BLEACHERS	
Deposit	$100.00
Rental Fee	$100.00
PORTABLE STAGE	
Deposit	$100.00
Rental Fee	$100.00
TRASH CANS	
Deposit	$100.00
Rental Fee (10 cans)	$50.00
PARK PAVILION RENTAL	
Deposit	$100.00
Rental Fee 9am-12am	$60.00
Rental Fee 9am-3pm	$30.00
Rental Fee 4pm-12am	$40.00
BEAL RANCH HOUSE	
Deposit no Alcohol	$300.00
Deposit w/Alcohol	$500.00
Rental Fee Per Hour	$50.00
GAZEBO RENTAL WADLEY	
Deposit	$100.00
Rental Fee 9 am- 3 pm	$50.00
Rental Fee 4 pm-10 pm	$50.00
Rental Fee 9 am-10 pm	$100.00
GAZEBO RENTAL BEAL	
Deposit	$100.00
Rental Fee 9 am- 3 pm	$50.00
Rental Fee 4 pm-10 pm	$50.00
Rental Fee 9 am-10 pm	$100.00

Exhibit C

Recreation

		Fee
CITY POOL RATES		
Entry Fee		$3.00
Children under 2		Free
10 Punch Card		$15.00
25 Punch Card		$35.00
75 Punch Card		$75.00
Personal Cooler Admission		$10.00
Soda/Drinks		$2.00
Snacks		$1.00
Life Jacket Rental		$1.00
Life Jacket Deposit		$1.00
PRIVATE RENTALS		
DEPOSIT		$250.00
RENTAL		$700.00
POOL PAVILION RENTALS		
(Doug Russell Only)		
DEPOSIT		$100.00
RENTAL		$100.00
MARTIN LUTHER KING RECREATION CENTER	per hour	
Activity Room		
During Operation		$25.00
After Hours		$35.00
Deposit		$100.00
Activity Rm/with Gameroom	per hour	
During Operation		$35.00
After Hours		$70.00
Deposit		$300.00
Auditorium	per hour	
During Operation		$50.00
After Hours		$75.00
Deposit No Alcohol		$500.00
Deposit Alcohol		$750.00
Gymnasium	per hour	
Sporting Events ONLY		
During Operation		$25.00
After Hours		$50.00
Deposit		$200.00
Training Room	per hour	
Sporting Events ONLY		

Exhibit C

Recreation

	Fee
During Operation	$50.00
After Hours	$75.00
Deposit	$1,000.00
Daily	$1.00
Monthly Membership	$15.00
MLK Volleyball Net Setup Fee	$15.00
MOVIE SCREEN	
Deposit	$1,000.00
Fee	$500.00
BUBBLE SOCCER AT MLK Gym Only	
Deposit	$300.00
During Hrs	$100.00
After Hours	$125.00
Bubble Soccer at MLK Gym/Activity Rm	
Deposit	$300.00
During Hrs	$125.00
After Hours	$135.00
BUBBLE SOCCER AT MLK Gym/Act Rm/Game Rm	
Deposit	$300.00
During Hrs	Not Avaliable
After Hours	$170.00
BUBBLE SOCCER NOT @MLK	
Deposit	$500.00
Fee Per Hr (must be 2 hour rental)	$200.00
AUXILIARY FIELDS	
Per Hour	$50.00
Tournament (per game)	$30.00
Deposit	$100.00
Tournament Deposit ($125 non refundable)	$250.00
Field Marking	$75.00
Lights for Practice field (per field per hour)	$25.00

Exhibit D

Health and Senior Services

	Fee
Environmental Section	
Mobile Food Vendor	
Mobile Food Vendor	$175.00
Mobile Food (Seasonal)	$105.00
Temporary Permit	$70.00
Food Services Establishments	
1 thru 5 employees	$150.00
6 thru 10 employees	$200.00
11 or more employees	$250.00
Deli/Meat Market/Bakery	$75.00
Farmers Market	$50.00
Retail Food Store	
1 thru 5 employees	$150.00
6 thru 10 employees	$200.00
11 or more employees	$250.00
Temporary Permit	$70.00
Child Care Programs	
Day Care	$100.00
Foster Care	$50.00
Child Care Program for after School	$50.00
Swimming Pool, Spa, or Water Feature Permit	
Swimming Pool or Spa Permit	$100.00
Water Feature Permit	$100.00
Non-Profit Yearly	$30.00
Non-Profit Temporary	$30.00
Re-inspection (When Establishment is shut down)	$75.00
Septic System Inspections	
Septic System Residential	$150.00
Septic System Commercial	$210.00
Septic re-inspection (When fails initial inspection)	$50.00
Late Fee (When not paid by specified date)	25% of Permit Fee
Clinical Section	
Health Department Services	
DTaP	$45.00
Kinrix (DTaP & Polio)	$100.00
Pentacel (DTaP & Polio & Flu Type B)	$140.00
IPV (Polio)	$50.00
Pedi HEP A	$40.00
Pedi HEP B	$35.00
HIB (Flu Type B)	$40.00

Exhibit D

Health and Senior Services

	Fee
Vaxelis (DTaP, HIB, Polio & HEP B)	$150.00
Rototeq/Rotarix (Rotavirus)	$140.00
Proquad (MMR & Varicella)	$250.00
PCV 13 (Pneumococcal Conjugate)	$260.00
PPSV23 (Pneumococcal Conjugate)	$145.00
MMR	$90.00
Varicella	$150.00
TD (Tetanus & Diptheria)	$50.00
TDAP (Tetanus Diptheria and Pertussis)	$60.00
HPV 9	$240.00
MCV4 (Meningitis)	$150.00
Menqaudfi (Meningitis)	$200.00
Trumenba (Meningococcal Group B)	$140.00
Bexsero (Meningococcal Group B)	$130.00
Adult Hep A	$60.00
Adult Hep B	$65.00
Shingrix (Shingles)	$170.00
Infant flu	$25.00
Flu	$30.00
High Dose Flu	$65.00
Flublok	$60.00
Yellow Fever	$130.00
STD Testing	$10.00
HIV Testing	$10.00
STD Clinic Treatment	$10.00
STD Clinic Retreatment	$10.00
Pregnancy Test-Urine	$10.00
Pregnancy Test - Blood	$15.00
TB Test	$15.00
TB Clinic	$10.00
Administration Fees	
Insured	$25.00
TVFC 1=$10, 2=$20, >or= 3 = $30	
Refugee	$0.00
Medicaid/CHIP	$14.85
Medicare Flu or Pneumonia	$25.00

Exhibit E

Animal Services

	Fee
Adoption Fees	
Adoption Fees (includes micro chipping)	$35.00
Ducks, Rabbits, Other	$5.00
Humane Coalition Transfer Fee (with micro chipping) Range $17 to $25	$25.00
Animal Service Discount	$6.73
Impoundment Fees	
Impoundment - 1st Offense (altered)	$25.00
Impoundment - 1st Offense (unaltered)	$100.00
Impoundment - 2nd Offense (altered)	$50.00
Impoundment - 2nd Offense (unaltered)	$100.00
Impoundment - 3rd+ Offense (altered)	$60.00
Impoundment - 3rd+ Offense (unaltered)	$100.00
Livestock Impoundment	$100.00
Boarding & Quarantine	
Boarding (per day)	$6.00
Quarantine Fees ($8/day for 10 days)	$8.00
Home Quarantine Fees ($3/day for 10 days)	$30.00
Pick-up Fees	
Pickup Fee - Owner release	$15.00
Pickup Fee - Deceased	$10.00
Pickup Fee - Dead Small Livestock	$25.00
Pickup Fee- Deceased Livestock	$75.00
Transfer to Vet Fee	$15.00
Rabies Specimen Prep Fee	$15.00
Rabies Specimen Shipping	$45.00
Microchipping	
Microchips	$15.00
Pet Services	
Flea/Tick Dip	$15.00
Euthanasia	
Euthanasia	$15.00
Pet Licenses	
Pet License (yearly) ($7 reg, $10 Spec Event)	$7 or $10
Pet License (replacement)	$1.00
Wild Animal Permit	$25.00
Dangerous Dog Yearly Registration	$50.00
Off Leash Training Permit	$5.00
Pigeons	
Loft Permit for Pigeons	$3.00
Renewal of Loft Permit	$2.00

Exhibit F

Golf Course

	Fee
Green Fee - Weekday	$20.25
Green Fee - Weekdays after 4:00	$11.25
Green Fee - Weekend	$25.25
Green Fee - Weekend after 4:00	$15.00
Weekend AM - 9 Holes	$14.00
Green Fee - Senior	$15.25
Green Fee - Junior	$9.50
Cart Fee (90%)	$12.75

Exhibit G

Planning

	Fee
Preliminary Plat Application	
Sketch Plan Application (1st review)	$225.00
Sketch Plan Application (2nd review)	$100.00
Preliminary Plat Application (up to 50 acres)	$350.00
Preliminary Plat Application (over 50 acres)	$500.00
Final Plat Application	
Standard Plat or Residential Up to 50 acres	$350.00
Standard Plat or Residential over 50 acres Max	$500.00
Administrative Plat	$250.00
Digital File Conversion Fee	$50.00
Recording Fees- Plats up to 18"x24"	$61.00
Recording Fees- Plats over 18"x24"	$81.00
Related Documents	$26.00
Replat	
Replat with Public Hearing	$250.00
Replat without Public Hearing	$250.00
Annexation/Zone Change Application	
Standard Zone Change	$500.00
Planned District Zone Change	$650.00
Multiple PD Proposal Basic	$550.00
Multiple PD Proposal Per Additional District	$100.00
Additional PD Regulations	$75.00
Site Plan in PDF Format for City Council	$50.00
Application Fee	$500.00
Zoning Board of Appeal Fee	$600.00
Special Exception Application Fee	$500.00
Oil and Gas	
Application for Oil and Gas Permit	$4,000.00
Credit Access Businesses	
Application Fee	$50.00
Specific Use Permit (SUP) / Specific Use Designation (SUD)	
Application for SUP/SUD with Term for Alcoholic Beverage	$300.00
Application for General SUP/SUD	$400.00
Renewal SUP/SUD	$75.00
Temporary Mobile Home	
Special Temporary Permit for Manufactured Home App (Based on Genuine Hardship Condition)	$50.00
Special Temporary Permit for Manufactured Home App (For Occupancy by a Caretaker, Manager, or Guard)	$100.00
Temporary Land Use	
Application Fee	$300.00
For each additional event date	$25.00
Clean-Up Deposit	$500.00

Exhibit G

Planning

		Fee
	Damage Deposit	$500.00
	Outside sale of dogs	$20.00
Site Plan Review		
	Single PD Amendment	$550.00
	Multiple PD Amendment	$650.00
Dedications		
	Review Fee	$400.00
Vacation		
	Application Fee	$400.00
Creation of a Building Site		
	Application Fee	$400.00
Master Sign Plan		
	Application Fee	$300.00
Traffic Impact		
	Traffic Impact (Staff Study)	$350.00
	Traffic Impact (Review of Submittal)	$600.00
Portable Storage Containers		
Freight or Portable storage cont.- permit fee		$125.00
	Each add'l on same property	$25.00
90- day permit fee for storage container		$150.00
	Each add'l container	$25.00
45- day permit fee for storage container		$125.00
	Each add'l container	$25.00
30 day permit fee for storage container		$75.00
Certificate of occupancy and compliance		
Certificate of occupancy and compliance		$10.00

Exhibit H

Code Enforcement

	Fee
Building Permits	
Construction Permit Fee	31.5 cents per square foot
Sidewalk/ROW Residential (No building permit)	$50.00
Sidewalk/ROW Commercial (No building permit)	$200.00
Street Improvement Fee	23 cents per square foot
Fence Fee	$50.00
Manufactured Home	$200.00
Manufactured Home Skirting Deposit	$100.00
Moving Fee	$200.00
Non-Profit Residential	$150.00
Temporary Structure	$100.00
Detached Assessory (120Sq.ft or less)	$50.00
Detached Assessory (120Sq.ft to 200 sq.ft.)	$100.00
Demolition Permits	
Commercial Demo Fee - Building	$500.00
Commerical Demo Fee - Interior	$100.00
Residential or Accessory Bldg	$50.00
Temporary Sign Permits	
Permanent Sign Permits	$50.00
Temporary sign annual permit fee	$50.00
Failure to remove sign- hauling fee	$50.00
Failure to remove sign- daily storage fee	$10.00
Oil & Gas Drilling Permits	
Amendment Fee	$1,000.00
Certification Fee & Inspection	$300.00
Oil & Gas Application Fee	$4,000.00
Well Tranfer Fee	$500.00
***TX State HB-40 recognizes Ordinance 8769 including fees and may not be amended**	
Mobile Home Park Licenses	
Mobile Home Park Licenses	$25.00 plus $1 ea/addl
Certificate of Occupancy	
Certificate of Occupancy	$50.00
Lot Deposits	
Clearing Deposits (Floor & Foundation) Commercial	$2,000.00
Clearing Deposits (Floor & Foundation) Residential	$600.00
Clearing Deposits (Rubbish, Litter, Lot)	$200.00
Clearing Deposit (Accessory Bldg, Debris, Material	$200.00
Lot Clearing	
Administrative Fee	$100.00
Tree Removal	$70.00
Debris Charge	$110 per ton

Exhibit H

Code Enforcement

	Fee
Mow Vacant Lot	$0.05 per sq. yd.
Mow Lot with Structure	$0.055 per sq. yd.
Mow Acreage	$70 per acre
Mowing Fee	$0.10 per sq. yd.
Special Project	$165.00
Minimum Lot Charge	$45.00
Tires	Reimbursemt+$2.00/tire
Electrical Fees	
Minimum Fee	$50.00
Temporary Service	$50.00
Temporary Construction Pole	$50.00
Parking Lot Wiring	$50.00
Building Wiring	$0.05 per sq.ft
Service Change	$50.00
Sign Electrical Fee	$50.00
Electrical Fixture Fee (for first, $1.00 each after)	$15.00
Mobile Home Rewiring ($5 for each add'l)	$50.00
Clearance for Elec Connect/Disconnect Residential	$50.00
Reinspection (Red Tag)	$50.00
Mechanical Fees (when not part of bldg.permit)	
Minimum Fee	$50.00
Inspection for Heating, AC,Venting,Ductwork,Fridge ($5 for each add'l inspection)	$50.00
Fire Extinguishing Permit	$50.00
Boiler Inspections (33K to 1165 BTU)	$50.00
Boiler Inspections (1165K to 3300 BTU)	$50.00
Boiler Inspections (over 3300 BTU)	$50.00
Reinspection (Red Tag)	$50.00
Gas Fees (when not part of bldg.permit)	
Minimum Fee	$50.00
Floor Furnace, Boiler	$50.00
Vented Recessed Heater	$50.00
Gas line service	$50.00
Vented Appliance ($10 each add'l)	$50.00
Temporary Connection	$50.00
Reinspection (Red Tag)	$50.00
Plumbing Fees (when not part of bldg.permit)	
Minimum Fee	$50.00
Furnace, unit or wall heater ($10 each add'l)	$50.00
Water heater ($10 each add'l)	$50.00
Water softener	$50.00
Lawn Sprinkler	$50.00

Exhibit H

Code Enforcement

	Fee
Water Line Service	$50.00
Sewer Line Service	$50.00
Replumb Bldg	$0.05 Sq. Ft.
Fire Sprinker	$0.05 Sq. Ft.
Backflow Assembly Device ($10 each add'l)	$50.00
Reinspection (Red Tag)	$30.00
Vendor Permit	
Vendor Permit	$100.00
Water Well Fee	
Drill new well	$50.00
Reinspection Fee	
Reinspection (All Permits)	$100.00
Application to Board of Appeals	
Application	$200.00
Public Ways and Property	
House moving permit fee	$25.00
Network Nodes-5 in same application	$500.00
Each additional node in application	$250.00
Node Support Pole Application	$1,000.00
Fee to attach network node to public ROW pole	$20.00

Exhibit I

Engineering

	Fee
Traffic	
Street Name and Traffic Control Sign Fee	$500/intersection
Right of Way Use Permit Fee	$350.00

Exhibit J

Water & Sewer Fees

	Fee (as of July 1, 2020)
Water Rates Inside City:	
Base Rate for All Except Apartments for First 2,000 gallons	$21.61
Base Rate for Apartments per Unit for first 2,000 gallons per Unit	$17.60
Rate per 1,000 gallons over base of 2,000 up to 10,000	$6.11
Rate per 1,000 gallons from 10,001 up to 25,000	$8.03
Rate per 1,000 gallons from 25,001 up to 50,000	$10.80
Irrigation)	$13.50
Sewer Rates Inside City:	
All Customers Base Rate (First 2,000 gallons)	$21.79
All Customers Rate per 1,000 after Base Rate	$0.88
Water Rates Outside City:	
Base Rate for All Except Apartments for First 2,000 gallons	$32.42
Base Rate for Apartments per Unit for first 2,000 gallons per Unit	$26.40
Rate per 1,000 gallons over base of 2,000 up to 10,000	$9.17
Rate per 1,000 gallons from 10,001 up to 25,000	$12.05
Rate per 1,000 gallons from 25,001 up to 50,000	$16.20
Irrigation)	$20.25
Sewer Rates Outside City:	
Residential Base Rate (First 2,000 gallons)	$32.69
Residential Rate per 1,000 after Base Rate	$1.32
Miscellaneous:	
Septage waste hauler discharges and fees (per gallon)	$0.30

Exhibit K

Customer Service/Utility Billing

	Fee
Account Billing	
Residential Utility Deposit	$75.00
Re-read of Water Meter (2nd time)	$25.00
Test of Water Meter (2nd time)	$25.00
Non-sufficient fund check	$30.00
Reconnect-Disconnect fee	$30.00
Application Fee	$20.00
Transfer Fee	$20.00
Tampering/Straight Fee (1st time)	$200.00
Tampering/Straight Fee (2nd time)	$300.00
Water Meters & Tap Fees	
3/4" water meter-with existing meter box	$40.00
1" water meter-with existing meter box	$100.00
1" water meter tap (no paving cut or meter installation)	$390.00
1" service charge for tap and meter with meter box	$425.00
2" water meter- with existing meter box	$240.00
2" water meter tap (no paving cut or meter installation)	$564.00
2" service charge for tap and meter with meter box	$710.00
3" water meter	$375.00
4" water meter	$375.00
4" sewer tap	$350.00
6" sewer tap	$400.00
Replacement sewer tap (per line)	$300.00
Fee to abandon line for replacement	$150.00
Paving cut/Boring & Casing Fee	$400.00
Fire hydrant meter setting or moving	$200.00
Fire Hydrant meter deposit setting	$2,400.00
Drinking Water Testing- Total Coliform (Presence or absence)	$18.00
Non-Potable H2O testing- Total Coliform & E.Coli (MPN)	$25.00
Non-Potable H2O testing- Total Coliform & Fecal Coliform (MPN)	$25.00
Move a service line no more than 5 feet	$150.00

Exhibit L

Sanitation Fees

Inside City Limits

# of Containers	Number of pickups per week			
	2X	3X	4X	5X
Residential				
0.25	$18.45			
0.5	$36.90			
0.75	$55.35			
1	$73.80			
Commercial				
0.25	$24.68	$37.02	$49.36	$61.70
0.5	$49.36	$74.04	$98.72	$123.40
0.75	$74.04	$111.06	$148.08	$185.10
1	$98.70	$148.05	$197.40	$246.75
2	$187.53	$281.30	$375.06	$468.83
3	$276.36	$414.54	$552.72	$690.90
4	$365.19	$547.79	$730.38	$912.98
5	$454.02	$681.03	$908.04	$1,135.05
6	$542.85	$814.28	$1,085.70	$1,357.13
7	$631.68	$947.52	$1,263.36	$1,579.20
8	$720.51	$1,080.77	$1,441.02	$1,801.28
9	$809.34	$1,214.01	$1,618.68	$2,023.35
10	$898.17	$1,347.26	$1,796.34	$2,245.43
11	$987.00	$1,480.50	$1,974.00	$2,467.50
12	$1,075.83	$1,613.75	$2,151.66	$2,689.58
13	$1,164.66	$1,746.99	$2,329.32	$2,911.65
14	$1,253.49	$1,880.24	$2,506.98	$3,133.73
15	$1,342.32	$2,013.48	$2,684.64	$3,355.80
16	$1,431.15	$2,146.73	$2,862.30	$3,577.88
17	$1,519.98	$2,279.97	$3,039.96	$3,799.95
18	$1,608.81	$2,413.22	$3,217.62	$4,022.03
19	$1,697.64	$2,546.46	$3,395.28	$4,244.10
20	$1,786.47	$2,679.71	$3,572.94	$4,466.18
21	$1,875.30	$2,812.95	$3,750.60	$4,688.25
22	$1,964.13	$2,946.20	$3,928.26	$4,910.33
23	$2,052.96	$3,079.44	$4,105.92	$5,132.40
24	$2,141.79	$3,212.69	$4,283.58	$5,354.48
25	$2,230.62	$3,345.93	$4,461.24	$5,576.55
Per Month				
Recycling fee	$0.50			
Litter Abatement Fee	$1.00			

Exhibit L

Sanitation Fees

Outside City Limits - Sanitation Fees

# of Containers	Number of pickups per week			
	2X	3X	4X	5X
Residential				
0.25	$27.68			
0.5	$55.36			
0.75	$83.04			
1	$110.72			
Commercial				
0.25	$37.02	$55.53	$74.04	$92.55
0.5	$74.04	$111.06	$148.08	$185.10
0.75	$111.06	$166.59	$222.12	$277.65
1	$148.05	$222.08	$296.10	$370.13
2	$281.30	$421.94	$562.59	$703.24
3	$414.54	$621.81	$829.08	$1,036.35
4	$547.79	$821.68	$1,095.57	$1,369.46
5	$681.03	$1,021.55	$1,362.06	$1,702.58
6	$814.28	$1,221.41	$1,628.55	$2,035.69
7	$947.52	$1,421.28	$1,895.04	$2,368.80
8	$1,080.77	$1,621.15	$2,161.53	$2,701.91
9	$1,214.01	$1,821.02	$2,428.02	$3,035.03
10	$1,347.26	$2,020.88	$2,694.51	$3,368.14
11	$1,480.50	$2,220.75	$2,961.00	$3,701.25
12	$1,613.75	$2,420.62	$3,227.49	$4,034.36
13	$1,746.99	$2,620.49	$3,493.98	$4,367.48
14	$1,880.24	$2,820.35	$3,760.47	$4,700.59
15	$2,013.48	$3,020.22	$4,026.96	$5,033.70
16	$2,446.73	$3,220.09	$4,293.45	$5,366.81
17	$2,279.97	$3,419.96	$4,559.94	$5,699.93
18	$2,413.22	$3,619.82	$4,826.43	$6,033.04
19	$2,546.46	$3,819.69	$5,092.92	$6,366.15
20	$2,679.71	$4,019.56	$5,359.41	$6,699.26
21	$2,812.96	$4,219.43	$5,625.90	$7,032.38
22	$2,946.20	$4,419.29	$5,892.39	$7,365.49
23	$3,079.44	$4,619.16	$6,158.88	$7,698.60
24	$3,212.69	$4,819.03	$6,425.37	$8,031.71
25	$3,345.93	$5,018.90	$6,691.86	$8,364.83

Exhibit L

Sanitation Fees

Open Top/Compactor Fees	
One-time set up fee (Delivery fee)	$33.15 + Tax
Daily Rental	$6.63 + Tax
Haul Charge	$165.81 + Tax
Per Ton Disposal Fee (Landfill Charge)	$34.93 per

Removal of Garbage by Other Entity	
Garbage Hauler's Permit	$500.00

Landfill- Dumping and Unloading Charges	
Landfill Access Fee-	$25.00
Unlimited Landfill Access Fee-year	$500.00
Minimum Fee under 1 Ton	$17.46
Per ton Disposal Fee	$34.93
Materials not contained	$15.00
Pull off Fee	$75.00
Special Waste/Minor or TDH permit	
Special Waste Fee- Per Ton	$69.86
Minimum Fee under 1 Ton	$34.92

(1) Pursuant to Section 8-6-24 (A), Code of Ordinances, all Landfill Charges referenced in this Subsectioin (A) shall increase by two percent on February 1, 2017, and each February 1 thereafter, Unless otherwise modified by the City Council.

Exhibit M

Airport

	Fee
Landing Fees (per 1000 pounds of gross landing weight)	$0.70
Air carrier fees (per 1000 pounds of gross landing weight)	$0.70
Public Aircraft parking – locally based aircraft (month)	$25.00
Public Aircraft parking – transient aircraft (day)	$1.50
Public Parking – CI (Covered)	
0-30 minutes	Free
31-60 minutes	$3.00
Every additional hour	$2.00
Maximum per 24-hour period	$15.00
Public Parking – P1 & P3 (Close-In)	
0-30 minutes	Free
31-60 minutes	$2.00
Every additional hour	$1.00
Maximum per 24-hour period	$12.00
Public Parking – P2 &P4 (Economy)	
0-30 minutes	Free
31-60 minutes	$2.00
Every additional hour	$1.00
Maximum per 24-hour period	$9.00
Public Parking – C2 (Remote Covered)	
0-30 minutes	Free
31-60 minutes	$2.00
Every additional hour	$1.00
Maximum per 24-hour period	$11.00
Public Parking – P5 (Remote Economy)	
0-30 minutes	Free
31-60 minutes	$2.00
Every additional hour	$1.00
Maximum per 24-hour period	$7.00
Ground Transportation Permits -per month, per vehicle	
Taxicab	$25.00
Buses	$25.00
Courtesy vehicles for off-aiport hotel	$25.00
Courtesy vehicles for off-aiport car rental (plus 10% airport revenue)	$25.00
Courtesy vehicles for off-aiport parking lot (plus 10% airport revenue)	$25.00
Employee Parking	
Annual Employee Parking media (prorated monthly)	$40.00

Exhibit M

Airport

	Fee
Special assessments	
1. Should any person upon driving a vehicle from the paid parking areas of the airport not be able to present an officially issued ticket indicating where that person's vehicle was parked and at what time, then the charge assessed for the parking of that vehicle shall be at least $12.00. In addition to that fee, there shall also be a fee assessed for the parking of that vehicle equal to the amount of the daily rate, times number of days, for the area in which that vehicle was parked as is indicated by the daily lot inventory taken by the airport administration.	
2. Whenever a person or an entity shall pay for the parking fees assessed by this Section with a check or draft, and that check or draft is dishonored, then there shall be an additional $25.00 assessed against that person or entity.	

Exhibit N

Sports Complex

	Fee
Grande Stadium - Football/Soccer Field-Events	
Schools that are Members of the Texas Association of Private and Parochial Schools	$500.00
Up to 3A Schools	$500.00
4A and 5A	$1,500.00
Per 5000+ attendees after	$500.00
Security Bank Ballpark - Baseball Field	
Baseball Events-Flat Rate	$500.00
Grande Stadium - Stadium Rental	
Non-profits Deposit	$500.00
Non-profits Daily Rate	$1,000.00
Commercial Deposit	$1,000.00
Commercial Daily Rate vs. 1.5% of gross gate receipts	$1,500.00
SSC - Parking Lot Rental	
Multiple Day Events- Deposit	$1,000.00
Multiple Day Events- Daily Rate	$1,000.00
Light Use- Single Day- Deposit	$500.00
Light Use- Single Day- Daily Rate	$500.00
SSC - Auxiliary Fields	
Field Per Hour	$50.00
Lights Per Hour	$25.00
Deposit	$100.00
Auxiliary Fields - Tournament Fee Per Game (Includes Lights)	
Game	$30.00
Depost/Clean Up Fee (per day per field. Half deposit is refundable is field is left in good condition)	$250.00
Field Alteration (per field)	$75.00

Exhibit O

Miscellaneous

	Fee
Court Fees	
Municipal Court Building Security Fee	$3.00
Municipal Court Technology Fee	$4.00
Municipal Court Copy Fee	$1.00 per page
Business Regulations	
Closing out sale license fees - 30 days	$100.00
Closing out sale license fees - 60 days	$125.00
Closing out sale license fees - 90 days	$150.00
Peddler license	$4.00
Mobile Home/Travel Trailer Park App Fee	$10.00
Mobile Home/Travel Trailer Park License	$25 plus $1 ea.space
Mobile Home Mini Park location app	$10.00
Mobile Home Mini Park revised site plan	$10.00
City Chauffeur's license app fee	$25.00
Airport Cabstand Permit fee (per month)	$25.00
Special police officer license fee (individual)	$10.00
Special police officer license fee (firm)	$50.00
Carnival operator's license	$50.00
Carnival employee's license	$6.00
Side walk sale application fee	$4.00
Police Regulations	
Ambulance Services- Basic Life Support	$650 + $10 per mile
Ambulance Services- Advanced Life Support	$750 + $10 per mile
Ambulance Services- Advanced Level II	$850 + $10 per mile
Ambulance Waiting Charge	$200 per hour
Ambulance Service- Outside Midland County	$100.00
Food Truck Fire Inspection	$50 per inspection annually
Alarm Permit Application Fee-Commercial	$25.00
Alarm Permit Application Fee-Residential	$20.00
Alarm Permit Renewal Fee -Commercial	$20.00
Alarm Permit Renewal Fee - Residential	$15.00
Alarm Permit Service fee	$50.00
Franchises	
Telecomm Carrier on public ROW Reg. Fee-	$25.00
Franchise application and review fee	$500.00
Franchise renewal application and review fee	$500.00

Pricing Comparison Worksheet Cities - Residential

Twice Per Week Collection Municipalities

	City of Odessa	City of Abilene	City of Big Spring	City of Midland	City of Midland
Address	1100 W 42nd st Odessa Tx	149 Gann St Abilene, TX	301 Nolan St Big Spring, TX	**Current Rates**	**Proposed Rates**
Date & Time of tour	8 AM- 5PM	8 AM- 5PM	8 AM- 5PM		
Phone #	432-368-3510	325-676-6053	432-264-2501		
Email address	sw@odessa-tx.gov				
Rollout Carts					
Single Family	$20.94 + tax	$18.11 + tax	$19.10+ tax	$16.45 + tax	$18.45 + tax
Multi family					
			One time per week Collection		
Environmental charge		$1.80	$1.25		
Litter Fee				$1.00	$1.00
Recycle				$0.50	$0.50
Commercial					
3 yd	$81.22 + tax	$66.02 + tax			
4 yd	$108.27 + tax	$90.73 + tax		$65.80 + tax	$98.70 + tax
Rental OT					
30 yd	$5.80 daily + tax	$3.47 + tax		$5.30 daily + tax	$6.63 daily + tax
Monthly					
Set fee/ 10 day	$58.00 + tax	$46.45		$26.52 + tax	$33.15 + tax
Pull charge	$207.19 + tax	$200 + tax		$132.65 + tax	$165.81 + tax
Landfill tonnage	$30.40/ ton	$28.89/ton	$46.00/ton	$34.24/Ton	$34.93/ton
State fee	$1.25/ton				
Overweight fee	$149.17				

Pricing Comparison - Private Collection Companies - Commercial

Twice Per Week Commercial Collection

	Basin Disposal	Republic Services	Y-BAR-A	City of Midland	City of Midland
Address	Odessa, TX	Midland, TX	Midland, TX	**Current Rates**	**Proposed Rates**
Date & Time of tour	8 AM- 5PM	8 AM- 5PM	8 AM- 5PM		
Phone #	432-332-3866	432-561-7600	432-212-0264		
3 yard Container To 4 Yard Container	$192.96 + tax	$173.25		$65.80 + tax	$98.70 + tax
Delivery Fee	$45.00	$269.26		$0.00	$0.00
Environmental charge		$63.11		$0.00	$0.00
Litter Fee				$1.00	$1.00
Recycle Fee				$0.50	$0.50
Rental OT					
30 yd	$5.50 daily + tax	$1,104 for 9 days	$5.00 daily + Tax	$5.30 daily + tax	$6.63 daily + tax
Weekly		$60/Ton over 5 tons			
Set fee	$150.00	$17 per day over 9 days	$150.00	$26.52 + tax	$33.15 + tax
Pull charge	$200.00		$150.00	$132.65 + tax	$165.81 + tax
Environmental/Fuel	$144.00				
Landfill tonnage	$60		$31.00/Ton Midland	$34.24/Ton	$34.93/ton
State fee			$51.00/Ton Odessa		
Overweight fee					
plus applicable tax					

City Council Meeting

Item Number: 46

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Michael Pacelli, City Traffic Engineer

Subject: MOTION GRANTING AMANDA AND DANIEL ARCHER'S APPEAL AND REVERSING THE CITY TRAFFIC ENGINEER'S DENIAL OF A DRIVEWAY PERMIT FOR LOT 31, BLOCK 31, LONE STAR TRAILS ADDITION, SECTION 13, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF BURNETT LANE, APPROXIMATELY 288 FEET NORTH OF BRUSH DRIVE) (DISTRICT 1) (ENGINEERING SERVICES)

Purpose:

The homeowners, Amanda and Daniel Archer, are requesting an exemption from the minimum driveway separation requirements of Title IX, "Public Ways and Property", Chapter 4, "Sidewalks, Driveways and Curbing", of the City Code of Midland, Texas, to allow for construction of a second driveway at the single-family residence at 6911 Burnett Lane.

Recommended City Council Action:

Deny

Fiscal Impact:

None

Discussion:

In early June 2021, the City received a resident complaint about a driveway being constructed at 6911 Burnett Ln in the Lone Star Trails subdivision. Based on a field visit by an Engineering Inspector, it was determined that a contractor had removed the public sidewalk, curb, and a portion of the street pavement and was in the process of constructing a second driveway to this lot. A photo is included in the packet.

The work in the public right-of-way was being done without a permit, in violation of Midland City Code Section 9-4-1. No enforcement action was taken, but the contractor was directed to stop work and apply for a permit.

On June 18, 2021, Favela's Concrete LLC, applied for a driveway permit. A copy of the sketch that was submitted is attached. The sketch shows that, with the addition of the second driveway, there will be no more than 5 ft of landing on the sidewalk between the two ramps.

Per Midland City Code Section 9-4-5, the minimum distance between curb cuts (at the top of the ramps) is 20 ft. Therefore, the 5 ft provided by the proposed design falls significantly short of meeting the Code requirement.

This 20 ft requirement in the Code goes back to at least 1986 and was worked out through multiple meetings held jointly between city staff, developers, and consultants when the standards were prepared at that time. The intention of the 20 ft spacing requirement when multiple driveways are serving one single-family residential lot is to ensure that there remains some stand-up curb along the frontage of each lot to allow for on-street parking.

In this specific case, the addition of the second driveway at 5 ft from the existing driveway means that there will not be enough space for any legal on-street parking. This lot also has about 11 ft of stand-up curb on the other side of the existing driveway, which is also not enough to park a vehicle. Therefore, by not meeting the Code requirement, a situation is created where any visitors or deliveries to this lot will need to park on-street in front of one of the neighbors' lots to either side. Experience has shown that situations where parking regularly occurs in front of the homes of others often leads to conflicts between neighbors and complaints to the City to regulate the parking.

Since the proposed driveway location is substantially out of compliance with long-standing City Code, and no hardship has been demonstrated, the driveway permit was denied on June 23, 2021, after follow-up discussions with the contractor.

The homeowners appealed the permit denial on July 29, 2021, and have indicated that they should be exempted from City Code requirements in this case. A copy of the emailed appeal is attached for reference.

Staff recommends denial of the appeal.

City Manager's Office


Coleman
6911

Michael Pacelli

Subject: FW: 6911 Burnett ~ driveway permit

From: daniel and amanda archer <dat_archer@hotmail.com>
Sent: Thursday, July 29, 2021 1:59 PM
To: Michael Pacelli <mpacelli@midlandtexas.gov>
Cc: Troy Clabaugh <tclabaugh@midlandtexas.gov>; Natalie Burgard <nburgard@midlandtexas.gov>
Subject: RE: 6911 Burnett ~ driveway permit

Good afternoon,

I would like to make a request to be put on the next City Council agenda regarding denial of the driveway permit submitted for my home at 6911 Burnett Lane. After looking over the Access Management Policy sent to me by Mr. Pacelli, I understand that my permit request does not meet the city codes as outlined in the policy. However, after driving throughout my neighborhood and various parts of the city, it seems as though several variances have been granted for driveway access is situations similar to my own. I would like the opportunity to present these sites and discuss the options available to my particular site and situation, with the intention of coming to an agreement that will satisfy all parties involved. With an extended property line as well as living on a cul-de-sac, I do not believe adding an additional driveway will in anyway prohibit traffic flow or decrease parking availability, and will increase property value as well as curb appeal.

Thank you for your consideration,
Amanda and Daniel Archer

From: Michael Pacelli
Sent: Thursday, July 8, 2021 8:18 AM
To: dat_archer@hotmail.com
Cc: Troy Clabaugh; Natalie Burgard
Subject: 6911 Burnett ~ driveway permit

Ms. Archer:

The Access Management Policy that we discussed yesterday is available online here:
https://www.midlandtexas.gov/1006/DrivewaysAccess

Residential driveways are in Sect. 3.1, starting on page 7.

- Table 5 lists the 20 ft minimum curb cut spacing between multiple driveways on one lot.
- Table 6 lists the 36 ft maximum throat width.

The appeals process is described in Sect. 4.5 on page 19. The written request may be submitted via email by replying-to-all on this email.

As discussed, this Access Management Policy went into effect on June 1, 2021, so that applies to all permits submitted after that time. However, there were no changes from the previous ordinance that would have impacted your situation.

For reference, the prior code is still online here:
https://library.municode.com/tx/midland/codes/code_of_ordinances?nodeId=PT2MUCO_TITIXPUWAPR_CH4SIDRCU

Sect. 9-4-5(D) covers residential.

Thank you.

Michael Pacelli, P.E., PTOE
City Traffic Engineer | City of Midland
O. 432-685-7287 D. 432-685-7280

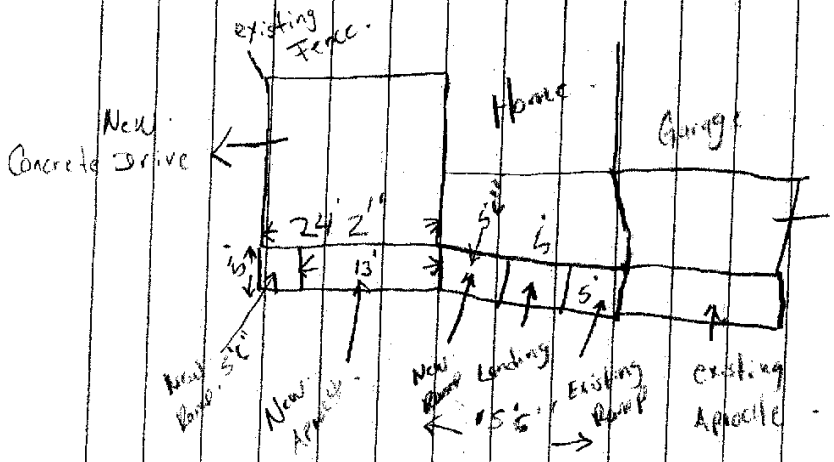




300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

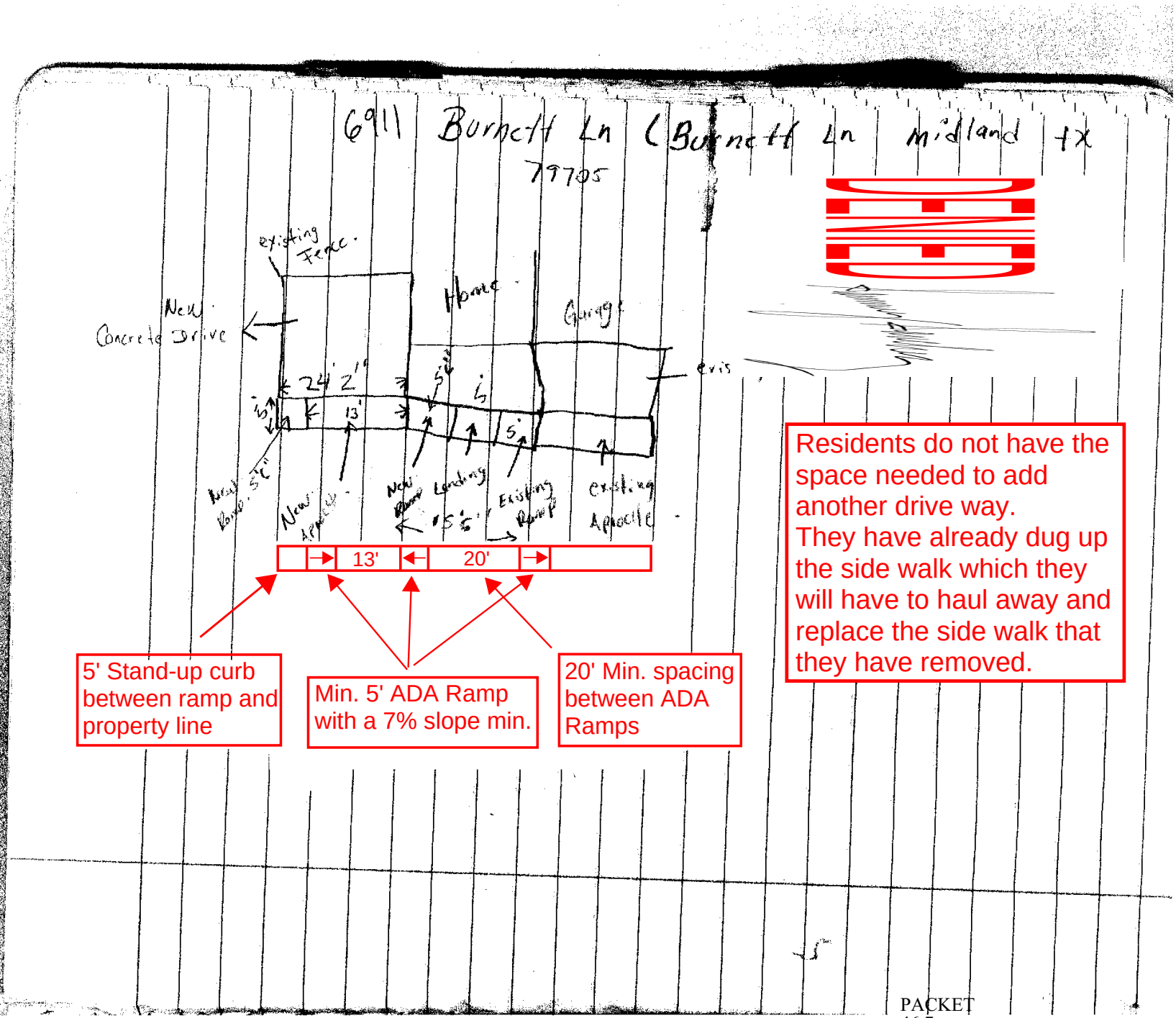
CAUTION: This email originated from outside your organization — exercise caution when opening attachments or clicking links, especially from unknown senders.

6911 Burnett Ln (Burnett Ln Midland TX
79705



Faclas Concrete.

4 flour


6911 Burnett Ln (Burnett Ln Midland TX
79705
DENIED
existing Fence
New Concrete Drive
Home
Garage
24' 2"
13'
5'
New Ramp 5'C"
New Approach
New Ramp Landing
Existing Ramp
existing Approach
13'
20'
5' Stand-up curb between ramp and property line
Min. 5' ADA Ramp with a 7% slope min.
20' Min. spacing between ADA Ramps
Residents do not have the space needed to add another drive way.
They have already dug up the side walk which they will have to haul away and replace the side walk that they have removed.

City Council Meeting

Item Number: 47

Meeting Date: August 24, 2021

To: City Council / City Manager

From: Tina Jauz, Assistant City Manager

Subject: RESOLUTION CREATING A DOWNTOWN ENTERTAINMENT DISTRICT ADVISORY COMMITTEE AND ESTABLISHING DUTIES, QUALIFICATIONS, TERMS OF OFFICE, METHODS FOR FILLING VACANCIES, AND RELATED ORGANIZATIONAL MATTERS (DISTRICT 2) (CITY MANAGER)

Purpose:

Resolution creating a Downtown Entertainment District Advisory Committee and establishing duties, qualifications, terms of office, methods for filling vacancies, and related organizational matters.

Recommended City Council Action:

Approve

Fiscal Impact:

None

Discussion:

City staff is exploring the development of an Entertainment District in downtown Midland. In an effort to include many of the parties directly impacted, the creation of an advisory committee is recommended. If approved, the Downtown Entertainment District Advisory Committee would be appointed by the city council. The committee would work with city staff in exploring the process, pros & cons, and actions needed to create an Entertainment District. The five (5) member committee would include:

Two (2) City Council Members
Two (2) City of Midland Residents

One (1) Downtown Midland Conservancy Park Board Member

The committee would automatically dissolve in 90 days.

Morris William Jr.

City Manager's Office

RESOLUTION NO. _____

RESOLUTION CREATING A DOWNTOWN ENTERTAINMENT DISTRICT ADVISORY COMMITTEE AND ESTABLISHING DUTIES, QUALIFICATIONS, TERMS OF OFFICE, METHODS FOR FILLING VACANCIES, AND RELATED ORGANIZATIONAL MATTERS

WHEREAS, the City Council finds it to be in the public interest to create a Downtown Entertainment District Advisory Committee and establish duties, qualifications, terms of office, methods for filling vacancies, and related organizational matters;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS:

SECTION ONE. Creation and Duties. There is hereby created a Downtown Entertainment District Advisory Committee (the "*Committee*"). The Committee shall be composed of a five (5) members appointed as follows: two (2) City Council members and two (2) City of Midland residents shall be appointed by the City Council; and (1) one Downtown Midland Conservancy Park board member shall be appointed by said board.

The duties of the Committee shall be solely advisory and shall consist of making recommendations to the City Council regarding the creation of a downtown entertainment district and matter related thereto, including, but not limited to, the area covered by said district, and permitted and prohibited uses within said district.

SECTION TWO. Dissolution. The Committee shall automatically dissolve and terminate ninety (90) days following the date of this Resolution.

SECTION FOUR. Vacancies. Upon the resignation or removal of a member of the Committee, a successor to such member shall be appointed by the City Council or Downtown Midland Park Conservancy as applicable, and such successor shall hold his or her membership on the Committee until the Committee is dissolved and terminated in accordance with Section Two.

Any member appointed by the City Council may be removed from the Committee by

a majority vote of the City Council at any time for any reason.

SECTION FIVE. Organization. The Committee shall meet on an ad hoc basis and shall designate the time and place of all meetings. The Committee shall adopt its own rules of procedure.

SECTION SIX. Compensation and Expenses. The members of the Committee shall serve without compensation. No debt shall be made or incurred by the Committee, or anyone acting on behalf of the Committee.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2021, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Patrick N. Payton, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO FORM ONLY:

_____

John Ohnemiller, City Attorney

S:\Resolutions\Administration\2021\Create Downtown Entertainment District Advisory Committee.wpd