CITY OF MIDLAND, TEXAS
AGENDA FOR CITY COUNCIL MEETING
September 28, 2021 - 10:00 AM
300 North Loraine
Midland, Texas
Council Chamber - City Hall

Notice is hereby given that a public meeting will be held by the City Council of the City of Midland, in the Council Chamber, City Hall, 300 N. Loraine, Midland, Texas and via videoconference. A quorum of the City Council intends to be physically present at the aforementioned location.

Videoconference Information

Please click this URL to join. https://us06web.zoom.us/j/88572170407?pwd=eDlBZ3F4a2FtMDJjeHY4V0gwbHdZdz09
Passcode: 210860

Or One tap mobile:
+13462487799,,88572170407# US (Houston)
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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 +1 646 558 8656 or +1 301 715 8592 or +1 312 626 6799
Webinar ID: 885 7217 0407
International numbers available: https://us06web.zoom.us/u/kchHKecQ2t

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

OPENING ITEMS

1. Invocation – Pastor Bob Pase, Grace Lutheran 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 to Saint Ann's Catholic Church for the "125th

Anniversary of the Parish Founding"

3b. Presentation of Proclamation for “National Recovery Month”

CONSENT AGENDA

4. MOTION APPROVING THE FOLLOWING MINUTES:

4a. REGULAR CITY COUNCIL MEETING OF SEPTEMBER 14, 2021.

5. 2021-122 – RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH AXON ENTERPRISE, INC., FOR THE BODY WORN CAMERA SYSTEMS FOR THE POLICE DEPARTMENT THROUGH BUYBOARD AT A TOTAL COST OF $822,963.38 (DISTRICT: NONE) (GENERAL SERVICES)

6. 2021-123 – RESOLUTION AWARDING A CONTRACT FOR THE LABORATORY INFORMATION MANAGEMENT SYSTEM TO PROMIUM, LLC, IN THE AMOUNT OF $145,367.00; AND APPROVING $20,000.00 FOR CONTINGENCIES (DISTRICT: NONE) (GENERAL SERVICES)

7. 2021-124 – RESOLUTION AUTHORIZING THE PURCHASE OF AN ESTIMATED ANNUAL SUPPLY OF CHEMICALS NEEDED FOR THE TREATMENT OF DRINKING WATER FOR FISCAL YEAR 2022 FROM MULTIPLE BIDDERS, FOR A TOTAL COST OF $2,195,113.50 (DISTRICT: NONE) (GENERAL SERVICES)

8. 2021-125 – RESOLUTION APPROVING THE SELECTION OF DUNAWAY ASSOCIATES, LLC, FREESE AND NICHOLS, INC., HALFF ASSOCIATES, INC., KIMLEY-HORN AND ASSOCIATES, INC., MAVERICK ENGINEERING, PARKHILL SMITH & COOPER, INC., DOING BUSINESS AS PARKHILL, STANTEC CONSULTING SERVICES, INC., AND WESTWOOD PROFESSIONAL SERVICES, INC. TO ASSIST THE ENGINEERING SERVICES DEPARTMENT BY PROVIDING PROFESSIONAL ENGINEERING SERVICES AND SERVICES PROVIDED IN CONNECTION THEREWITH ON AN AS-NEEDED BASIS; AUTHORIZING THE NEGOTIATION AND EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH EACH FIRM; PROVIDING THAT EACH AGREEMENT SHALL BE FOR A TERM NOT TO EXCEED THREE YEARS; AUTHORIZING THE NEGOTIATION AND EXECUTION OF TASK ORDERS IN ACCORDANCE WITH SUCH AGREEMENTS; PROVIDING THAT THE PAYMENT FOR EACH TASK ORDER EXECUTED IN ACCORDANCE WITH SUCH AN AGREEMENT SHALL NOT EXCEED $200,000.00; PROVIDING THAT THE TOTAL COST TO THE CITY FOR ALL TASK ORDERS EXECUTED EACH YEAR IN ACCORDANCE WITH EACH AGREEMENT SHALL NOT EXCEED $500,000.00 PER AGREEMENT PER YEAR; AND AUTHORIZING PAYMENT (DISTRICT: NONE) (GENERAL SERVICES)

9. 2021-126 – RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH JUSTICE BENEFITS, INC., TO PROVIDE FEDERAL REIMBURSEMENT OPPORTUNITIES AND CONSULTANT SERVICES FOR THE HEALTH AND SENIOR SERVICES DIVISION OF THE COMMUNITY SERVICES DEPARTMENT (DISTRICT:

NONE) (GENERAL SERVICES)

10. 2021-127 – RESOLUTION AUTHORIZING THE PURCHASE OF AN ESTIMATED ANNUAL SUPPLY OF CHEMICALS FOR THE WATER RECLAMATION FACILITY FOR FISCAL YEAR 2022 FROM MULTIPLE BIDDERS, FOR A TOTAL COST OF $168,964.00 (DISTRICT: NONE) (GENERAL SERVICES)

11. 2021-128 – RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH PARAGON ROOFING, INC., THROUGH THE INTERLOCAL PURCHASING SYSTEM, FOR THE PURCHASE AND INSTALLATION OF STANDING SEAM METAL ROOFING AT FIRE STATION 6 FOR A TOTAL COST OF $195,049.25; APPROVING $4,950.75 FOR CONTINGENCIES; AND APPROPRIATING FUNDS FOR SAID CONTRACT (DISTRICT 4) (GENERAL SERVICES)

12. 130-2021 – MOTION AUTHORIZING THE EXECUTION OF A SECOND AMENDMENT TO THAT CERTAIN TURF AND LANDSCAPE MAINTENANCE SERVICES CONTRACT FOR CITY PARKS AND OTHER MUNICIPAL SITES WITH ALLDREDGE GARDENS, LP; SAID AMENDMENT PROVIDING FOR THE EXTENSION OF THE CONTRACT TERM THROUGH OCTOBER 31, 2021 (DISTRICT: ALL) (GENERAL SERVICES)

13. 131-2021 – MOTION REJECTING THE SOLE BID FOR TURF AND LANDSCAPE MAINTENANCE SERVICES; AND AUTHORIZING THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE TO: (I) REISSUE OF A REQUEST FOR PROPOSALS FOR TURF AND LANDSCAPE MAINTENANCE SERVICES PURSUANT TO THE STATUTES OF THE STATE OF TEXAS FOR ACCOMPLISHING THE WORK SET FORTH IN THE REQUEST FOR PROPOSALS, AND (II) NEGOTIATE A CONTRACT FOR SAID SERVICES; PROVIDED, HOWEVER, THAT SAID CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL (DISTRICT: NONE) (GENERAL SERVICES)

14. 2021-129 – RESOLUTION APPROVING THE PURCHASE OF TWO (2) AMBULANCES FROM STERLING MCCALL FORD THROUGH THE HOUSTON-GALVESTON AREA COUNCIL AT A TOTAL COST OF $567,262.00 (DISTRICT: NONE) (GENERAL SERVICES)

15. 2021-130 – RESOLUTION ESTABLISHING THE DATES OF THE REGULAR CITY COUNCIL MEETINGS TO BE HELD DURING THE CALENDAR YEAR 2022 (DISTRICT: NONE) (CITY MANAGER)

16. 132-2021 – MOTION AUTHORIZING AND EXECUTING A RIGHT-OF-WAY LICENSE (21-329-036) BETWEEN THE CITY OF MIDLAND AND DCP OPERATING COMPANY, LP., REGARDING CITY-OWNED PROPERTY DESCRIBED AS SECTION 9, BLOCK 38, TOWNSHIP 2 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)

17. 133-2021 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (21-329-037) WITH ENDEAVOR ENERGY RESOURCES, L.P., REGARDING CITY-

OWNED PROPERTY DESCRIBED AS SECTIONS 11,12,13 AND 14, BLOCK 37, TOWNSHIP 3 SOUTH, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT: NONE) (UTILITIES)

SECOND READINGS

18. 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) (FIRST READING HELD AUGUST 10, 2021)

19. 10235 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 5, BLOCK 8, GREENWOOD ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM C, COMMERCIAL DISTRICT TO SF-3, SINGLE FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF SOUTH STONEWALL STREET, APPROXIMATELY 90 FEET NORTH OF KENTUCKY 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) (FIRST READING HELD SEPTEMBER 14, 2021)

20. 10236 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,774-SQUARE FOOT PORTION OF LOT 1, BLOCK 1, MESA VERDE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF NEELY AVENUE AND NORTH MIDLAND DRIVE), 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 4) (DEVELOPMENT SERVICES) (FIRST READING HELD SEPTEMBER 14, 2021)

21. 10237 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 1,081-SQUARE FOOT PORTION OF BLOCK 64, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF WEST WALL STREET AND SOUTH COLORADO STREET), WHICH IS PRESENTLY ZONED CB, CENTRAL BUSINESS DISTRICT, ALLOWING SAID

PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A COCKTAIL LOUNGE 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 SEPTEMBER 14, 2021)

22. 10238 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1, BLOCK 1, RUCKUS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM TH, TOWNHOUSE (ATTACHED) DWELLING DISTRICT, IN PART, SF-2, SINGLE-FAMILY DWELLING DISTRICT, IN PART, SF-3, SINGLE-FAMILY DWELLING DISTRICT, IN PART, MF-16, MULTIPLE-FAMILY DWELLING DISTRICT, IN PART, AND PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, IN PART, TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF FAIRGROUNDS ROAD, APPROXIMATELY 1,899 FEET SOUTH OF EAST LOOP 250 NORTH); 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 SEPTEMBER 14, 2021)

23. 10239 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 5, BLOCK 39, GREENWOOD ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF SOUTH BENTON STREET, APPROXIMATELY 162 FEET NORTH OF EAST CALIFORNIA 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) (FIRST READING HELD SEPTEMBER 14, 2021)

24. 10240 – AN ORDINANCE AMENDING THE CITY OF MIDLAND'S DROUGHT CONTINGENCY PLAN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS ($500.00); AND ORDERING PUBLICATION (DISTRICT: ALL) (UTILITIES) (FIRST READING HELD SEPTEMBER 14, 2021)

PUBLIC HEARINGS

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

25. 10241 – 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, RUCKUS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF FAIRGROUNDS ROAD, APPROXIMATELY 1,899 FEET SOUTH OF EAST LOOP 250 NORTH), WHICH IS

PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR A KENNEL; 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)

26. 134-2021 – THE PROPOSED GRANTING OF OIL AND GAS WELL PERMITS TO PERMIAN DEEP ROCK OIL CO., LLC FOR THE DRILLING OF THE FOLLOWING OIL AND GAS WELLS: MUSTANG 115 MIPA UNIT H115LS; MUSTANG 115 MIPA UNIT H115WA; MUSTANG 120 MIPA UNIT H120WB; MUSTANG 125 MIPA UNIT H125WA; MUSTANG 130 MIPA UNIT H130LS; MUSTANG 130 MIPA UNIT H130WB; MUSTANG 135 MIPA UNIT H135WA; AND MUSTANG 140 MIPA UNIT H140WB; SAID WELLS BEING GENERALLY LOCATED BETWEEN 1,575 FEET AND 1,697 FEET EAST OF RANKIN HIGHWAY AND BETWEEN 510 FEET AND 625 FEET SOUTH OF I-20 (DISTRICT 2) (DEVELOPMENT SERVICES)

27. 135-2021 – THE PROPOSED GRANTING OF OIL AND GAS WELL PERMITS TO ENDEAVOR ENERGY RESOURCES, L.P. FOR THE DRILLING OF THE FOLLOWING OIL AND GAS WELLS: INTERSTATE 5-32 UNIT 2 #153; INTERSTATE 5-32 UNIT 2 #154; INTERSTATE 5-32 UNIT 2 #162; INTERSTATE 5-32 UNIT 2 #163; INTERSTATE 5-32 UNIT 2 #172; INTERSTATE 5-32 UNIT 2 #173; INTERSTATE 5-32 UNIT 2 #174; INTERSTATE 5-32 UNIT 2 #182; INTERSTATE 5-32 UNIT 2 #183; INTERSTATE 5-32 UNIT 2 #252; INTERSTATE 5-32 UNIT 2 #261; AND INTERSTATE 5-32 UNIT 2 #281; SAID WELLS BEING GENERALLY LOCATED BETWEEN 204 FEET AND 205 FEET SOUTH OF WEST I-20 SERVICE ROAD AND BETWEEN 415 FEET AND 994 FEET EAST OF SOUTH COUNTY ROAD 1220 EXTENSION (DISTRICT 2) (DEVELOPMENT SERVICES)

28. 10242 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 9, BLOCK 25, GREENWOOD ADDITION, THIRD, FOURTH & FIFTH SECTIONS, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH WEBSTER STREET, APPROXIMATELY 192 FEET SOUTH OF EAST WASHINGTON AVE); 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)

29. 10243 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 2.273-ACRE TRACT OF LAND OUT OF SECTION 20, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-1, SINGLE-FAMILY DWELLING DISTRICT TO PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH MIDKIFF ROAD AND SINCLAIR 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 3) (DEVELOPMENT SERVICES)

30. 10244 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 1.742-ACRE TRACT OF LAND OUT OF LOT 1 AND ALL OF LOT 3, BLOCK 1, WEST 191 INDUSTRIAL PARK, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO LI, LIGHT INDUSTRIAL DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF STATE HIGHWAY 191, APPROXIMATELY 2,205 FEET WEST OF WESTLAKE 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 4) (DEVELOPMENT SERVICES)

31. 10245 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 11, BLOCK 3, GATEWAY PLAZA, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF STARBOARD DRIVE, APPROXIMATELY 612 FEET EAST OF SOUTH TRADEWINDS 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 (DISTRICT 4) (DEVELOPMENT SERVICES)

32. 2021-131 – RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A VENDOR MARKET AND CONCERT ON LOTS 1-12, BLOCK 56, A 0.57-ACRE PORTION OF NORTH COLORADO STREET RIGHT-OF-WAY ADJACENT TO SAID LOTS, AND A 0.57-ACRE PORTION OF WEST WALL STREET RIGHT-OF-WAY ADJACENT TO BLOCK 55, ALL OUT OF ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED SOUTH OF THE INTERSECTION OF NORTH COLORADO STREET AND WEST TEXAS AVENUE) SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS (DISTRICT 2) (DEVELOPMENT SERVICES)

MISCELLANEOUS

33. 136-2021 – MOTION GRANTING CACTUS SIGN COMPANY'S APPEAL AND REVERSING THE BUILDING OFFICIAL'S DENIAL OF A SIGN PERMIT FOR LOT 4, BLOCK 7, HIGHLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF NORTH BIG SPRING STREET, APPROXIMATELY 72 FEET NORTH OF WEST COWDEN AVENUE (DISTRICT 2) (DEVELOPMENT SERVICES)

34. 137-2021 – MOTION GRANTING CACTUS SIGN COMPANY'S APPEAL AND REVERSING THE BUILDING OFFICIAL'S DENIAL OF A SIGN PERMIT FOR 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 LOOP 250 NORTH FRONTAGE ROAD) (DISTRICT 3) (DEVELOPMENT SERVICES)

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

PUBLIC COMMENT

36. 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

37. 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 551.072, Deliberation Regarding Real Property

    a.1. Discuss the purchase, exchange, lease or value of real property.

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
September 14, 2021

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., September 14, 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 – Pastor Jason Atchley, Greenwood Baptist 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 “DESK & DERRICK INDUSTRY APPRECIATION WEEK”

    3b. Presentation of Proclamation for “THE AMERICAN LEGION DAY”

BUDGET AND TAX RATE

4. 10225 – 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

DRAFT

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)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10225.

Budget Manager Jamie Radcliff reported this is the second reading and vote for the budget ordinance. The next item is a ratification of the tax levy required by state law. The final budget item is the second reading of the tax levy ordinance adopting a tax rate of $0.367189 per $100 of valuation.

Spencer Robnett moved to approve the second and final reading of Ordinance No. 10225; 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

5. 2021-107 – RESOLUTION RATIFYING THE PROPERTY TAX REVENUE INCREASE REFLECTED IN THE FISCAL YEAR 2021-2022 BUDGET (DISTRICT: NONE) (FINANCE)

Jack Ladd moved to approve Resolution No. 2021-107; 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

6. 10226 – 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)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10226.

Council Member Trost felt there should be no new taxes and asked how that would affect the budget. Ms. Radcliff reported that $1.1 million would need to be cut.

Spencer Robnett moved to approve the second and final reading of Ordinance No. 10226; seconded by Jack Ladd.

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

CONSENT AGENDA

DRAFT

Lori Blong moved to approve the Consent Agenda items 7-26, excluding item(s) 19, 26; 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

7. MOTION APPROVING THE FOLLOWING MINUTES:

   7a. BRIEFING SESSION OF AUGUST 24, 2021

   7b. REGULAR SESSION OF AUGUST 24, 2021

8. 122-2021 – MOTION ALLOCATING $9,500,000 RECEIVED FROM THE U.S. DEPARTMENT OF THE TREASURY UNDER THE AMERICAN RESCUE PLAN ACT OF 2021 TO CONSTRUCTION PROJECTS (DISTRICT: NONE) (FINANCE)

9. 2021-108 – RESOLUTION APPROVING A SOLE-SOURCE MASTER AGREEMENT FOR NEPTUNE WATER METERS AND ASSOCIATED PARTS FOR THE CUSTOMER SERVICE DIVISION OF THE FINANCE DEPARTMENT FROM CORE & MAIN, LP, AT A TOTAL COST OF $2,939,325.20 (DISTRICT: ALL) (GENERAL SERVICES)

   Doug Page, 611 West Estes, reported that the meters are not as reliable as the City would have the customers believe. He reported that at 605 Estes, the normal usage is 2,000 gallons per month, but in May they used 84,000 gallons. He has turned in a claim for damage due to extensive flooding of the residential property following the zero degree weather. He believes he turned off the water to the property. There was a pipe burst and the property flooded and it would not have flooded if the valve worked correctly. The water valve allowed pressurized water inside the pipes inside the house which would not have occurred if the valve closed. The pipe still would have broke, but there would not have been continuous flow for three weeks. He is still waiting for the status of that claim.

10. 2021-109 – RESOLUTION AWARDING A CONTRACT FOR THE FLORIDA AVENUE AND COTTON FLAT ROAD WATER MAIN IMPROVEMENTS PROJECT TO TEC EXCAVATION, INC., FOR A TOTAL COST NOT TO EXCEED $483,444.00; APPROVING $96,688.80 FOR CONTINGENCIES; AND TRANSFERRING FUNDS (DISTRICT 2) (GENERAL SERVICES)

11. 123-2021 – MOTION AUTHORIZING THE EXECUTION OF A 2022 ROUTINE AIRPORT MAINTENANCE PROGRAM AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION TO RECEIVE FUNDS IN THE AMOUNT OF $25,000.00 FOR AUTOMATED WEATHER OBSERVING SYSTEM MAINTENANCE AND CERTAIN OTHER MAINTENANCE ITEMS AT MIDLAND AIRPARK; AND APPROPRIATING SAID FUNDS FROM THE AIRPORT OPERATING FUND (500) UNAPPROPRIATED FUND BALANCE TO THE 2022 TXDOT RAMP AGREEMENT PROJECT (700317) (DISTRICT

DRAFT

4) (AIRPORTS)

12. 2021-110 – RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH ONYX GENERAL CONSTRUCTION, LLC, IN THE AMOUNT OF $1,641,882.53 FOR THE SV1A AND SV1B AND ASSOCIATED ROADWAY AND CARGO ROAD RECONSTRUCTION PROJECT AT MIDLAND INTERNATIONAL AIR & SPACE PORT; AND APPROPRIATING FUNDS FOR SAID PROJECT (DISTRICT 4) (AIRPORTS)

13. 2021-111 – RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH RURAL ELECTRIC, INC., IN THE AMOUNT OF $1,502,264.00 FOR THE AIRFIELD LIGHTING REHABILITATION PROJECT AT MIDLAND INTERNATIONAL AIR & SPACE PORT; AND APPROPRIATING FUNDS FOR SAID PROJECT (DISTRICT 4) (AIRPORTS)

14. 2021-112 – RESOLUTION REQUESTING THE RESALE OF PROPERTY ACQUIRED BY MIDLAND CENTRAL APPRAISAL DISTRICT AT A DELINQUENT TAX SALE (DISTRICT 2) (CITY MANAGER)

15. 124-2021 – MOTION AUTHORIZING THE ACCEPTANCE OF GRANT FUNDS FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES IN THE FOLLOWING AMOUNTS AND FOR THE FOLLOWING PURPOSES: $150,358.00 TO ASSIST THE CITY OF MIDLAND HEALTH SERVICES DIVISION (THE "CITY") WITH THE DELIVERY OF IMMUNIZATION SERVICES; $57,521.00 TO ASSIST THE CITY WITH THE FUNDING AND DELIVERY OF IMMUNIZATION/COVID-19 SERVICES; $105,462.00 TO ASSIST THE CITY WITH THE FUNDING AND DELIVERY OF PUBLIC HEALTH EMERGENCY PREPAREDNESS SERVICES; $111,630.00 TO ASSIST THE CITY WITH THE FUNDING AND DELIVERY OF LOCAL PUBLIC HEALTH SERVICES; $350,000.00 TO ASSIST THE CITY WITH THE FUNDING AND DELIVERY OF PUBLIC HEALTH WORKFORCE SERVICES; $97,801.00 TO ASSIST THE CITY WITH THE FUNDING OF AN INFECTIOUS DISEASE CONTROL UNIT AND/OR RELATED COVID-19 SERVICES; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE ALL NECESSARY ACCEPTANCE DOCUMENTS; AND AUTHORIZING AND DIRECTING THE CITY TREASURER TO DEPOSIT SAID GRANT FUNDS INTO THE GENERAL FUND (DISTRICT: ALL) (COMMUNITY SERVICES)

16. 125-2021 – MOTION AUTHORIZING THE ACCEPTANCE OF GRANT FUNDS FROM THE U.S. COMMITTEE FOR REFUGEES AND IMMIGRANTS IN THE AMOUNT OF $31,617.00 TO ASSIST THE CITY OF MIDLAND HEALTH SERVICES DIVISION WITH THE FUNDING AND DELIVERY OF REFUGEE IMMUNIZATION SERVICES; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE ALL NECESSARY ACCEPTANCE DOCUMENTS; AND AUTHORIZING AND DIRECTING THE CITY TREASURER TO DEPOSIT SAID GRANT FUNDS INTO THE GENERAL FUND (DISTRICT: ALL) (COMMUNITY SERVICES)

17. 2021-113 – RESOLUTION APPROVING THE TRANSFER FROM DE3 OPERATING LLC ("OPERATOR") TO PIONEER NATURAL RESOURCES USA, INC. ("TRANSFEREE") OF ALL OF OPERATOR'S OIL AND GAS WELL PERMITS AND ROAD REPAIR AGREEMENTS ASSOCIATED WITH OPERATIONS LOCATED IN SECTION 23, BLOCK

DRAFT

40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (DISTRICT 4) (DEVELOPMENT SERVICES)

18. 2021-114 – RESOLUTION GRANTING A VARIANCE FOR AN OIL AND GAS WELL TO BE LOCATED IN SECTION 10, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED 2,080 FEET WEST OF RANKIN HIGHWAY AND 520 FEET SOUTH OF WEST INTERSTATE 20) BY ALLOWING SAID OIL AND GAS WELL TO BE NO CLOSER THAN 333 FEET OF AN OCCUPIED RESIDENCE OR COMMERCIAL STRUCTURE; APPROVING THE ISSUANCE OF A PERMIT TO PERMIAN DEEP ROCK OIL CO., LLC ("OPERATOR") TO DRILL SAID OIL AND GAS WELL WITHIN THE CITY LIMITS; AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT (DISTRICT 2) (DEVELOPMENT SERVICES)

20. 127-2021 – MOTION AUTHORIZING THE APPROPRIATION OF $1,267,679 TO THE 2021-2022 CDBG BLOCK GRANT PROJECT (700316) (DISTRICT:NONE) (DEVELOPMENT SERVICES)

21. 2021-115 – RESOLUTION AUTHORIZING THE EXECUTION OF COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACTS WITH CASA DE AMIGOS OF MIDLAND, TEXAS, INCORPORATED, MIDLAND VISIONS 2000, AND MISSION HEALTH CARE, INC.; AND AUTHORIZING THE FUNDING OF COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAMS, FOR A TOTAL COST OF $1,267,679.00 (DISTRICT: ALL) (DEVELOPMENT SERVICES)

22. 2021-116 – RESOLUTION PARTIALLY RELEASING A UTILITY EASEMENT THAT WAS GRANTED TO THE CITY OF MIDLAND BY LOS CONCHOS VENTURES, LLC; AUTHORIZING THE EXECUTION OF AN INSTRUMENT MEMORIALIZING THE PARTIAL RELEASE OF THE UTILITY EASEMENT; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT 4) (ENGINEERING SERVICES)

23. 2021-117 – RESOLUTION AUTHORIZING THE CITY MANAGER TO ACQUIRE, ON BEHALF OF THE CITY OF MIDLAND, ANY REAL PROPERTY INTERESTS NECESSARY OR APPROPRIATE, BY ANY INSTRUMENTS OF CONVEYANCE NECESSARY OR APPROPRIATE, FOR THE USE AND BENEFIT OF THE PUBLIC FOR STREET, ROAD, PEDESTRIAN ACCESS, DRAINAGE, AND PUBLIC UTILITY PURPOSES, AND FOR ANY OTHER ANCILLARY PUBLIC USE AS IS USUAL AND CUSTOMARY IN CONNECTION THEREWITH IN THE PORTION OF THE CITY THAT IS NORTH OF BUSINESS INTERSTATE 20, EAST OF FAIRGROUNDS ROAD, SOUTH OF THE NORTHERN BOUNDARY OF MIDLAND COUNTY, AND WEST OF ELKINS ROAD; AUTHORIZING THE CITY MANAGER TO OBTAIN APPRAISALS, NEGOTIATE, EXECUTE, AND FILE ALL DOCUMENTS NECESSARY TO ACQUIRE SAID REAL PROPERTY INTERESTS, PURCHASE TITLE INSURANCE POLICIES, AND HOLD THE CLOSINGS FOR SAID ACQUISITIONS; AUTHORIZING PAYMENT FOR SAID APPRAISALS, TITLE INSURANCE POLICIES, AND CLOSING COSTS; AND ORDERING THE CITY SECRETARY TO RECORD, OR ENSURE THAT THE TITLE COMPANY RECORDS, ALL INSTRUMENTS OF CONVEYANCE (DISTRICT 1 AND DISTRICT 2) (ENGINEERING SERVICES)

DRAFT

24. 2021-118 – RESOLUTION AUTHORIZING THE ISSUANCE OF AN OPERATING CERTIFICATE FOR JOHN LEWALLEN D/B/A BIG JOHN'S LIMO SERVICE; SETTING FORTH CONDITIONS ACCOMPANYING THE CERTIFICATE; AND ESTABLISHING THE TERMS OF THE CERTIFICATE (DISTRICT: ALL) (POLICE)

25. 2021-119 – RESOLUTION APPROVING THE TRANSFER OF A RIGHT-OF-WAY LICENSE FROM DE3 OPERATING LLC ("LICENSEE") TO PIONEER NATURAL RESOURCES USA, INC. ("TRANSFEREE"); SAID RIGHT-OF-WAY LICENSE BEING LOCATED IN SECTION 23, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (DISTRICT 4) (UTILITIES)

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

19. 126-2021 – MOTION APPROVING A PROPOSED PRELIMINARY PLAT OF NORTHWEST PASSAGE ADDITION, BEING A PLAT OF A 117.035-ACRE TRACT OF LAND OUT OF 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) (DISTRICT: NONE) (DEVELOPMENT SERVICES)

Council Member Trost asked if this development was mostly SF-3. Development Services Director Chuck Harrington reported it was all SF-3 except for the commercial properties. The plat matches the zone change that was presented at the last meeting. A lot of the lots are larger than SF-3.

Michael Trost moved to approve Motion No. 126-2021; seconded by Lori Blong.

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

26. 2021-120 – RESOLUTION AMENDING THE WATER CONSERVATION PLAN FOR THE CITY OF MIDLAND, TEXAS (DISTRICT: ALL) (UTILITIES)

Council Member Blong asked for an explanation. Utilities Director Carl Craigo reported that the new plant can outfall water to the draw and we want to keep the water rights. To do that we have to put in wholesale language that was not previously there.

Lori Blong moved to approve Resolution No. 2021-120; seconded by Jack Ladd.

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

DRAFT

SECOND READINGS

27. 10203 – AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO A CERTAIN AREA ADJOINING THE PRESENT CITY LIMITS, 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 (GENERALLY LOCATED ON THE WEST SIDE OF STATE HIGHWAY 158, APPROXIMATELY 1,001 FEET NORTH OF STATE HIGHWAY 191); ORDERING PUBLICATION; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT: NONE) (DEVELOPMENT SERVICES) (FIRST READING HELD JULY 13, 2021)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10203.

Spencer Robnett moved to approve the second and final reading of Ordinance No. 10203; seconded by Lori Blong.

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

28. 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)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10204.

Spencer Robnett moved to approve the second and final reading of Ordinance No. 10204; seconded by Lori Blong.

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

29. 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);

DRAFT

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 24, 2021)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10227.

Spencer Robnett moved to approve the second and final reading of Ordinance No. 10227; seconded by Lori Blong.

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

30. 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) (FIRST READING HELD AUGUST 24, 2021)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10228.

Lori Blong moved to approve the second and final reading of Ordinance No. 10228; seconded by Jack Ladd.

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

31. 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;

DRAFT

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 AUGUST 24, 2021)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10229.

Jack Ladd moved to approve the second and final reading of Ordinance No. 10229; seconded by Spencer Robnett.

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

32. 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) (FIRST READING HELD AUGUST 24, 2021)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10230.

Spencer Robnett moved to approve the second and final reading of Ordinance No. 10230; seconded by Lori Blong.

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

33. 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

DRAFT

PUBLICATION (DISTRICT 2) (DEVELOPMENT SERVICES) (FIRST READING HELD AUGUST 24, 2021)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10231.

Lori Blong moved to approve the second and final reading of Ordinance No. 10231; seconded by Jack Ladd.

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

34. 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) (FIRST READING HELD AUGUST 24, 2021)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10232.

Spencer Robnett moved to approve the second and final reading of Ordinance No. 10232; seconded by Lori Blong.

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

35. 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

DRAFT

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) (FIRST READING HELD AUGUST 24, 2021)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10233.

Jack Ladd moved to approve the second and final reading of Ordinance No. 10233; seconded by Spencer Robnett.

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

36. 10234 – AN ORDINANCE ADOPTING A FEE SCHEDULE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING AN APPEAL PROCESS; AND ORDERING PUBLICATION (FINANCE) (FIRST READING HELD AUGUST 24, 2021)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10234.

Jack Ladd moved to approve the second and final reading of Ordinance No. 10234; seconded by Spencer Robnett.

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

PUBLIC HEARINGS

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

37. 128-2021 – THE PROPOSED GRANTING OF OIL AND GAS WELL PERMITS TO PERMIAN DEEP ROCK OIL CO., LLC FOR THE DRILLING OF THE FOLLOWING OIL AND GAS WELLS: CHAPARRAL H110UH AND KNIGHT H140UH; SAID WELLS BEING GENERALLY LOCATED BETWEEN 717 FEET AND 703 FEET EAST OF NORTH A STREET EXTENSION AND BETWEEN 1,922 FEET AND 1,909 FEET SOUTH OF WEST LOOP 250 NORTH (DISTRICT 3) (DEVELOPMENT SERVICES)

Mayor Payton opened the public hearing at 10:29 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

38. 129-2021 – THE PROPOSED GRANTING OF OIL AND GAS WELL PERMITS TO PERMIAN DEEP ROCK OIL CO., LLC FOR THE DRILLING OF THE FOLLOWING OIL AND GAS WELLS: MUSTANG 145 MIPA UNIT H145LS; MUSTANG 155 MIPA UNIT H155WA; MUSTANG 160 MIPA UNIT H160LS; AND MUSTANG 160 MIPA UNIT H160WB; SAID WELLS BEING GENERALLY LOCATED BETWEEN 1,181 FEET AND 892 FEET

DRAFT

WEST OF RANKIN HIGHWAY AND BETWEEN 627 FEET AND 600 FEET SOUTH OF WEST I-20 (DISTRICT 2) (DEVELOPMENT SERVICES)

Mayor Payton opened the public hearing at 10:30 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

39. 10235 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 5, BLOCK 8, GREENWOOD ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM C, COMMERCIAL DISTRICT TO SF-3, SINGLE FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF SOUTH STONEWALL STREET, APPROXIMATELY 90 FEET NORTH OF KENTUCKY 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)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10235.

Mayor Payton opened the public hearing at 10:30 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Lori Blong moved to approve the first of two readings of Ordinance No. 10235; seconded by Jack Ladd.

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

40. 10236 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,774-SQUARE FOOT PORTION OF LOT 1, BLOCK 1, MESA VERDE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF NEELY AVENUE AND NORTH MIDLAND DRIVE), 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 4) (DEVELOPMENT SERVICES)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10236.

Mayor Payton opened the public hearing at 10:31 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

DRAFT

Spencer Robnett moved to approve the first of two readings of Ordinance No. 10236; seconded by Jack Ladd.

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

41. 10237 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 1,081-SQUARE FOOT PORTION OF BLOCK 64, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF WEST WALL STREET AND SOUTH COLORADO STREET), WHICH IS PRESENTLY ZONED CB, CENTRAL BUSINESS DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A COCKTAIL LOUNGE 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. 10237.

Mayor Payton opened the public hearing at 10:32 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Jack Ladd moved to approve the first of two readings of Ordinance No. 10237; seconded by Scott Dufford.

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

42. 10238 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 1, BLOCK 1, RUCKUS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM TH, TOWNHOUSE (ATTACHED) DWELLING DISTRICT, IN PART, SF-2, SINGLE-FAMILY DWELLING DISTRICT, IN PART, SF-3, SINGLE-FAMILY DWELLING DISTRICT, IN PART, MF-16, MULTIPLE-FAMILY DWELLING DISTRICT, IN PART, AND PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, IN PART, TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF FAIRGROUNDS ROAD, APPROXIMATELY 1,899 FEET SOUTH OF EAST LOOP 250 NORTH); 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)

DRAFT

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10238.

Development Services Director Chuck Harrington gave a brief overview of the item noting this was a request made by Lone Star Animal Sanctuary. To make it work they went with Regional Retail zoning with a Specific Use Designation. The property has been there for years. This cleans up the zoning so they can expand with new office space.

Council Member Blong heard from a concerned citizen about the drainage in the area. Mr. Harrington reported that drainage would be addressed in the development process.

Mayor Payton opened the public hearing at 10:34 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. 10238; seconded by Jack Ladd.

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

43. 10239 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 5, BLOCK 39, GREENWOOD ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF SOUTH BENTON STREET, APPROXIMATELY 162 FEET NORTH OF EAST CALIFORNIA 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)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10239.

Mayor Payton opened the public hearing at 10:35 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Jack Ladd moved to approve the first of two readings of Ordinance No. 10239; seconded by Lori Blong.

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

MISCELLANEOUS

44. 2021-121 – RESOLUTION CONSENTING TO THE ISSUANCE OF MIDLAND COUNTY

DRAFT

FRESH WATER SUPPLY DISTRICT NO. 1 REVENUE REFUNDING BONDS (CITY OF MIDLAND PROJECT), TAXABLE SERIES 2021; AUTHORIZING THE MAYOR, THE CITY ATTORNEY AND THE CITY MANAGER TO EXECUTE ALL DOCUMENTS IN CONNECTION THEREWITH; AND RESOLVING OTHER MATTERS RELATED THERETO (DISTRICT: NONE) (FINANCE)

Interim Finance Director Christy Weakland introduced George Wolford of Hilltop Securities. She noted this is a refunding of a bond for Midland Freshwater District that will extend it for five years and bring in a total of $1.5 million in savings. City Attorney John Ohnemiller clarified that this is the district's bond that needs Council approval.

George Wolford gave a brief overview of the issue.

Jack Ladd moved to approve Resolution No. 2021-121; seconded by Lori Blong.

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

45. 10240 – AN ORDINANCE AMENDING THE CITY OF MIDLAND'S DROUGHT CONTINGENCY PLAN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS ($500.00); AND ORDERING PUBLICATION (DISTRICT: ALL) (UTILITIES)

Deputy City Secretary Vanessa White read the caption of Ordinance No. 10240.

Utilities Director Carl Craigo reported this item was similar to item 26. The City is wanting to reserve their water rights and had to add a wholesale agreement to the drought contingency plan. When we hit the next drought and go to stage 3 and 4 it automatically increases the water rates.

Lori Blong moved to approve the first of two readings of Ordinance No. 10240; seconded by Jack Ladd.

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

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

Council delayed making appointment to the following boards to the next meeting: Airport Planning & Development Board, Animal Services Advisory Commission, and Oil & Gas Advisory Committee (Real Estate position).

DRAFT

Lori Blong moved to reappoint Ellen Ramsey to the Citizens Development & Hotel/Motel Tax Advisory Board; seconded by Spencer Robnett.

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

Scott Dufford moved to appoint Vicky Hailey to replace David Blackketter on the Citizens Development & Hotel/Motel Advisory Board; seconded by Michael Trost.

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

Jack Ladd moved to reappoint Joseph Sanchez to the Midland-Odessa Urban Transit District Board; seconded by Lori Blong.

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

Spencer Robnett moved to appoint Rhett Bullock to replace Stephen Brumley as Petroleum Engineer on the Oil & Gas Advisory Committee; seconded by Scott Dufford.

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

Spencer Robnett moved to reappoint Shirley Howard to the Parks & Recreation Commission; seconded by Scott Dufford.

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

Jack Ladd moved to move Adrian Carrasco from Alternate Member to Regular Member on the Planning and Zoning Commission; seconded by Spencer Robnett.

The motion passed by the following vote:
AYE: Payton, Robnett, Trost, Dufford, Ladd, Blong

DRAFT

NAY: None
ABSTAIN: None
ABSENT: Norman

Lori Blong moved to appoint Beverly Dillow as alternate member to the Planning and Zoning Commission; seconded by Jack Ladd.

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

Spencer Robnett moved to reappoint Derek Whiting and E.J. Baldridge to the Zoning Board of Adjustments; seconded by Lori Blong.

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

PUBLIC COMMENT

47. 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.

EXECUTIVE SESSION

Mayor Payton recessed the meeting to go to Executive Session at 10:49 a.m.

48. 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 551.071, Consultation with the City Attorney

a.1. Discuss matters in which the duty of the attorney(s) to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code

All the business at hand having been completed, the meeting adjourned at 11:30 a.m.

DRAFT

PASSED AND APPROVED September 28, 2021.

Patrick Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

DRAFT

City Council Meeting

Item Number: 5

Meeting Date: September 28, 2021

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH AXON ENTERPRISE, INC., FOR THE BODY WORN CAMERA SYSTEMS FOR THE POLICE DEPARTMENT THROUGH BUYBOARD AT A TOTAL COST OF $822,963.38 (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Approval of a resolution awarding a contract with AXON Enterprise, Inc. through Buyboard contract 568-18, for the Body Worn Camera Systems for the Police Department for a five-year term for a total cost of $822,963.38.

Recommended City Council Action:

Approve

Fiscal Impact:

The amount of $822,963.38 is available in the FY2022 Technology Fund operating budget.

Discussion:

Staff recommends awarding a contract for the purchase of Body Worn Camera Systems for the Police Department with AXON Enterprise, Inc. for a five-year term, through Buyboard contract 568-18. We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases. Axon Enterprise, Inc. formally known as TASER International, Inc. changed names in 2017. Please see the attached memo from Jennifer Frescaz, Chief Information Officer, for more information.

Therefore, please consider a resolution awarding a contract for the purchase of Body Worn

Camera Systems for the Police Department for a five-year term from Axon Enterprise, Inc. of Scottsdale, Arizona through Buyboard contract 568-18 for a total cost of $822,963,38.

Tina Gaug

City Manager's Office

City Council Agenda

MEETING DATE: 09/14/2021

TO: Erika Martinez, Purchasing Manager

FROM: Jennifer Frescaz, Chief Information Officer

SUBJECT: Consider a resolution to approve the renewal of the Body Worn Camera System contract with AXON for a five-year term.

Purpose:

Consider a resolution to approve the renewal of the Body Worn Camera System contract with AXON for a five-year term.

Discussion:
The Police Department has been using AXON body Cameras since 2016, when they release an RFP to acquire a Body-Worn Camera System. AXON was the finalist selected during the RFP process, and the department would like to continue its partnership with AXON. AXON has continued to be a leader in the Body-Worn Camera System industry and has streamlined many of the Police Department's processes with Open Records Request, which has saved many man hours. The Camera system has also given officers more time to be in the field as the system is user-friendly.

This renewal will provide AXON software updates, continued maintenance for camera hardware, and access licenses.

The total cost of the agreement is $822,963.38 for five years and is budgeted in the CISD Technology Fund contingent on the passing of the 2022 budget.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH AXON ENTERPRISE, INC., FOR THE BODY WORN CAMERA SYSTEMS FOR THE POLICE DEPARTMENT THROUGH BUYBOARD AT A TOTAL COST OF $822,963.38

WHEREAS, the Buyboard is a cooperative purchasing agency with which the City participates with on purchases through a cooperative purchasing program in accordance with TEX. LOC. GOV'T CODE § 271.102; and

WHEREAS, Axon Enterprise, Inc., submitted a total proposed cost to the City of $822,963.38 for a five year contract to supply the body worn camera systems to the Police Department; and

WHEREAS, the Council finds the price proposed by AXON Enterprise, Inc., through Buyboard for said body worn camera systems to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a contract with AXON Enterprise, Inc., for said body worn camera systems through Buyboard.

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with AXON Enterprise, Inc., for said body worn camera systems through Buyboard for a total cost of $822,963.38. Said contract being in a form substantially similar to Exhibit A, which is attached hereto and incorporated herein for all purposes.

SECTION TWO. That the amount of $822,963.38 is available in the FY2022 Technology Fund operating budget.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay AXON Enterprise, Inc., for said body worn camera systems from funds available in the FY 2022 Technology Fund operating budget upon receipt of proper invoices or statements

approved by the City Manager.

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:

_____
Regina Stephenson, General Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

THE CITY OF MIDLAND

CONTRACT

Contract No. 22000010

THIS CONTRACT, effective the 29 day of September, 2021, by and between the City of Midland, hereinafter referred to as the "City", and Axon Enterprise, Inc., hereinafter referred to as the "Company", is made for the following considerations:

1. **Cost:** Total Proposal: $ 822,963.38 DOLLARS

2. **Scope of Work:** The Company shall perform all work described for Body Worn Camera System for the Police Department in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

EXHIBIT A..... Specifications, Proposal or Cost Summary
EXHIBIT B.....Master Services and Purchasing Agreement

3. **City:** The words "City's Representative" or "representative" shall mean Seth Herman or his designee under whose supervision these contract documents, including the plans and specifications, were prepared, or who may inspect work performed under this Contract; or such other representative, supervisor, or inspector as may be authorized by the City to act in any particular capacity under this Contract.

4. **The City's Representative** may inspect the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract documents. City's representative will not be responsible for the Company's failure to perform the work in accordance with the contract.

5. **Company:** Unless otherwise stipulated, the Company shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and all water, light, power, fuel, transportation and all other facilities necessary for the execution and completion of the work covered by the contract documents. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of a good quality. The Company shall, if required, furnish satisfactory evidence as to the kind and quality of materials. Company shall perform the services described in Exhibit "B" with all necessary and appropriate professional skill and care. Company represents that each employee who

performs said services shall be fully qualified and competent to perform the services described in Exhibit "B".

5.1. The Company shall, at its expense, obtain all permits and licenses necessary for the performance of this contract and pay all fees and taxes required by law, and comply with all laws, ordinances, rules and regulations governing the Company's performance of the contract, including all environmental laws and regulations, whether state or federal.

5.2. All work shall be done and all materials furnished in strict conformity with the contract and specifications.

6. **Minor Work Not Mentioned:** All minor detail of the work not specifically mentioned in the Specifications but obviously necessary for the proper completion of the work, such as the proper connection of new work to old, shall be considered as incidental to and a part of the work for which the prices are named in the contract. The Company will not be entitled to any additional compensation therefor unless specifically stated otherwise. Otherwise the term "extra work" as used in this contract shall mean and include all work that may be required by the City to be done by the Company to accomplish any alteration or addition to the work as shown on the Specifications.

6.1. Company shall perform all extra work under the direction of the City's Representative when presented with a written work order signed by the City's Representative, subject, however, to the right of the Company to require written confirmation of such extra work order by the City. Payment for extra work shall be as agreed in the work order.

7. **Safety:** The Company shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws. All machinery and equipment and other physical hazards shall be guarded in accordance with federal, state or municipal laws or regulations.

8. **Start of Work:** The Company shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 30 calendar days after release to proceed.

9. **Clean Up:** Company shall promptly remove from the City's premises all materials condemned by the City's Representative on account of failure to conform to the contract, whether actually incorporated in the work or not, and Company shall at its own expense promptly replace such condemned materials with other materials conforming to the requirements of the contract. Company shall also bear the expense of restoring all work of other contractors damaged by any such removal or replacement. If Company does not remove and replace any such condemned materials within a reasonable time after a written notice by

the City, City may remove and replace such at Company's expense.

10. **Warranty:** Neither the final payment nor any provision in this contract shall relieve the Company of responsibility for faulty materials or workmanship, and he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of substantial completion. The City shall give notice of observed defects with reasonable promptness.

11. **Remedy:** The City may, on account of subsequently discovered evidence, withhold whole or part of any payment to such extent as may be necessary to protect itself from loss on account of:

11.1. Defective work not remedied; or

11.2. Claims filed or reasonable evidence indicating possible filing of claims; or

11.3. Failure of the Company to make payments promptly to subcontractors or for material or labor which the City may pay as an agent for the Company; or

11.4. Damages to another contractor or subcontractor.

When the above grounds to withhold payment are removed, or the Company provides a surety bond satisfactory to the City, which will protect the City in the amount withheld, payment may be released.

12. **Funding Out :** In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable in any fiscal period for contract payments due under the contract, then this contract shall terminate on the last day of the fiscal period for which full appropriations were made.

13. **PROMPT PAY ACT**: The City and Company agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

14. **Payment; Retainage:** After all work is completed by Company, including all Change Orders altering the original scope and amount of the contract are completed, and the City has inspected and approved that the work is completed and in compliance with the contract which will be no longer than 7 days from the completion of work and all subsequent Change Orders, the City may thereafter issue payment to Company in the amount of the contract and all Change Orders. The City shall be the final judge of when the work is completed by Company. The City, in its sole discretion, shall determine if the work under the contract and under any Change Orders has been doneto the Contract's requirements.

14.1. The City may make periodic payments to Company; provided, however, such periodic payments may only be made pursuant to this section, and only after all work and all Change Orders are completed

by Company and approved by the City. The approval shall be in the City's sole discretion. Requests for progress payments may be made to the extent of the materials and labor completed at the endof each month. Upon approval by the City or the City's representative, the request and invoice shall be forwarded for payment less 5% retainage. The total of these payments shall not exceed 95% of the total contract amount.

14.2. For clarity, this section is not applicable for any subscription services offered by Company including any software products.

15. **No Third Party Beneficiary:** The City's approval of this contract does not create a third party beneficiary. There is no third party beneficiary to this contract. No person or entity who is not a party to this contract shall have any third party beneficiary or other rights hereunder.

16. **WAIVER OF ATTORNEY FEES: BY EXECUTING THIS CONTRACT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE CONTRACT. THE COMPANY SPECIFICALLY AGREES THAT IF THE COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS CONTRACT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS CONTRACT, 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 COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.**

COMPANY AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. THE COMPANY ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE CONTRACT. THE COMPANY FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE COMPANY. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

17. **Sovereign Immunity:** By executing this contract the City is not waiving its right of sovereign immunity. The City is retaining its immunity from suit. The City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

18. **Insurance**

Company shall at all times during the term of this Contract 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 an occurrence basis. This insurance shall name the City as an additional insured and waive subrogation in favor of the City.

The Business Automobile Liability insurance provided by Company shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city 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 Contract. This insurance shall name the City as an additional insured and waive subrogation in favor of the City.

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 Contract. The Workers' Compensation shall waive all rights of subrogation in favor of the City.

All insurance required pursuant to this Contract shall provide for a waiver of subrogation in favor of the City. All insurance required pursuant to this Contract, except for Workers' Compensation Insurance, shall name the City as an additional insured on a claims occurred basis. City 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 Contract 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 the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers' compensation).

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

The Company certifies that the certificate of insurance provided as required herein complies with the requirements of Senate Bill 425, passed during the 82nd regular session of the Texas Legislature, and effective January 1, 2012. The 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 the Company.

19. **Assignment**: Company shall not, either directly or indirectly, assign all or any part of this Contract or any interest, right or privilege herein, without the prior written consent of the City. The issue on whether or not to grant consent to an assignment is in the sole discretion of the City.

20. **Governing Law and Venue:** This Contract shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Contract 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 Contract or the performance of this Contract shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Contract shall be deemed to have occurred in Midland County, Texas. This Contract shall be governed by, interpreted, enforced and construed under the law 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 Contract, without regard to conflict on laws and rules that would direct application of the laws of another jurisdiction.

21. **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 the City; 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 City and Company, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City 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 the City. Further, it is specifically understood and agreed that nothing in this Contract 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 Contract and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. The City does not have the power to direct the order in which the work is done. The City shall not have the right to control the means, methods or details of the Company's work. Company shall assume exclusive responsibility for the work. Company is entirely free to do the work in its own way.

22. **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 Contract, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Contract) 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 COMPANY shall 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 (6) 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 provide such written notification 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 COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request 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 to the contrary, COMPANY's failure to comply with the requirements of this Section 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

CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Contract are reasonable. The provisions and obligations of this Section shall survive the termination of this Contract.

23. **Consideration:** The terms of this Contract are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

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

25. **Compliance:** COMPANY agrees that it shall comply with Texas Government Code Section 2252.908, *et seq.*, as amended. COMPANY agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

26. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Contract, Company hereby verifies:

- that Company does not boycott Israel and will not boycott Israel during the term of this Contract;
- that Company does not boycott energy companies and will not boycott energy companies during the term of this Contract; and
- that Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Contract against a firearm entity or firearm trade association.

To the extent that the Anti-Boycott Statutes do not apply to this Contract, such verification is not required, and Company shall be deemed to have not made such verification.

27. **Records Retention and Production of Information.** To the extent that this Contract constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Contract as provided by the records retention requirements applicable to CITY for the duration of this Contract; (ii) promptly provide to CITY any contracting information related to the Contract that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Contract, either: (a) provide at no cost to CITY all contracting information

related to the Contract that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to CITY.

28. **Public Information.** To the extent that this Contract is a contract described by Section 552.371 of the Texas Government Code, COMPANY agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

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

30. Company agrees that all iron or steel products produced through a manufacturing process and used in the project that is the subject of this Contract shall be produced in the United States in accordance with Government Code § 2252.202, et seq., as amended.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this _____ day of _____, 20___ personally appeared,_____, an officer of Axon Enterprise, Inc., 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 ___ day of _____, 20__.

_____
Notary Public, State of Texas

Midland Police Dept. - TX

AXON SALES REPRESENTATIVE
Danny Thielen
(480) 434-8810
dthielen@axon.com

ISSUED
8/26/2021

PACKET 5.16 September 28, 2021
Q-290882-44267.827DT

Q-290882-44267.827DT

Issued: 08/26/2021

Quote Expiration: 09/20/2021

Account Number: 465613

Payment Terms: Net 30

Delivery Method: Fedex - Ground

Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, Arizona 85255
United States
Phone: (800) 978-2737

SALES REPRESENTATIVE
Danny Thielen
Phone: (480) 434-8810
Email: dthielen@axon.com

SHIP TO
Michael Hedrick
Midland Police Dept. - TX
601 N. Loraine St.
Midland, TX 79701
US

BILL TO
Midland Police Dept. - TX
601 N. Loraine St.
Midland, TX 79701
US

PRIMARY CONTACT
Michael Hedrick
Phone: (432) 254-8334
Email: mhedrick@midlandtexas.gov

Year 1 - TAP Refresh #00009735

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Hardware						
73202	AXON BODY 3 - NA10		137	0.00	0.00	0.00
74210	AXON BODY 3 - 8 BAY DOCK		6	0.00	0.00	0.00
74028	WING CLIP MOUNT, AXON RAPIDLOCK		181	0.00	0.00	0.00
11534	USB-C to USB-A CABLE FOR AB3 OR FLEX 2		137	0.00	0.00	0.00
Other						
73827	AB3 CAMERA TAP WARRANTY	60	137	0.00	0.00	0.00
73828	AB3 8 BAY DOCK TAP WARRANTY	60	6	0.00	0.00	0.00
71019	NORTH AMER POWER CORD FOR AB3 8-BAY, AB2 1-BAY / 6-BAY DOCK		6	0.00	0.00	0.00
					Subtotal	0.00
					Estimated Shipping	0.00
					Estimated Tax	0.00
					Total	0.00

Year 1 - Unlimited BWC

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages						
73746	PROFESSIONAL EVIDENCE.COM LICENSE	60	143	0.00	0.00	0.00
73686	EVIDENCE.COM UNLIMITED AXON DEVICE STORAGE	60	143	0.00	0.00	0.00

Year 1 - Unlimited BWC (Continued)

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages (Continued)						
73683	10 GB EVIDENCE.COM A-LA-CART STORAGE	60	572	0.00	0.00	0.00
73682	AUTO TAGGING LICENSE	60	143	0.00	0.00	0.00
73683	10 GB EVIDENCE.COM A-LA-CART STORAGE	60	20	0.00	0.00	0.00
73840	EVIDENCE.COM BASIC ACCESS LICENSE	60	20	0.00	0.00	0.00
73683	10 GB EVIDENCE.COM A-LA-CART STORAGE	60	60	0.00	0.00	0.00
73746	PROFESSIONAL EVIDENCE.COM LICENSE	60	20	0.00	0.00	0.00
Hardware						
73202	AXON BODY 3 - NA10		6	699.00	699.00	4,194.00
74210	AXON BODY 3 - 8 BAY DOCK		2	1,495.00	0.00	0.00
70033	WALL MOUNT BRACKET, ASSY, EVIDENCE.COM DOCK		2	43.90	0.00	0.00
74028	WING CLIP MOUNT, AXON RAPIDLOCK		6	0.00	0.00	0.00
11534	USB-C to USB-A CABLE FOR AB3 OR FLEX 2		6	0.00	0.00	0.00
Other						
73842	UNLIMITED EVIDENCE.COM TAP BUNDLE PAYMENT	12	143	1,068.00	913.66	130,653.38
73827	AB3 CAMERA TAP WARRANTY	60	6	0.00	0.00	0.00
73828	AB3 8 BAY DOCK TAP WARRANTY	60	2	0.00	0.00	0.00
71019	NORTH AMER POWER CORD FOR AB3 8-BAY, AB2 1-BAY / 6-BAY DOCK		2	0.00	0.00	0.00
73835	AUTO TAGGING LICENSE PAYMENT	12	143	108.00	108.00	15,444.00
73841	EVIDENCE.COM BASIC LICENSE PAYMENT	12	20	180.00	0.00	0.00
73837	EVIDENCE.COM PROFESSIONAL LICENSE PAYMENT	12	20	468.00	0.00	0.00
					Subtotal	150,291.38
					Estimated Tax	0.00
					Total	150,291.38

Spares

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Hardware						
73202	AXON BODY 3 - NA10		5	0.00	0.00	0.00
74028	WING CLIP MOUNT, AXON RAPIDLOCK		5	0.00	0.00	0.00

Spares (Continued)

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Hardware (Continued)						
11534	USB-C to USB-A CABLE FOR AB3 OR FLEX 2		5	0.00	0.00	0.00
Other						
73827	AB3 CAMERA TAP WARRANTY	60	5	0.00	0.00	0.00
					Subtotal	0.00
					Estimated Tax	0.00
					Total	0.00

Year 2 - Unlimited BWC

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Other						
73842	UNLIMITED EVIDENCE.COM TAP BUNDLE PAYMENT	12	143	1,068.00	1,068.00	152,724.00
73835	AUTO TAGGING LICENSE PAYMENT	12	143	108.00	108.00	15,444.00
73841	EVIDENCE.COM BASIC LICENSE PAYMENT	12	20	180.00	0.00	0.00
73837	EVIDENCE.COM PROFESSIONAL LICENSE PAYMENT	12	20	468.00	0.00	0.00
					Subtotal	168,168.00
					Estimated Tax	0.00
					Total	168,168.00

Year 3 - Unlimited BWC

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Other						
73842	UNLIMITED EVIDENCE.COM TAP BUNDLE PAYMENT	12	143	1,068.00	1,068.00	152,724.00
73309	AXON CAMERA REFRESH ONE		143	0.00	0.00	0.00
73689	MULTI-BAY BWC DOCK 1ST REFRESH		6	0.00	0.00	0.00
73689	MULTI-BAY BWC DOCK 1ST REFRESH		2	0.00	0.00	0.00
73835	AUTO TAGGING LICENSE PAYMENT	12	143	108.00	108.00	15,444.00
73841	EVIDENCE.COM BASIC LICENSE PAYMENT	12	20	180.00	0.00	0.00
73837	EVIDENCE.COM PROFESSIONAL LICENSE PAYMENT	12	20	468.00	0.00	0.00
73309	AXON CAMERA REFRESH ONE		5	0.00	0.00	0.00
					Subtotal	168,168.00
					Estimated Tax	0.00
					Total	168,168.00

Year 4 - Unlimited BWC

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Other						
73842	UNLIMITED EVIDENCE.COM TAP BUNDLE PAYMENT	12	143	1,068.00	1,068.00	152,724.00
73835	AUTO TAGGING LICENSE PAYMENT	12	143	108.00	108.00	15,444.00
73841	EVIDENCE.COM BASIC LICENSE PAYMENT	12	20	180.00	0.00	0.00
73837	EVIDENCE.COM PROFESSIONAL LICENSE PAYMENT	12	20	468.00	0.00	0.00
					Subtotal	168,168.00
					Estimated Tax	0.00
					Total	168,168.00

Year 5 - Unlimited BWC

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Other						
73842	UNLIMITED EVIDENCE.COM TAP BUNDLE PAYMENT	12	143	1,068.00	1,068.00	152,724.00
73310	AXON CAMERA REFRESH TWO		143	0.00	0.00	0.00
73688	MULTI-BAY BWC DOCK 2ND REFRESH		6	0.00	0.00	0.00
73688	MULTI-BAY BWC DOCK 2ND REFRESH		2	0.00	0.00	0.00
73835	AUTO TAGGING LICENSE PAYMENT	12	143	108.00	108.00	15,444.00
73841	EVIDENCE.COM BASIC LICENSE PAYMENT	12	20	180.00	0.00	0.00
73837	EVIDENCE.COM PROFESSIONAL LICENSE PAYMENT	12	20	468.00	0.00	0.00
73310	AXON CAMERA REFRESH TWO		5	0.00	0.00	0.00
					Subtotal	168,168.00
					Estimated Tax	0.00
					Total	168,168.00

Grand Total	**822,963.38**

Discounts (USD)

Quote Expiration: 09/20/2021

List Amount	912,911.80
Discounts	89,948.42
Total	**822,963.38**

Total excludes applicable taxes

Summary of Payments

Payment	Amount (USD)
Year 1 - TAP Refresh #00009735	0.00
Year 1 - Unlimited BWC	150,291.38
Spares	0.00
Year 2 - Unlimited BWC	168,168.00
Year 3 - Unlimited BWC	168,168.00
Year 4 - Unlimited BWC	168,168.00
Year 5 - Unlimited BWC	168,168.00
Grand Total	**822,963.38**

Notes

Agency has existing contract #00009735 (originated via Q-83056) and is terminating that contract upon the new license start date (10/15/2021) of this quote.

The parties agree that Axon is granting a refund of $22,070.88 (applied to Year 1 licenses) to refund paid, but undelivered services. This discount is based on a ship date range of 9/16/2021-9/30/2021, resulting in a 10/15/2021 license date. Any change in this date and resulting license start date will result in modification of this discount value which may result in additional fees due to or from Axon.

100% discounted body-worn camera and docking station hardware contained in Year 1 reflects a TAP replacement for hardware purchased under existing contract #00009735. All TAP obligations from this contract will be considered fulfilled upon execution of this quote. This refreshed hardware will be covered under the Technology Assurance Plan (TAP) and will be eligible for 2 replacements. This will take place at the 30 and 60-month marks of this new contract.

TX BuyBoard 568-18 used for pricing and purchasing justification.

Tax is subject to change at order processing with valid exemption.

Axon's Sales Terms and Conditions

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at www.axon.com/legal/sales-terms-and-conditions), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

Signature: _____ **Date:** _____

Name (Print): _____ **Title:** _____

PO# (Or write N/A): _____

Please sign and email to Danny Thielen at dthielen@axon.com

Thank you for being a valued Axon customer. For your convenience on your next order, please check out our online store buy.axon.com

The trademarks referenced above are the property of their respective owners.

Axon Internal Use Only		
		SFDC Contract #:
		Order Type:
		RMA #:
		Address Used:
Review 1	Review 2	SO #:
Comments:		

ATTENTION

This order may qualify for freight shipping, please fill out the following information.

What is the contact name and phone number for this shipment?	
What are your receiving hours? (Monday-Friday)	
Is a dock available for this incoming shipment?	
Are there any delivery restrictions? (no box trucks, etc.)	

Master Services and Purchasing Agreement between Axon and Agency

This Master Services and Purchasing Agreement ("**Agreement**") is between Axon Enterprise, Inc., a Delaware corporation ("**Axon**"), and the agency on the Quote ("**Agency**"). This Agreement is effective as of the later of the (a) last signature date on this Agreement or (b) signature date on the Quote ("**Effective Date**"). Axon and Agency are each a "**Party**" and collectively "**Parties**". This Agreement governs Agency's purchase and use of the Axon Devices and Services detailed in the Quote Appendix ("**Quote**"). It is the intent of the Parties that this Agreement act as a master agreement governing all subsequent purchases by Agency for the same Axon products and services in the Quote, and all such subsequent quotes accepted by Agency shall be also incorporated into this Agreement by reference as a Quote. The Parties therefore agree as follows:

1 **Definitions**.

"**Axon Cloud Services**" means Axon's web services for Axon Evidence, Axon Records, Axon Dispatch, and interactions between Evidence.com and Axon Devices or Axon client software. Axon Cloud Service excludes third-party applications, hardware warranties, and my.evidence.com.

"**Axon Device**" means all hardware provided by Axon under this Agreement.

"**Quote**" means an offer to sell and is only valid for devices and services on the quote at the specified prices. Any terms within Agency's purchase order in response to a Quote will be void. Orders are subject to prior credit approval. Changes in the deployment estimated ship date may change charges in the Quote. Shipping dates are estimates only. Axon is not responsible for typographical errors in any offer by Axon, and Axon reserves the right to cancel any orders resulting from such errors.

"**Services**" means all services provided by Axon under this Agreement, including software, Axon Cloud Services, and professional services.

2 **Term**. This Agreement begins on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated ("**Term**").

All subscriptions including Axon Evidence, Axon Fleet, Officer Safety Plans, Technology Assurance Plans, and TASER 7 plans begin after shipment of the applicable Axon Device. If Axon ships the Axon Device in the first half of the month, the start date is the 1st of the following month. If Axon ships the Axon Device in the second half of the month, the start date is the 15th of the following month. For purchases solely of Axon Evidence subscriptions, the start date is the Effective Date. Each subscription term ends upon completion of the subscription stated in the Quote ("**Subscription Term**").

Upon completion of the Subscription Term, the Subscription Term will automatically renew for an additional 5 years ("**Renewal Term**"). For purchase of TASER 7 as a standalone, Axon may increase pricing to its then-current list pricing for any Renewal Term. For all other purchases, Axon may increase pricing on all line items in the Quote up to 3% at the beginning of each year of the Renewal Term. New devices and services may require additional terms. Axon will not authorize services until Axon receives a signed Quote or accepts a purchase order, whichever is first.

3 **Payment**. Axon invoices upon shipment. Payment is due net 30 days from the invoice date. Payment obligations are non-cancelable. Agency will pay invoices without setoff, deduction, or withholding. If Axon sends a past due account to collections, Agency is responsible for collection and attorneys' fees.

4 **Taxes**. Agency is responsible for sales and other taxes associated with the order unless Agency provides Axon a valid tax exemption certificate.

5 **Shipping**. Axon may make partial shipments and ship Axon Devices from multiple locations. All shipments are FOB shipping point via common carrier. Title and risk of loss pass to Agency upon Axon's delivery to the common carrier. Agency is responsible for any shipping charges in the Quote.

6 **Returns**. All sales are final. Axon does not allow refunds or exchanges, except warranty returns or as provided by state or federal law.

7 Warranty.

7.1 Hardware Limited Warranty. Axon warrants that Axon-manufactured Devices are free from defects in workmanship and materials for 1 year from the date of Agency's receipt, except Signal Sidearm, which Axon warrants for 30 months from the date of Agency's receipt. Axon warrants its Axon-manufactured accessories for 90-days from the date of Agency's receipt. Used conducted energy weapon ("**CEW**") cartridges are deemed to have operated properly. Extended warranties run from the expiration of the 1-year hardware warranty through the extended warranty term. Non-Axon manufactured Devices are not covered by Axon's warranty. Agency should contact the manufacturer for support of non-Axon manufactured Devices.

7.2 Claims. If Axon receives a valid warranty claim for an Axon manufactured Device during the warranty term, Axon's sole responsibility is to repair or replace the Device with the same or like Device, at Axon's option. A replacement Axon Device will be new or like new. Axon will warrant the replacement Axon Device for the longer of (a) the remaining warranty of the original Axon Device or (b) 90-days from the date of repair or replacement.

If Agency exchanges a device or part, the replacement item becomes Agency's property, and the replaced item becomes Axon's property. Before delivering a Axon Device for service, Agency must upload Axon Device data to Axon Evidence or download it and retain a copy. Axon is not responsible for any loss of software, data, or other information contained in storage media or any part of the Axon Device sent to Axon for service.

7.3 Spare Axon Devices. For qualified purchases, Axon may provide Agency a predetermined number of spare Axon Devices as detailed in the Quote ("**Spare Axon Devices**"). Spare Axon Devices are intended to replace broken or non-functioning units while Agency submits the broken or non-functioning units, through Axon's warranty return process. Axon will repair or replace the unit with a replacement Axon Device. Title and risk of loss for all Spare Axon Devices shall pass to Agency in accordance with shipping terms under Section 5. Axon assumes no liability or obligation in the event Agency does not utilize Spare Axon Devices for the intended purpose.

7.4 Limitations. Axon's warranty excludes damage related to: (a) failure to follow Axon Device use instructions; (b) Axon Devices used with equipment not manufactured or recommended by Axon; (c) abuse, misuse, or intentional damage to Axon Device; (d) force majeure; (e) Axon Devices repaired or modified by persons other than Axon without Axon's written permission; or (f) Axon Devices with a defaced or removed serial number.

7.4.1 To the extent permitted by law, the above warranties and remedies are exclusive. Axon disclaims all other warranties, remedies, and conditions, whether oral, written, statutory, or implied. If statutory or implied warranties cannot be lawfully disclaimed, then such warranties are limited to the duration of the warranty described above and by the provisions in this Agreement.

7.4.2 Axon's cumulative liability to any Party for any loss or damage resulting from any claim, demand, or action arising out of or relating to any Axon Device or Service will not exceed the purchase price paid to Axon for the Axon Device, or if for Services, the amount paid for such Services over the 12 months preceding the claim. Neither Party will be liable for direct, special, indirect, incidental, punitive or consequential damages, however caused, whether for breach of warranty or contract, negligence, strict liability, tort or any other legal theory.

8 Statement of Work. Certain Axon Devices and Services, including Axon Interview Room, Axon Channel Services, and Axon Fleet, may require a Statement of Work that details Axon's Service deliverables ("**SOW**"). In the event Axon provides an SOW to Agency, Axon is only responsible to perform Services described in the SOW. Additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule. The SOW is incorporated into this Agreement by reference.

9 Axon Device Warnings. See www.axon.com/legal for the most current Axon Device warnings.

10 **Design Changes**. Axon may make design changes to any Axon Device or Service without notifying Agency or making the same change to Axon Devices and Services previously purchased by Agency.

11 **Bundled Offerings**. Some offerings in bundled offerings may not be generally available at the time of Agency's purchase. Axon will not provide a refund, credit, or additional discount beyond what is in the Quote due to a delay of availability or Agency's election not to utilize any portion of an Axon bundle.

12 **Insurance**. Axon will maintain General Liability, Workers' Compensation, and Automobile Liability insurance. Upon request, Axon will supply certificates of insurance.

13 **INDEMNIFICATION. AXON WILL INDEMNIFY AGENCY'S OFFICERS, DIRECTORS, AND EMPLOYEES ("AGENCY INDEMNITEES") AGAINST ALL CLAIMS, DEMANDS, LOSSES, AND REASONABLE EXPENSES ARISING OUT OF A THIRD-PARTY CLAIM AGAINST AN AGENCY INDEMNITEE RESULTING FROM ANY NEGLIGENT ACT, ERROR OR OMISSION, OR WILLFUL MISCONDUCT BY AXON UNDER THIS AGREEMENT, EXCEPT TO THE EXTENT OF AGENCY'S NEGLIGENCE OR WILLFUL MISCONDUCT, OR CLAIMS UNDER WORKERS COMPENSATION.**

14 **IP Rights**. Axon owns and reserves all right, title, and interest in Axon devices and services and suggestions to Axon, including all related intellectual property rights. Agency will not cause any Axon proprietary rights to be violated.

15 **IP INDEMNIFICATION. AXON WILL INDEMNIFY AGENCY INDEMNITEES AGAINST ALL CLAIMS, LOSSES, AND REASONABLE EXPENSES FROM ANY THIRD-PARTY CLAIM ALLEGING THAT THE USE OF AXON DEVICES OR SERVICES INFRINGES OR MISAPPROPRIATES THE THIRD-PARTY'S INTELLECTUAL PROPERTY RIGHTS. AGENCY MUST PROMPTLY PROVIDE AXON WITH WRITTEN NOTICE OF SUCH CLAIM, TENDER TO AXON THE DEFENSE OR SETTLEMENT OF SUCH CLAIM AT AXON'S EXPENSE AND COOPERATE FULLY WITH AXON IN THE DEFENSE OR SETTLEMENT OF SUCH CLAIM. AXON'S IP INDEMNIFICATION OBLIGATIONS DO NOT APPLY TO CLAIMS BASED ON (A) MODIFICATION OF AXON DEVICES OR SERVICES BY AGENCY OR A THIRD-PARTY NOT APPROVED BY AXON; (B) USE OF AXON DEVICES AND SERVICES IN COMBINATION WITH HARDWARE OR SERVICES NOT APPROVED BY AXON; (C) USE OF AXON DEVICES AND SERVICES OTHER THAN AS PERMITTED IN THIS AGREEMENT; OR (D) USE OF AXON SOFTWARE THAT IS NOT THE MOST CURRENT RELEASE PROVIDED BY AXON.**

16 **Agency Responsibilities**. Agency is responsible for (a) Agency's use of Axon Devices; (b) breach of this Agreement or violation of applicable law by Agency or an Agency end user; and (c) a dispute between Agency and a third-party over Agency's use of Axon Devices.

17 **Termination**.

17.1 **For Breach**. A Party may terminate this Agreement for cause if it provides 30 days written notice of the breach to the other Party, and the breach remains uncured at the end of 30 days. If Agency terminates this Agreement due to Axon's uncured breach, Axon will refund prepaid amounts on a prorated basis based on the effective date of termination.

17.2 **By Agency**. If sufficient funds are not appropriated or otherwise legally available to pay the fees, Agency may terminate this Agreement. Agency will deliver notice of termination under this section as soon as reasonably practicable.

17.3 **Effect of Termination**. Upon termination of this Agreement, Agency rights immediately terminate. Agency remains responsible for all fees incurred before the effective date of termination. If Agency purchases Axon Devices for less than the manufacturer's suggested retail price ("**MSRP**") and this Agreement terminates before the end of the Term, Axon will invoice Agency the difference between the MSRP for Axon Devices received, including any Spare Axon Devices, and amounts paid towards those Axon Devices. Only if terminating for non-appropriation, Agency may return Axon Devices to Axon within 30 days of termination. MSRP is the standalone price of the individual Axon Device at the time of sale. For bundled Axon Devices, MSRP is the standalone price of all individual

components.

18 **Confidentiality**. "**Confidential Information**" means nonpublic information designated as confidential or, given the nature of the information or circumstances surrounding disclosure, should reasonably be understood to be confidential. Each Party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of the other Party's Confidential Information. Unless required by law, neither Party will disclose the other Party's Confidential Information during the Term and for 5-years thereafter. Axon pricing is Confidential Information and competition sensitive. If Agency is required by law to disclose Axon pricing, to the extent allowed by law, Agency will provide notice to Axon before disclosure. Axon may publicly announce information related to this Agreement.

19 **General**.

19.1 **Force Majeure**. Neither Party will be liable for any delay or failure to perform due to a cause beyond a Party's reasonable control.

19.2 **Independent Contractors**. The Parties are independent contractors. Neither Party has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.

19.3 **Third-Party Beneficiaries**. There are no third-party beneficiaries under this Agreement.

19.4 **Non-Discrimination**. Neither Party nor its employees will discriminate against any person based on race; religion; creed; color; sex; gender identity and expression; pregnancy; childbirth; breastfeeding; medical conditions related to pregnancy, childbirth, or breastfeeding; sexual orientation; marital status; age; national origin; ancestry; genetic information; disability; veteran status; or any class protected by local, state, or federal law.

19.5 **Export Compliance**. Each Party will comply with all import and export control laws and regulations.

19.6 **Assignment**. Neither Party may assign this Agreement without the other Party's prior written consent. Axon may assign this Agreement, its rights, or obligations without consent: (a) to an affiliate or subsidiary; or (b) for purposes of financing, merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. This Agreement is binding upon the Parties respective successors and assigns.

19.7 **Waiver**. No waiver or delay by either Party in exercising any right under this Agreement constitutes a waiver of that right.

19.8 **Severability**. If a court of competent jurisdiction holds any portion of this Agreement invalid or unenforceable, the remaining portions of this Agreement will remain in effect.

19.9 **Survival**. The following sections will survive termination: Payment, Warranty, Axon Device Warnings, Indemnification, IP Rights, and Agency Responsibilities.

19.10 **Governing Law**. The laws of the state where Agency is physically located, without reference to conflict of law rules, govern this Agreement and any dispute arising from it. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

19.11 **Notices**. All notices must be in English. Notices posted on Agency's Axon Evidence site are effective upon posting. Notices by email are effective on the sent date of the email. Notices by personal delivery are effective immediately. Contact information for notices:

Axon: Axon Enterprise, Inc. Attn: Legal 17800 N. 85th Street Scottsdale, Arizona 85255	Agency: Midland Police Department TX Attn: Street Address City, State, Zip

legal@axon.com Email

19.12 Entire Agreement. This Agreement, including the Appendices and any SOW(s), represents the entire agreement between the Parties. This Agreement supersedes all prior agreements or understandings, whether written or verbal, regarding the subject matter of this Agreement. This Agreement may only be modified or amended in a writing signed by the Parties.

Each representative identified below declares they have been expressly authorized to execute this Agreement as of the date of signature.

Axon Enterprise, Inc.	**Agency**
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Axon Cloud Services Terms of Use Appendix

1 **Definitions**.

"Agency Content" is data uploaded into, ingested by, or created in Axon Cloud Services within Agency's tenant, including media or multimedia uploaded into Axon Cloud Services by Agency. Agency Content includes Evidence but excludes Non-Content Data.

"**Evidence**" is media or multimedia uploaded into Axon Evidence as 'evidence' by an Agency. Evidence is a subset of Agency Content.

"**Non-Content Data**" is data, configuration, and usage information about Agency's Axon Cloud Services tenant, Axon Devices and client software, and users that is transmitted or generated when using Axon Devices. Non-Content Data includes data about users captured during account management and customer support activities. Non-Content Data does not include Agency Content.

"**Personal Data**" means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

2 **Access**. Upon Axon granting Agency a subscription to Axon Cloud Services, Agency may access and use Axon Cloud Services to store and manage Agency Content. Agency may not exceed more end users than the Quote specifies. Axon Air requires an Axon Evidence subscription for each drone operator. For Axon Evidence Lite, Agency may access and use Axon Evidence only to store and manage TASER CEW and TASER CAM data ("**TASER Data**"). Agency may not upload non-TASER Data to Axon Evidence Lite.

3 **Agency Owns Agency Content**. Agency controls and owns all right, title, and interest in Agency Content. Except as outlined herein, Axon obtains no interest in Agency Content, and Agency Content is not Axon's business records. Agency is solely responsible for uploading, sharing, managing, and deleting Agency Content. Axon will only have access to Agency Content for the limited purposes set forth herein. Agency agrees to allow Axon access to Agency Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of the Axon products.

4 **Security**. Axon will implement commercially reasonable and appropriate measures to secure Agency Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive information security program to protect Axon Cloud Services and Agency Content including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; encryption of uploaded digital evidence; security education; and data protection. Axon agrees to the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum.

5 **Agency Responsibilities**. Agency is responsible for (a) ensuring Agency owns Agency Content; (b) ensuring no Agency Content or Agency end user's use of Agency Content or Axon Cloud Services violates this Agreement or applicable laws; and (c) maintaining necessary computer equipment and Internet connections for use of Axon Cloud Services. If Agency becomes aware of any violation of this Agreement by an end user, Agency will immediately terminate that end user's access to Axon Cloud Services.

Agency will also maintain the security of end user names and passwords and security and access by end users to Agency Content. Agency is responsible for ensuring the configuration and utilization of Axon Cloud Services meet applicable Agency regulation and standards. Agency may not sell, transfer, or sublicense access to any other entity or person. Agency shall contact Axon immediately

if an unauthorized party may be using Agency's account or Agency Content, or if account information is lost or stolen.

To the extent Agency uses the Axon Cloud Services to interact with YouTube®, such use may be governed by the YouTube Terms of Service, available at https://www.youtube.com/static?template=terms.

6 **Privacy**. Agency's use of Axon Cloud Services is subject to the Axon Cloud Services Privacy Policy, a current version of which is available at https://www.axon.com/legal/cloud-services-privacy-policy. Agency agrees to allow Axon access to Non-Content Data from Agency to (a) perform troubleshooting, maintenance, or diagnostic screenings; (b) provide, develop, improve, and support current and future Axon products and related services; and (c) enforce this Agreement or policies governing the use of Axon products.

7 **Axon Body 3 Wi-Fi Positioning**. Axon Body 3 cameras offer a feature to enhance location services where GPS/GNSS signals may not be available, for instance, within buildings or underground. Agency administrators can manage their choice to use this service within the administrative features of Axon Cloud Services. If Agency chooses to use this service, Axon must also enable the usage of the feature for Agency's Axon Cloud Services tenant. Agency will not see this option with Axon Cloud Services unless Axon has enabled Wi-Fi Positioning for Agency's Axon Cloud Services tenant. When Wi-Fi Positioning is enabled by both Axon and Agency, Non-Content and Personal Data will be sent to Skyhook Holdings, Inc. ("**Skyhook"**) to facilitate the Wi-Fi Positioning functionality. Data controlled by Skyhook is outside the scope of the Axon Cloud Services Privacy Policy and is subject to the Skyhook Services Privacy Policy.

8 **Storage**. For Axon Unlimited Device Storage subscriptions, Agency may store unlimited data in Agency's Axon Evidence account only if data originates from Axon Capture or the applicable Axon Device. Axon may charge Agency additional fees for exceeding purchased storage amounts. Axon may place Agency Content that Agency has not viewed or accessed for 6 months into archival storage. Agency Content in archival storage will not have immediate availability and may take up to 24 hours to access.

9 **Location of Storage**. Axon may transfer Agency Content to third-party subcontractors for storage. Axon will determine the locations of data centers for storage of Agency Content. For United States agencies, Axon will ensure all Agency Content stored in Axon Cloud Services remains within the United States. Ownership of Agency Content remains with Agency.

10 **Suspension**. Axon may temporarily suspend Agency's or any end user's right to access or use any portion or all of Axon Cloud Services immediately upon notice, if Agency or end user's use of or registration for Axon Cloud Services may (a) pose a security risk to Axon Cloud Services or any third-party; (b) adversely impact Axon Cloud Services , the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent.

Agency remains responsible for all fees incurred through suspension. Axon will not delete Agency Content because of suspension, except as specified in this Agreement.

11 **Axon Cloud Services Warranty**. Axon disclaims any warranties or responsibility for data corruption or errors before Agency uploads data to Axon Cloud Services.

12 **Axon Records**. Axon Records is the software-as-a-service product that is generally available at the time Agency purchases an OSP 7 bundle. During Agency's Axon Records Subscription Term, Agency will be entitled to receive Axon's Update and Upgrade releases on an if-and-when available basis.

The Axon Records Subscription Term will end upon the competition of the Axon Records

Subscription as documented in the Quote, or if purchased as part of an OSP 7 bundle, upon competition of the OSP 7 Term ("**Axon Records Subscription**")

An "**Update**" is a generally available release of Axon Records that Axon makes available from time to time. An "**Upgrade**" includes (i) new versions of Axon Records that enhance features and functionality, as solely determined by Axon; and/or (ii) new versions of Axon Records that provide additional features or perform additional functions. Upgrades exclude new products that Axon introduces and markets as distinct products or applications.

New or additional Axon products and applications, as well as any Axon professional services needed to configure Axon Records, are not included. If Agency purchases Axon Records as part of a bundled offering, the Axon Record subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Records to Agency.

13 **Axon Cloud Services Restrictions**. Agency and Agency end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:

- **13.1** copy, modify, tamper with, repair, or create derivative works of any part of Axon Cloud Services;
- **13.2** reverse engineer, disassemble, or decompile Axon Cloud Services or apply any process to derive any source code included in Axon Cloud Services, or allow others to do the same;
- **13.3** access or use Axon Cloud Services with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
- **13.4** use trade secret information contained in Axon Cloud Services, except as expressly permitted in this Agreement;
- **13.5** access Axon Cloud Services to build a competitive device or service or copy any features, functions, or graphics of Axon Cloud Services;
- **13.6** remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within Axon Cloud Services; or
- **13.7** use Axon Cloud Services to store or transmit infringing, libelous, or other unlawful or tortious material; to store or transmit material in violation of third-party privacy rights; or to store or transmit malicious code.

14 **After Termination**. Axon will not delete Agency Content for 90-days following termination. There will be no functionality of Axon Cloud Services during these 90-days other than the ability to retrieve Agency Content. Agency will not incur additional fees if Agency downloads Agency Content from Axon Cloud Services during this time. Axon has no obligation to maintain or provide Agency Content after these 90-days and will thereafter, unless legally prohibited, delete all Agency Content. Upon request, Axon will provide written proof that Axon successfully deleted and fully removed all Agency Content from Axon Cloud Services.

15 **Post-Termination Assistance**. Axon will provide Agency with the same post-termination data retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Agency Content, including requests for Axon's data egress service, will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.

16 **U.S. Government Rights**. If Agency is a U.S. Federal department or using Axon Cloud Services on behalf of a U.S. Federal department, Axon Cloud Services is provided as a "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data", as defined in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement. If Agency is using Axon Cloud Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Agency will immediately discontinue use of Axon Cloud Services.

17 **Survival**. Upon any termination of this Agreement, the following sections in this Appendix will survive: Agency Owns Agency Content, Storage, Axon Cloud Services Warranty, and Axon Cloud Services Restrictions.

Axon Customer Experience Improvement Program Appendix

1 **Axon Customer Experience Improvement Program (ACEIP)**. The ACEIP is designed to accelerate Axon's development of technology, such as building and supporting automated features, to ultimately increase safety within communities and drive efficiency in public safety. To this end, subject to the limitations on Axon as described below, Axon, where allowed by law, may make limited use of Agency Content from all of its customers, to provide, develop, improve, and support current and future Axon products (collectively, "**ACEIP Purposes**"). However, at all times, Axon will comply with its obligations pursuant to the Axon Cloud Services Terms of Use Appendix to maintain a comprehensive data security program (including compliance with the CJIS Security Policy for Criminal Justice Information), privacy program, and data governance policy, including high industry standards of de-identifying Personal Data, to enforce its security and privacy obligations for the ACEIP. ACEIP has 2 tiers of participation, Tier 1 and Tier 2. By default, Agency will be a participant in ACEIP Tier 1. If Agency does not want to participate in ACEIP Tier 1, Agency can revoke its consent at any time. If Agency wants to participate in Tier 2, as detailed below, Agency can check the ACEIP Tier 2 box below. If Agency does not want to participate in ACEIP Tier 2, Agency should leave box unchecked. At any time, Agency may revoke its consent to ACEIP Tier 1, Tier 2, or both Tiers.

1.1 ACEIP Tier 1.

1.1.1. When Axon uses Agency Content for the ACEIP Purposes, Axon will extract from Agency Content and may store separately copies of certain segments or elements of the Agency Content (collectively, "**ACEIP Content**"). When extracting ACEIP Content, Axon will use commercially reasonable efforts to aggregate, transform or de-identify Agency Content so that the extracted ACEIP Content is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to a particular individual ("**Privacy Preserving Technique(s)**"). For illustrative purposes, some examples are described in footnote 1[1]. For clarity, ACEIP Content will still be linked indirectly, with an attribution, to the Agency from which it was extracted. This attribution will be stored separately from the data itself, but is necessary for and will be solely used to enable Axon to identify and delete all ACEIP Content upon Agency request. Once de-identified, ACEIP Content may then be further modified, analyzed, and used to create derivative works. At any time, Agency may revoke the consent granted herein to Axon to access and use Agency Content for ACEIP Purposes. Within 30 days of receiving the Agency's request, Axon will no longer access or use Agency Content for ACEIP Purposes and will delete any and all ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to Agency. In addition, if Axon uses Agency Content for the ACEIP Purposes, upon request, Axon will make available to Agency a list of the specific type of Agency Content being used to generate ACEIP Content, the purpose of such use, and the retention, privacy preserving extraction technique, and relevant data protection practices

[1] For example; (a) when extracting specific text to improve automated transcription capabilities, text that could be used to directly identify a particular individual would not be extracted, and extracted text would be disassociated from identifying metadata of any speakers, and the extracted text would be split into individual words and aggregated with other data sources (including publicly available data) to remove any reasonable ability to link any specific text directly or indirectly back to a particular individual; (b) when extracting license plate data to improve Automated License Plate Recognition (ALPR) capabilities, individual license plate characters would be extracted and disassociated from each other so a complete plate could not be reconstituted, and all association to other elements of the source video, such as the vehicle, location, time, and the surrounding environment would also be removed; (c) when extracting audio of potential acoustic events (such as glass breaking or gun shots), very short segments (<1 second) of audio that only contains the likely acoustic events would be extracted and all human utterances would be removed.

applicable to the Agency Content or ACEIP Content ("Use Case"). From time to time, Axon may develop and deploy new Use Cases. At least 30 days prior to authorizing the deployment of any new Use Case, Axon will provide Agency notice (by updating the list of Use Case at https://www.axon.com/aceip and providing Agency with a mechanism to obtain notice of that update or another commercially reasonable method to Agency designated contact) ("**New Use Case**").

1.1.2. **Expiration of ACEIP Tier 1**. Agency consent granted herein, will expire upon termination of the Agreement. In accordance with section 1.1.1, within 30 days of receiving the Agency's request, Axon will no longer access or use Agency Content for ACEIP Purposes and will delete ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to Agency.

1.2 **ACEIP Tier 2**. In addition to ACEIP Tier 1, if Agency wants to help further improve Axon's services, Agency may choose to participate in Tier 2 of the ACEIP. ACEIP Tier 2, grants Axon certain additional rights to use Agency Content, in addition to those set forth in Tier 1 above, without the guaranteed deployment of a Privacy Preserving Technique to enable product development, improvement, and support that cannot be accomplished with aggregated, transformed or de-identified data.

☐ Check this box if Agency wants to help further improve Axon's services by participating in ACEIP Tier 2 in addition to Tier 1. By checking this box, Agency hereby agrees to the Axon Customer Experience Improvement Program Tier 2 Terms of Service, available at https://www.axon.com/sales-terms-and-conditions and incorporated herein by reference.

Technology Assurance Plan Appendix

If Technology Assurance Plan ("**TAP**") or a bundle including TAP is on the Quote, this appendix applies.

1 **TAP Warranty**. The TAP warranty is an extended warranty that starts at the end of the 1-year Hardware Limited Warranty.

2 **Officer Safety Plan**. If Agency purchases an Officer Safety Plan ("**OSP**"), Agency will receive the deliverables detailed in the Quote. Agency must accept delivery of the TASER CEW and accessories as soon as available from Axon.

3 **OSP 7 Term**. OSP 7 begins after Axon ships the Axon Body 3 or TASER 7 hardware to Agency. If Axon ships in the first half of the month, OSP 7 starts the 1st of the following month. If Axon ships in the second half of the month, OSP 7 starts the 15th of the following month ("**OSP 7 Term**").

4 **TAP BWC Upgrade**. If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon body-worn camera ("**BWC Upgrade**") as scheduled in the Quote. If Agency purchased TAP Axon will provide a BWC Upgrade that is the same or like Axon Device, at Axon's option. Axon makes no guarantee the BWC Upgrade will utilize the same accessories or Axon Dock.

5 **TAP Dock Upgrade**. If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon Dock as scheduled in the Quote ("**Dock Upgrade**"). Accessories associated with any Dock Upgrades are subject to change at Axon discretion. Dock Upgrades will only include a new Axon Dock bay configuration unless a new Axon Dock core is required for BWC compatibility. If Agency originally purchased a single-bay Axon Dock, the Dock Upgrade will be a single-bay Axon Dock model that is the same or like Axon Device, at Axon's option. If Agency originally purchased a multi-bay Axon Dock, the Dock Upgrade will be a multi-bay Axon Dock that is the same or like Axon Device, at Axon's option.

6 **Upgrade Delay**. Axon may ship the BWC and Dock Upgrades as scheduled in the Quote without prior confirmation from Agency unless the Parties agree in writing otherwise at least 90 days in advance. Axon may ship the final BWC and Dock Upgrade as scheduled in the Quote 60 days before the end of the Subscription Term without prior confirmation from Agency.

7 **Upgrade Change**. If Agency wants to change Axon Device models for the offered BWC or Dock Upgrade, Agency must pay the price difference between the MSRP for the offered BWC or Dock Upgrade and the MSRP for the model desired. If the model Agency desires has an MSRP less than the MSRP of the offered BWC Upgrade or Dock Upgrade, Axon will not provide a refund. The MSRP is the MSRP in effect at the time of the upgrade.

8 **Return of Original Axon Device**. Within 30 days of receiving a BWC or Dock Upgrade, Agency must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon including serial numbers for the destroyed Axon Devices. If Agency does not return or destroy the Axon Devices, Axon will deactivate the serial numbers for the Axon Devices received by Agency.

9 **Termination**. If Agency's payment for TAP, OSP, or Axon Evidence is more than 30 days past due, Axon may terminate TAP or OSP. Once TAP or OSP terminates for any reason:

- **9.1** TAP and OSP coverage terminate as of the date of termination and no refunds will be given.
- **9.2** Axon will not and has no obligation to provide the Upgrade Models.
- **9.3** Agency must make any missed payments due to the termination before Agency may purchase any future TAP or OSP.

Axon Auto-Tagging Appendix

1 **Scope.** Axon Auto-Tagging consists of the development of a module to allow Axon Evidence to interact with Agency's Computer-Aided Dispatch ("**CAD**") or Records Management Systems ("**RMS**"). This allows end users to auto-populate Axon video meta-data with a case ID, category, and location-based on data maintained in Agency's CAD or RMS.

2 **Support**. For thirty days after completing Auto-Tagging Services, Axon will provide up to 5 hours of remote support at no additional charge. Axon will provide free support due to a change in Axon Evidence, so long as long as Agency maintains an Axon Evidence and Auto-Tagging subscription. Axon will not provide support if a change is required because Agency changes its CAD or RMS.

3 **Changes**. Axon is only responsible to perform the Services in this Appendix. Any additional Services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule.

4 **Agency Responsibilities**. Axon's performance of Auto-Tagging Services requires Agency to:

- **4.1** Make available relevant systems, including Agency's current CAD or RMS, for assessment by Axon (including remote access if possible);
- **4.2** Make required modifications, upgrades or alterations to Agency's hardware, facilities, systems and networks related to Axon's performance of Auto-Tagging Services;
- **4.3** Provide access to the premises where Axon is performing Auto-Tagging Services, subject to Agency safety and security restrictions, and allow Axon to enter and exit the premises with laptops and materials needed to perform Auto-Tagging Services;
- **4.4** Provide all infrastructure and software information (TCP/IP addresses, node names, network configuration) necessary for Axon to provide Auto-Tagging Services;
- **4.5** Promptly install and implement any software updates provided by Axon;
- **4.6** Ensure that all appropriate data backups are performed;
- **4.7** Provide assistance, participation, and approvals in testing Auto-Tagging Services;
- **4.8** Provide Axon with remote access to Agency's Axon Evidence account when required;
- **4.9** Notify Axon of any network or machine maintenance that may impact the performance of the module at Agency; and
- **4.10** Ensure reasonable availability of knowledgeable staff and personnel to provide timely, accurate, complete, and up-to-date documentation and information to Axon.

5 **Access to Systems**. Agency authorizes Axon to access Agency's relevant computers, network systems, and CAD or RMS solely for performing Auto-Tagging Services. Axon will work diligently to identify as soon as reasonably practicable resources and information Axon expects to use and will provide an initial list to Agency. Agency is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Agency.

Vendor Contract Information Summary

Vendor Name	Axon Enterprise, Inc.
Contact	Katie Wingate
Phone Number	8009782737
Email	kwingate@axon.com
Website	www.axon.com
Federal ID	86-0741227
Accepts RFQs	Yes
Address Line 1	17800 N. 85th St.
Vendor City	Scottsdale
Vendor Zip	85255
Vendor State	AZ
Vendor Country	USA
Delivery Days	45
Freight Terms	FOB Destination
Payment Terms	Net 30 days
Shipping Terms	Pre-paid and added to invoice
Ship Via	Common Carrier
Is Designated Dealer	No
EDGAR Forms Received	Yes
Service-Disabled Veteran Owned	No
Minority Owned	No
Women Owned	No
Is National	Yes
No Excluded Foreign Terrorist Orgs	Yes
No Israel Boycott Certificate	Yes
Is MWBE	No
Regions Served	All Texas Regions
States Served	All States
Contract Name	Law Enforcement Body Cameras, Supplies and Equipment
Contract #	568-18
Effective Date	10/01/2018
Expiration Date	09/30/2021
Quote Reference Number	568-18
Return Policy	All sales are final

Additional Info	EDGAR Vendor Certification Form (relating to 2 CFR Part 200 & Appendix II) is included in the Vendor response document, and can be found in the Vendor Proposal File link near the bottom of the page. Form regarding No Israel Boycott Certification & No Excluded Nation or Foreign Terrorist Organization Certification (Texas HB 89 and Texas SB 252, respectively) can be found under the "Vendor Proposal Files Documents" link below.

City Council Meeting

Item Number: 6

Meeting Date: September 28, 2021

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AWARDING A CONTRACT FOR THE LABORATORY INFORMATION MANAGEMENT SYSTEM TO PROMIUM, LLC, IN THE AMOUNT OF $145,367.00; AND APPROVING $20,000.00 FOR CONTINGENCIES (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Approval of a resolution awarding a contract for the Laboratory Information Management System (LIMS) to Promium, L.L.C.

Recommended City Council Action:

Approve

Fiscal Impact:

The amount of $165,367 is available in the FY2022 Water and Sewer operating budget.

Discussion:

The City Manager approved plans and specifications and authorized advertisement for proposals for the Laboratory Information Management System (LIMS). Proposal requests were issued to fifteen (15) vendors and we received three (3) proposals. Staff recommends awarding the agreement to Promium, L.L.C. Please see the attached memo from Jennifer Frescaz, Chief Information Officer, for additional information.

Therefore, please consider a resolution awarding a contract to Promium, L.L.C. of Bothell, Washington for Laboratory Information Management System (LIMS) in the amount of $145,367.00. Staff is also requesting an additional $20,000.00 in contingences for the total of $165,367.00.

Tina Daug

City Manager's Office

City Council Agenda

MEETING DATE: 09/14/2021

TO: Erika Martinez, Purchasing Manager

FROM: Jennifer Frescaz, Chief Information Officer

SUBJECT: Consider a resolution approving the purchase of Element LIMS to Promium, L.L.C for the Utilities Department Laboratory Information Management System.

Purpose:
Consider a resolution approving the purchase of Element LIMS to Promium, L.L.C for the Utilities Department Laboratory Information Management System.

Discussion:
In May, an RFP was released to replace the existing software for the Utilities Environmental Compliance Division for water testing and lab records management. The process returned four bidders. The following criteria were used to evaluate each bidder: Experience, Approach, Functionality, Technical, and Cost. Promium was the best in all five categories. In addition, they have more than 350 laboratory customers, including 100 local government laboratories. Staff recommends that Promium be selected as they have the best response in every criterion in the RFP.

The current software used by the Utilities Environmental Compliance division has limited functionality creating a poor user experience for citizens seeking water testing. The new software has greater functionality that will help the division process and provide citizens a better experience with the testing process.

RFP Final Average Score	Experience	Approach	Functionality	Technical	Cost	Total
Quality Systems International Corporation	14	7.8	11.6	8.6	7	49
Promium, L.L.C.	21	14	21.4	17.2	14.4	88
Labware, Inc.	14.8	8.8	13.2	11.2	6.6	54.6

Accelerated Technology, Inc.	7.5	7.5	1.5	1.5	6	24

The cost of the agreement is $145,367.00 plus a 15% contingency of $20,000.00 for the total of $165,367.00. It is budgeted in the Environmental Compliance budget contingent on the passing of the 2022 budget.

RESOLUTION NO. _____

RESOLUTION AWARDING A CONTRACT FOR THE LABORATORY INFORMATION MANAGEMENT SYSTEM TO PROMIUM, LLC, IN THE AMOUNT OF $145,367.00; AND APPROVING $20,000.00 FOR CONTINGENCIES

WHEREAS, the City Manager approved specifications and authorized the advertisement for proposals for the Laboratory Information Management System; and

WHEREAS, the most advantageous proposal was submitted by Promium, LLC; and

WHEREAS, the City Council finds the amount proposed by Promium, LLC, to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a contract to Promium, LLC, for the Laboratory Information Management System; and

WHEREAS, the City Council finds it to be in the public interest to approve $20,000.00 for contingencies;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Promium, LLC, for the Laboratory Information Management System in the amount of $145,367.00.00. Said contract to be kept on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the sum of $20,000.00 for contingencies is hereby approved for said agreement.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay Promium, LLC, pursuant to the terms of said contract from funds available in the FY 2022 Water and Sewer operating budget for said purpose upon receipt of proper invoices or statements approved by the City Manager.

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:

_____
Regina Stephenson, General Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

AGREEMENT
#21002758

THIS AGREEMENT is made and effective the 29 day of September 2021, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Promium, LLC. hereinafter referred to as "COMPANY."

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform Laboratory Information Management Software for the City of Midland.

ARTICLE II. SERVICES TO BE PERFORMED

1. COMPANY shall provide the Laboratory Information Management Software as described in the Scope of Services attached hereto as Exhibit "A" and incorporated herein for all legal purposes.
2. 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

CITY agrees to pay COMPANY in an amount not to exceed $ 145,367.00 for the product and services described in Exhibit “A”. After all work is completed by the COMPANY, including all Change Orders altering the original scope and amount of said agreement are completed, and the CITY has inspected and approved that the work is completed and in compliance with the agreement and all subsequent Change Orders, the CITY shall thereafter issue payment to the COMPANY in the amount of the agreement and all Change Orders. The CITY shall be the final judge of when the work is completed by the COMPANY. The CITY, in its sole discretion, shall determine if the work under the agreement and under any Change Orders has been done to the CITY’S requirements. The CITY may make periodic payments to the COMPANY, however such periodic payments may only be made pursuant to this paragraph, and only after all work and all Change Orders are completed by the COMPANY and approved by the CITY. Any approval of payments shall be in the CITY’S sole discretion.

ARTICLE IV. TERM

The term of this Agreement shall be from October 1, 2021 until September 31, 2022 unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

CITY 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 CITY's sole discretion to cancel the Agreement during the term of the Agreement without penalty to CITY. 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

COMPANY 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 CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

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

All reports, information and other data ("*Instruments of Service*"), given to, prepared or assembled by COMPANY under this Agreement, and any other related documents or items shall become the sole property of CITY and shall be delivered to CITY, without restriction, except that COMPANY may make copies of any and all Instruments of Service for its files. CITY shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of COMPANY, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be

performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Agreement shall be construed as creating a partnership or joint enterprise between CITY 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 CITY. Further, it is specifically understood and agreed that nothing in this agreement is intended or 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. 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 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 CITY as an additional insured and waive subrogation in favor of CITY.

The Business Automobile Liability insurance provided by COMPANY shall cover any

auto for bodily injury and property damage, including owned vehicles, hired and non-city 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 CITY as an additional insured and waive subrogation in favor of CITY.

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 CITY.

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY 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 the City of Midland and policies that name the City of Midland 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 CITY. CITY 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 KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST CITY REGARDING THE AWARD OR ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. COMPANY SPECIFICALLY 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), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

COMPANY AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY-EXISTING KNOWN RIGHT. COMPANY ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS AGREEMENT. COMPANY FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND COMPANY. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OR GOVERNMENTAL IMMUNITY AND SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

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

ARTICLE XI. 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.**

ARTICLE XII. NO THIRD-PARTY BENEFICIARIES

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.

ARTICLE XIII. RELEASE

NOTWITHSTANDING ANY OTHER PROVISIONS, COMPANY 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 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 CITY'S NEGLIGENCE. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE XIV. GENERAL PROVISIONS

A. Waiver. No waiver by CITY 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 CITY: City Manager's Office
P.O. Box 1152
Midland, Texas 79702

If to COMPANY: Promium, LLC
3350 Monte Villa Parkway, Suite 220
Bothell, WA 98021

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 its legal representative, shall give the City Manager, or any other reasonable official of CITY, 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

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 COMPANY shall 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 (6) 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 provide such written notification 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 COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request 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 to the contrary, COMPANY's failure to comply with the requirements of this Section 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 CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Agreement are reasonable. The provisions and obligations of this Section shall survive the termination of this Agreement.

J. Prompt Pay Act. CITY 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, *et seq.*, as amended. COMPANY agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

L. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Agreement, Company hereby verifies:

- that Company does not boycott Israel and will not boycott Israel during the term of this Agreement;
- that Company does not boycott energy companies and will not boycott energy companies during the term of this Agreement; and

- that Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

To the extent that the Anti-Boycott Statutes do not apply to this Agreement, such verification is not required, and Company shall be deemed to have not made such verification.

M. Records Retention and Production of Information. To the extent that this Agreement constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to CITY for the duration of this Agreement; (ii) promptly provide to CITY any contracting information related to the Agreement that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Agreement, either: (a) provide at no cost to CITY all contracting information related to the Agreement that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to CITY.

N. Public Information. To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, COMPANY agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

O. 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 CITY is hereby made void and of no force or effect. CITY's sole and exclusive obligations under this Agreement are contained in the provisions of this Professional Services Agreement that precede the signature page(s), which evidences the parties' execution.

P. Company agrees that all iron or steel products produced through a manufacturing process and used in the project that is the subject of this Agreement shall be produced in the United States

in accordance with Government Code § 2252.202, et seq., as amended.

Q.INDEMNITY: COMPANY 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, 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, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY 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. THE OBLIGATIONS CONTAINED IN THIS SECTION 8 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

Q 1. **COMPANY 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, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, 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, 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 COMPANY OR COMPANY'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 CONTRACT, AND COMPANY 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. THE OBLIGATIONS CONTAINED IN THIS SECTION 8.1 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.**

Q 2. **COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE CITY 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 AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND 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. THE OBLIGATIONS CONTAINED IN THIS SECTION Q 2. SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.**

[Signature Pages Follow]

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____§

§

COUNTY OF _____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Promium, LLC , 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 ____day of _____,

20____.

_____

Notary Public, State of Texas

CITY OF MIDLAND

ADDENDUM

BID #21002758

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 4

DATE: May 14, 2021

1. Describe the LIMS ability to provide methodreferences.
   A. H-14 – The LIMS must suggest the correct test for the sample given. (i.e. suggesting the Colilert – 18; SM 9223B)

2. Describe the LIMS ability to provide assessment and reporting of broad, long-termmeasures of QA performance (completeness,precision, accuracy, etc.).
   A. LIMS must give reporting for Quality Assurance to verify that no errors have been made and to track corrections made by users.

3. Describe the LIMS ability to providetroubleshooting diaries.
   A. If a sample is submitted and not accepted, there needs to be a description of the error or an error log.

4. The proposed LIMS must provide the abilityto export a text file of LIMS data for import into the City's internally-developed Access- based pretreatment system via an Excel template (file format included in Appendix D.)
   A. We can disregard this requirement.

5. Could you please clarify what is required of Section 7 Proposal Content, 7.3.3. Business Plan?
   A. We are requesting their project plan or the methodology they use to implement the project.

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

_____
Company Name

_____ _____
Bidder Authorized Signature Date

_____ _____
Please Print Above Name Phone

Proposal for

EXHIBIT "A"

City of Midland

RFP 21002758

Laboratory Information Management System (LIMS)

May 19, 2021

Element LIMS®

LABORATORY INFORMATION MANAGEMENT

PROMIUM

PROMIUM

May 14, 2021

City Secretary
City of Midland
Suite 340
P.O. BOX 1152
Midland, Texas 79702-1153
(300 N. Loraine, Suite 340 Midland, TX 79701)

Re: RFP 21002758 for Laboratory Information Management System (LIMS)

To: City Secretary

Promium is excited to offer the City of Midland (City) the implementation of Element LIMS®, our configurable commercial-off-the-shelf system, developed specifically for environmental testing laboratories. Element LIMS fully supports the City's goals of replacing the current LIMS with a system that increases efficiency, access to information, data management, and reporting to create a more automated and paperless environment.

Element LIMS brings a new level of automation and streamlining to your laboratory. An intuitive interface, standardized workflow, and robust analytical capabilities create a powerful information infrastructure. Your team will save time and reduce the cost of data entry, analysis, and report generation.

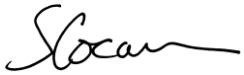
Since 1998, Promium has implemented Element LIMS in more than 350 laboratories, including more than 100 local and federal government laboratories and 17 laboratories in the State of Texas.

We are confident that implementation of Element LIMS will address the City's requirements while providing a stable and reliable technology platform that will meet your needs into the future. We look forward to working with you on this project.

Please contact our Western Regional Account Manager with any questions:

Rick Persichitte
Promium LLC
3350 Monte Villa Parkway, Suite 220
Bothell, WA 98021
425.286.9200 x223 rpersichitte@promium.com

Regards,
Promium, L.L.C.



Scot Cocanour, CEO

PROMIUM

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Attachment A – Execution of Offer
Attachment B – Signed Addendum 1, 2, and 3

A. Company Qualifications

Promium is a limited liability company and was established in 1998. The company is headquartered in Bothell, Washington, and team members are also located in California, New Jersey, Oregon, Tennessee, Texas, and Wisconsin.

Address: Promium, L.L.C., 3350 Monte Villa Parkway, Suite 220, Bothell, WA, 98021.

Promium was established in 1998 and has been exclusively serving the environmental/water testing laboratory community. Promium, with a 100% U.S. based workforce, develops the software and upgrades, implements the applications, conducts training, and provides customer support.

Unlike many other LIMS companies, Promium singularly focuses on environmental/water testing laboratories. This focus results in a deep understanding of the analytical and operational requirements of these laboratories and produces software that tightly aligns with customer needs. Our design philosophy is to provide an application that produces a seamless flow of information. All core functionality is in a single application—with no additional billable modules that must be integrated.

Element LIMS is installed in over 350 laboratories, and more than 100 municipal, state, and federal environmental laboratories, including the US EPA regional laboratories. Of those 100 laboratories, 60 are water/wastewater customers. Our customers operate water testing laboratories under various local, state and federal standards, certification programs, and regulations, and Element LIMS has served as a platform for meeting those requirements. We have experience with clean water regulations and reporting, and in particular have over 20 years of experience in the State of Texas, with 17 customer laboratories.

B. Element LIMS Overview

Element LIMS is a unified, commercial off-the-shelf (COTS) application, with all core components in one comprehensive solution. From bid to invoice, functionality is interwoven to provide a seamless infrastructure.

Element LIMS is also highly configurable. Through a broad array of optional settings, Element LIMS is easily configured to address your specific business policies and operations practices. A variety of changes can be made to the system without requiring development resources including: changing nomenclature, editing and adding data fields, modifying equations, configuring menus, establishing alerts and flags, modifying report formats and distributions, and modifying program settings and default values. Key Features include:

- Sample Scheduling and Login With several streamlined options for sample login, Element LIMS directly addresses what is otherwise one of the most time-consuming parts of the laboratory workflow—sample scheduling and login. Simplify the login process by leveraging extensive calendar-based scheduling. Depending on your specific project and client needs, utilize Work Order Login, Prelog, Quicklog, CoC Import, Operational Data, or ClientConnect online sample submission. Use automatic email notifications to let clients know the status of their project.
- Security and User Roles. Element LIMS users may be authenticated against a Microsoft Active Directory server for robust and consistent security. Industry standards for encryption are employed for both Element LIMS logon and ClientConnect web portal logon. Departments can be used to establish a pre-defined set of permissions.
- Audit Trail. Element LIMS creates a highly granular audit trail that supports the requirements of the US EPA, TNI 2016, and ISO 17025. The user's ID, date and time stamp and before/after values whenever changes are posted/saved to the system. These are accomplished by three different audit trails: analytical data, qualifiers/comments and general data. User ID, date/time, before/after, reason, change type and changed field are all tracked within these audit trails.
- Bar Coding and Bottle Kitting. Element LIMS supports bar code labeling, tracking, and reporting of samples by utilizing Code 128, 39 and 2D bar codes for sample bottles, consumables and in-house CoCs, down to the individual container level. Element LIMS also employs bar coding for other laboratory items such as reagents and standards.
- Chain of Custody. Element LIMS incorporates three levels of chain of custody. From the field, the Element ClientConnect web application provides the ability to submit samples and create a digital chain of custody and record field data, eliminating the need for paper CoCs. If paper CoCs are used instead of the online CoC, they can be easily uploaded into the project work order. The online CoCs and uploaded copies of paper CoCs are bound to the

work order to represent the third level of the internal chain of custody, with integrated traceability to the original sampling event.

- Replacement of Paper Log Books. Element LIMS replaces several paper-based tracking activities. From scheduling and sampling to reporting and disposal, Element LIMS eliminates sample log books and waste disposal logs. Spikes, MS Tunes, Reagents, Surrogates, and Reference, Internal, Calibration, other user-specific Standards are tracked in the Standards menu. And the Instrument Maintenance Log allows analysts to specify instruments and create schedules for routine maintenance.

- Consumables Inventory. The Consumables feature provides tracking of commonly consumed items. Items are received into a general storage area and then distributed to individual departments. The Consumables module offers the flexibility of using the mouse or a barcode reader to select consumable items for distribution or receiving.

- Sample Batching, Quality Control, and Bench Sheets. With the batch-centric structure of Element LIMS, QC samples are automatically inserted at appropriate sample intervals. Each batch is assigned a unique identifier, samples are associated with the QC samples and reagents in that batch, and those are automatically added to the batch as the user adds client samples. And automated QC protocol ensures adherence to TNI 2016, ISO 27015, USEPA and other standards.

- Instrument Data Import. Element LIMS includes instrument data import functionality with a large library of formats covering virtually any commonly used laboratory instrument. The application automates the import of analytical data, in some cases with bi-directional interaction. If your lab has an instrument that is not represented in the library of interpreters, we will create one at no additional charge.

- Subcontractor Data Integration. Element LIMS is also able to rapidly import data from subcontractor laboratories. Whether a subcontractor uses Element LIMS or not, Element LIMS provides features to import data easily and securely via a small transfer file.

- Flags and Qualifiers. Real-time alerts and flags identify conditions exceeding limits. Emails and dashboard updates notify you of the conditions. Minimum Detection Limits, Minimum Reporting Limits, upper and lower limits, and upper limit notification flags may be configured for each analysis matrix, and USEPA flags can be applied automatically. Flags can also be triggered based on suspect results between independent tests. Qualifiers are manually assigned from a custom picklist based on analyst-dependent events.

- Notification and Alerts. Element LIMS may be configured to automatically distribute alerts to internal analysts and reports to external customers. Internal alerts are available on the user dashboard or may be delivered by email. Alerts are triggered upon scheduled events, analysis status, or analytical results. Rules may be pre-configured for each client, resulting in a specific set of alerts or reports that can be automatically delivered via email.

- Control Charts and Statistics. The Control Charts feature is designed for US EPA, TNI 2016, and ISO 17025 compliance. The built-in quality control functionality has proven effective for nearly all our clients using the system for TNI 2016 and ISO 17025 compliance, eliminating the need for interfacing with an external system. It is possible to export data in a generic format for importing to an external statistical process control software.

- Invoicing. Quickly produce an invoice based on a single work order, or to split or combine work orders into any combination of one or more invoices. Invoices can be exported into commonly used accounting packages or printed. Multiple charge codes are supported, with the cost of test codes at the laboratory list price, bid price, flat discount off of price list, and manual override at the invoicing level. Pricing may be changed at the work order, project level, test code level and sample level.

- Integrated Automated Reporting. Integration with industry standard SAP Crystal Reports provides the ability to create customized reports beyond the included basic report library. In addition, Element LIMS has a large EDD library and an Export Builder feature, which gives users the ability to create their own electronic deliverables. Report distribution rules may be configured for each client, so that a specific set of reports, invoices, EDDs and other information can be delivered through email or the ClientConnect portal.

- Element ClientConnect Web Portal. The Element ClientConnect web application serves as a client portal for submitting samples and viewing information. Permissioned users have quick and easy access to preliminary and final reports, configurable downloads, and real-time sample status updates that would otherwise have to be provided by laboratory personnel. Online sample submission with the EnviroChain functionality addresses field sampling needs with automated chain of custody (CoC) and reduced sample login data entry by submitting sample data remotely from the field.

Maintenance

The first year of maintenance is included in the software fee and there is no separate charge. After year one, there is an annual renewal fee. Once the implementation portion of the project has been deemed to be completed, the account is transitioned to our customer support team.

Annual Promium maintenance for Element LIMS includes the following services:

- Software bug fixes
- Minor feature enhancements
- Major feature enhancements
- Major software upgrades (including platform and other technology updates)
- Instrument interfaces (typically no charge for new instruments)
- Customer Support Services

C. Requirements

SECTION	CATEGORY AND NUMBERING	LIMS REQUIREMENTS	Included In Proposed LIMS	NOT Included in Proposed LIMS	DESCRIPTION
NOTES —► TO RESPONDERS:		Proposers are requested to make an entry for each line-item requirement in Column E. The response may vary from "Standard LIMS Functionality", if the responder believes no further description is necessary, to a full-detail response should the responder believe the proposed system's functionality requires clarification or somehow stands out from competing products. The responder may utilize the first line of each section ("GENERAL RESPONSE") to address the entire section with a single description. This is at the proposer's discretion; however each line-item requirement should either be addressed within the General Response or individually in Column F. Should the requirement not be met by the proposed LIMS, an indicator should be placed in Column E and a description provided in Column E.			
A	**Vendor**	Information about the proposing Vendor is requested in the RFP's "Proposal" Section.			
B	**System Infrastructure**				
	The proposing vendor is expected to provide all necessary information regarding hardware, software, and database licensing subject to this section:				
	B-1	GENERAL RESPONSE / DESCRIPTION for this section as noted on line 2.			
	B-2	The City prefers MS SQL Server database platform. Please specify the preferred database (including versions), and explain the rationale of the database choice.	X		Element LIMS is optimized to work with Microsoft SQL Server.
	B-3	Indicate where event triggering and transaction processing take place (e.g., database level, middleware, etc.).	x		Element LIMS does not use any database level triggers or stored procedures. All database transactions are carried out by the application. Database processing is handled as transactions with rollback of the transaction set in case of failure.
	B-4	Specify the proposed LIMS architecture configuration by description and drawing (e.g., n-tier client-server, thin-client/web-enabled). No formal requirement is set	x		The Element LIMS architecture consists of a traditional n-tier client-server application. The application (Element LIMS) is installed on each client computer. The application performs all database transactions directly

		forth in terms of architecture as long as it best meets the needs of the City.			against the database. In addition, Element LIMS includes a web portal (ClientConnect) for read-only distribution of reports and data.
	B-5	Provide high-level details on the architecture of the proposed configuration, including the availability of API's, web services, and similar open architectures enabling expansion, custom reporting, and interfacing to the LIMS (such description should include a listing and discussion of available web services).	x		Element LIMS interfaces with other systems in one of two methods: direct database query or by EDD. The Repository Tables of the database are designed to house all reportable data, whether generated by the laboratory or subcontractors. These tables have a simple, flat structure and are easily queried by external applications. An alternative is the automatic generation of a specifically formatted EDD. External code is developed to query the database, generate the desired EDD, and deposit it in the desired directory for the external application. The EDD may be generated during the reporting process, or at specific times/frequencies throughout the day.
	B-6	The system must be compatible with MS Office 365 (for sending automated alerts, etc.) and use SMTP service. The City will not allow use of POP3 or IMAP services.	x		Element LIMS is compatible with Microsoft Office and Microsoft Office 365 and use of SMTP service.
	B-7	Describe the ability of the system to allow for active directory integration.	x		Using the Domain authentication method, domain names and passwords are used for Element LIMS login. Password policies established in Active Directory services will apply to Element LIMS. The user name that is entered into Element LIMS and saved in the Security table must match the user's domain username.
	B-8	Elaborate appropriately and succinctly any System Infrastructure considerations not called out in this section that are deemed important differentiators or essential functionality.			

C	**General System**				
	C-1	GENERAL RESPONSE / DESCRIPTION for this section as noted on line 2.			
	C-2	Provide an overview, introduction, and history of the proposed LIMS as it pertains to general system usage, differentiating features, and other relevant details.	x		Element LIMS is a unified, commercial off-the-shelf (COTS) application, with all core components in one comprehensive solution. From bid to invoice, functionality is interwoven to provide a seamless infrastructure. Element LIMS is also highly configurable. Through a broad array of optional settings, Element LIMS is easily configured to address your specific business policies and operations practices. A variety of changes can be made to the system without requiring development resources including: changing nomenclature, editing and adding data fields, modifying equations, configuring menus, establishing alerts and flags, modifying report formats and distributions, and modifying program settings and default values. Key features include sample scheduling and login, audit trail, bar coding and bottle kitting, chain of custody, electronic bench sheets, consumables inventory, sample batching, quality control, control charts, instrument data import, subcontractor data integration, flags and qualifiers, notifications and alerts, automated reporting, and web portal.
	C-3	The intended system must be a commercial-off-the-shelf (COTS) system; supply the following information:	x		
	C-3a	Number of installations following a versioning path	x		Over 330 laboratories are using Element LIMS.
	C-3b	Other information indicating a mature COTS system	x		Element LIMS has been in continuous development since 1998. The current release is version 6.x. 7.x*
	C-4	Describe the system development plan and/or commitments to future releases, including a description of known feature,	x		Operating continuously since 1998, Promium has a long history of providing regular updates to Element LIMS. Future plans include a focus in the following areas: 1)

*New release issued after submission. Verson 7.x per Andy Levy, 9/7/21

		function, and/or architecture enhancements.			user interface, 2) platform performance, 3) API integration, 4) web and mobile extensions. Releases are planned for yearly, quarterly, monthly, and weekly launch depending on the scope of impact. The goal is to maintain a stable environment for customers while keeping you up to date at reasonable intervals. Major releases are contemplated every 2-3 years. These releases constitute major changes to core functionality or architecture, additions of significant new features, incorporate of new technology, and/or launch of a new user interface. Minor releases, targeted for release on a quarterly and sometimes monthly basis, address the addition of new features or enhancement of existing functionality. Bug releases are produced as needed on a weekly or monthly basis depending on severity of the issue.
	C-5	Describe the upgrade plan (i.e., Are upgrades required to maintain support? What notice is given and what upgrade paths are offered when a version approaches retirement? When is a version no longer supported, etc?). Also include the method of communication to inform the client an upgrade has been sent.	x		Upgrades are available to any customer with an active maintenance agreement. Upgrades, particularly bug fixes, are not mandatory but are highly recommended. Upgrade releases will be posted to the Promium Customer Support site and available to download by any customer with an active maintenance agreement. Major releases are supported one level back (e.g. Version 6 and 5 are supported, then Version 7 and 6 will be supported).
	C-6	Describe the user interface, focusing on such items as the menu structure, screen layout, etc.	x		Designed around the typical Windows MDI (multiple document interface). Workflow is oriented around common laboratory workflow to maintain an intuitive user experience. A series of second layer dialogs address more complex functionality. Overall screen layout is intended to mimic actual sequential workflow.

	C-7	Describe the LIMS sample tracking ability beginning with the sample request and tracking the sample through log-in, analysis, quality assurance, review and approval.	x		The life cycle of a Sample is tracked within Element. As the sample enters into different processes new status triggers are automatically assigned to the sample so that the user can identify the current stage of the sample.
	C-8	Please provide a hierarchical diagram of the parent/child relationships for core product terminology (e.g., tests comprise samples, samples comprise specifications, etc.).	x		The Element LIMS data hierarchy is closely modeled after the workflow of a typical environmental laboratory. The hierarchy begins with the client level, and the following objects are nested within each other: Projects, Work Orders, Samples, Analyses, and Analytes. Please see the Data Hierarchy Diagram on the adjacent tab in this workbook.
	C-9	Describe any event triggering available in the system and how such events are designated, added, amended, or deleted by a user or system administrator. The following are required at minimum: automated e-mails based on limit exceedance, upcoming hold times for samples in the Holding Area to one or multiple recipients.	x		Limits can be defined at a base analysis (meaning it applies to the analysis for every sample) or on a Client/Project level (meaning it applies only to those samples logged in for that Project). A user can define up to 5 limits per analyte. For example an analyte might have a daily limit, monthly limit, and a semi-annual limit. At data review if the result exceeds a limit that result is flagged and color coded. The analyst will see this initially and the data reviewer will also see this flag. On a Project basis a user with appropriate permissions can also set it where these exceedances are e-mailed to an internal project manager and the client if they are approved in the laboratory. Holding time reports can also be automatically emailed to designated personnel throughout the day.
	C-10	Describe the degree of configurability of the proposed system by a trained administrator. Include items such as ability to add/create user defined data fields, changing screen labels, etc.	x		Element LIMS is highly configurable with the option to modify, without code changes the following: nomenclature, edit or add data fields, modify equations, configure drop down menus, establish alerts, modify report formats, assign report distribution, establish

					invoice frequency, modify program settings and default values. Element LIMS is designed to be easily configurable by the LIMS administrator through the front-end application.
	C-10a	More specifically, describe the ability to modify screen labels for the limit terminology (e.g., MDL/LOD). Furthermore, describe the ability for reports to utilize the specified terminology.	x		Through the use of the string table the laboratory has the ability to rename items using their own terminology. There is also a QC cross-table to assist in the re-naming of QC sample labels.
	C-11	Describe any third party software proposed. Include details on products, version, intended usage, and licensing.	x		SAP Crystal Reports is used as the report template designer. The viewer is embedded within the Element LIMS client. Crystal Reports provides tremendous flexibility in report design. A standalone single-seat license is required for creating or modifying report templates, available directly from SAP. The report viewer is built into Element LIMS, eliminating the need to load Crystal Reports on each workstation. The open source programs Ghostscript and XPDF are used for the internal manipulation of PDF documents. If required, they will be installed during the implementation process. Microsoft® Excel is used for the automation of some bench sheets (i.e. BOD and TSS) and for creating Work Order transfer files to subcontract laboratories.
	C-12	Describe any modules, spreadsheets, web tools, or other water/wastewater-specific applications that assist in the electronic capture of data (e.g., BOD spreadsheet).	x		With integrated bench sheets, volumes and spiking information are recorded and Element has the information needed to do calculations on raw data and produce a final result. For wet chemistry tests that require more up front data input, Element exports bench sheet information into pre-defined spreadsheets for analysis specific calculations.

	C-13	Describe the proposed system's document management/attachment capabilities, including the methodology used to attach/assign documents to any record in the database. No interface is required to the City Document Management System. Include discussion on where documents or files are stored and managed (e.g., within the database or as external references).	x		Element LIMS can attach any number of documents or electronic records to either a sample and/or a test for a specific sample. These attachments can either be attached as a link to an external file or can be stored as a pdf in the database. In addition the City can manually add and or download electronic records such as NPDES Requirements, SOPS, MSDS, Maps, and Pictures and attached as a file. The City will assign the proper authority within Element for records to be changed and or downloaded. This added security avoids the download of outdated information. In addition when defining tests, SOPs, methodology, and calculations can be attached to the test definition so it is easily accessed within Element LIMS.
	C-14	Describe the LIMS ability to allow data entry and review through browse screens (multiple record entry/review on a single screen).	x		Within the Element LIMS Data Entry/Review screen the user has access to the information used to arrive at the result. This information can also contain the raw data stored in a PDF file format. The data can be reviewed by Batch, Analysis, or Analyte.
	C-15	Describe the number and type of user-definable fields available.	x		In addition to standard fields each function has up to ten fields that can be defined by the laboratory for that function. For some functions this can be up to 20. An example of 20 being available would be on the sample description function. There can be 10 fields defined for every sample within the system and an additional 10 fields defined for samples received by that Client/Project.
	C-16	Describe provisions or plans for NELAP compliance. Please include discussion of current customers who utilize the proposed LIMS as a component of their NELAP certification, and in what capacity the system serves to aid in their accreditation.	x		Element LIMS is provides granular tracking and record retention to help laboratories meet the stringent requirements of NELAP, NELAC, TNI, and ISO 17205. Key features include, but are not limited to: -Documentation of purchase, reception and storage of consumables -Records on standard and reference material

					preparation, traceability from source to disposal -Instrument maintenance logs -Automated data entry via DataTool -Secure user login and auditing -Unique sample identifiers, traceability from source to disposal -Training, certifications, and demonstration of capability tracking
	C-17	Describe the ability of the system to interface with the PeopleSoft ERP system to update system users due to turnover.		x	Element LIMS does not currently include integration with PeopleSoft. This integration would be considered depending on technical requirements.
	C-18	Elaborate appropriately and succinctly any General System considerations not called out in this section that are deemed important differentiators or essential functionality.			
D	**Sample Requests and Scheduling**				
	D-1	GENERAL RESPONSE / DESCRIPTION for this section as noted on line 2.			
	D-2	Describe the proposed system's overall scheduling capabilities. Include such items as routine/standard sampling, ad-hoc, non-laboratory (e.g., industrial pretreatment), laboratory management (e.g., inventory, training, work management, etc.). Note: Only laboratory personnel will interact with sample scheduling tasks.	x		Projects defined within Element LIMS can manage the customer's sampling events from specific sample point data through the reporting requirements, including permit levels and special QC limits. Projects can also be set up and used as templates for routine sampling events, offering analytical configuration specifically at the project level, and eliminating the need to re-configure project characteristics for routine sampling events. Schedules are used in conjunction with Projects, which can be configured for either repeat or single use. This makes it simple to create unique projects for either routine or non-routine work. The Schedule Builder feature uses a simple series of

					checkboxes to select frequencies (i.e., daily, monthly, first day of each month, etc.) and a graphical calendar to allow users to schedule samples up to a year in advance. In addition, each schedule may be renewed automatically for as many years as desired.
	D-3	Describe the available methods for sample request/scheduling (e.g., daily, weekly, "2nd Tuesday", "Every other Monday", etc.).	x		Samples can be scheduled hourly, daily, weekly, monthly, single time, X hour, 2nd Tuesday, Every Monday. The User can access a calendar in Element and highlight dates needed for sample requests.
	D-4	Describe the proposed system's ability to schedule/assign tasks to individuals or sections within the laboratory.		x	Limited to tasks specifically related to specific samples/batches (i.e. warning about sample odor, need for dilution).
	D-5	Describe the proposed system's ability to alter (i.e., prioritize, change dates, etc.) the stated/standard schedule and the process for deleting samples or tasks that are not received or executed.	x		Priorities are based on required TAT, requested TAT, and priority within a batch. For complete record keeping, Promium recommends marking cancelled tests with a status of "cancelled" rather than deleting them.
	D-6	Describe the LIMS ability to store information in the database concerning the sample's origination or collection point, the ability to record biographical data such as the project number, due date, sample priority, and pertinent sample splitting or field preparation details.	x		Projects defined within Element LIMS can manage the customer's sampling events from specific sample point data through the reporting requirements, including permit levels and special QC limits. Projects can also be set up and used as templates for routine sampling events, offering analytical configuration specifically at the project level, and eliminating the need to re-configure project characteristics for routine sampling events. Work Orders are essentially a manifest of samples to be run for a specific project. Sample-specific information is tracked at this level, and can be leveraged for future use.
	D-7	Describe the LIMS schedule review capabilities (e.g., calendar format) and the ability to review past, present, and future sample requests.	x		This can be reviewed in worksheet format. A full calendar view is planned for a future release.

	D-8	Describe the user selectable filtering criteria available within the scheduling element of the proposed system (e.g., filter by Project Manager/Staff Member/Requesting Department/External Customer).	x		The backlog query can be filtered using several different criteria including those mentioned. These filtered queries can also be named and automatically e-mailed to individuals.
	D-9	Elaborate appropriately and succinctly any Sample Requests and Scheduling considerations not called out in this section that are deemed important differentiators or essential functionality.			
E	**Sample Identification**				
	E-1	GENERAL RESPONSE / DESCRIPTION for this section as noted on line 2.			
	E-2	Information on sampling sites will be stored in the LIMS. The minimum data elements, which will be stored, are site ID, description, time, location and sampling frequency. Describe the LIMS basic sample identification method including sample ID and associated parameters. Include discussion on the automated creation of sample ID and when such ID is generated (e.g., upon receipt, during scheduling, etc.).	x		Unique sample identifiers are assigned when a sample is actually logged into the system. This logging can be upon receipt of the sample or when the sample is pre-logged using the "Bottle Order" function or the "Route Sheet" function. If a sample is pre-logged the samples identifiers are assigned and the samples are given a status of "Pending". Samples are logged in basically by using the chain-of-custody (COC). A Work Order is first created which contains information that is common to all of the samples on the COC, i.e. project, received time, report due date, etc.... The Work Oder is given a unique seven character identifier. As samples are assigned they are given a unique ten character identifier with the first eight characters being the Work Order number and a "-". The samples are then identified by their order of being added (1234567-01). Further, in keeping with NELAC requirements, the

					individual containers for each sample are given an alpha (a,b,c...) identifier.
	E-3	Elaborate appropriately and succinctly any Sample Identification considerations not called out in this section that are deemed important differentiators or essential functionality.			
F	**Sample Receiving**				
	F-1	GENERAL RESPONSE / DESCRIPTION for this section as noted on line 2.			
	F-2	Describe how the proposed system handles the receiving of scheduled samples. Note: The City intends to utilize barcode labels for scheduled samples, however, please describe the receiving process for both bar-coded and hand-written labels.	x		Scheduled samples can be pre-logged either by a bottle order that is sent out or a collector collecting along an assigned sample route. These samples are assigned LIMS numbers and their status is set to “pending”. Upon receipt in the laboratory these samples can be individually or as a group marked to “received”. This would be done on the same screen whether the samples have a bar-code or not. The bar-code would take the place of mouse navigation.
	F-3	Describe the LIMS sample manual log-in function to accommodate ad-hoc requests.	x		If a sample arrives at the laboratory that is not on a schedule the user can then log that sample in manually. This is done based on a Project for the Client. In some cases you might need to define a generic Project for a Client. The login person can add or modify information from the Project as it is only a default template. Analysis can be selected from a pre-defined list in the Project or selected from the entire analysis list. There are fields for the specific items mentioned in this requirement as well as the additional information fields that are available. Note that sample identification patterns are set on a system-wide basis and cannot be changed at sample login. There are some patterns that use characters from the Client name.

	F-4	Describe the LIMS multiple sample log-in function. This function shall allow a batch of similar samples to be logged in one operation, assigning unique sample identifications to each sample, and duplicating common fields for each sample in the batch. Individual samples must then be modifiable at the user's discretion.	x		This would be the same as stated above in F-3. Once a sample is logged in it can be copied into as many different samples as needed. Each individual sample can then be modified if needed.
	F-5	Describe the proposed system's ability to capture the following receiving data items as samples arrive at the laboratory:			The items listed (F-5a -- F-5o) are included as part of the core functionality of Element DataSystem.
	F-5a	Date and time of receipt	x		See F-5 response above.
	F-5b	Location of sample	x		See F-5 response above.
	F-5c	Time of sample collection (Need Start Time and End Time for Composite sample and date)	x		See F-5 response above.
	F-5d	Sample identification code	x		See F-5 response above.
	F-5e	Unusual sample conditions	x		See F-5 response above.
	F-5f	Tests requested	x		See F-5 response above.
	F-5g	Field test results	x		See F-5 response above.
	F-5h	Project ID	x		See F-5 response above.
	F-5i	Sample Temperature and pH	x		See F-5 response above.
	F-5j	Sample Splitting	x		See F-5 response above.
	F-5k	One or many sampler names	x		See F-5 response above.
	F-5l	Comments	x		See F-5 response above.
	F-5m	User-definable Fields (e.g., identify the need for chain of custody document to be further reviewed).	x		See F-5 response above.
	F-5n	Chain of custody information (including the linking of scanned images).	x		See F-5 response above.

	F-5o	Please describe and/or list additional data fields that can be captured during sample receiving.	x		The laboratory has the ability to define fields that are required but not defined in the core system. These fields can be on a global basis, meaning applies to every sample, or variable, meaning for only those samples from this Client or Project.
	F-6	Describe the LIMS ability to add, store, associate, or delete sample information as appropriate (e.g. sample preparation, tests, holding time, storage requirements, type, time limits, etc.).	x		Sample information can be pre-defined when setting up Projects or manually entered through the normal Sample Login interface. Pre-definition details include the normal sample information but can also include schedules of sampling dates, association with a collection route, auto-assignment of bottles and special parameters such as field collection tests. Users can then employ this information to auto-login samples via the Bottle Order, Quick Log or Route Sheet functionalities elsewhere within the system. For sample identification, note that the system assigns a globally unique identifier (GUID) to samples whenever they are initially defined. This allows the sample to be tracked historically through the system and externally in the Repository Database in spite of any changes that might be made to its Sample Name, Alias or Regulatory ID. This identifier is separate from the unique identifier assigned to each instance of a sample logged into the system for purposes of LIMS processing.
	F-7	Describe the proposed system's ability to allow authorized users to modify tests or procedures assigned to logged in samples without modifying the standard procedures and test assignments.	x		Element LIMS allows Standard information such as standard procedures and test assignments to be stored in the LIMS. Only users with edit credentials may modify specific objects within Element LIMS.
	F-8	The system must provide the ability to create subsamples, assign tests to that subsample, reconcile the parent sample (remove tests from), maintain parent/child relationship, and uniquely	x		Samples are logged in and group using a Work Order model. This allows for information common to all of the samples to be entered in one location. Once the Work Oder is established, samples are assigned to it. These samples are assigned analysis (tests). The analysis can be

		track custody of parent and child independently. Please describe how the LIMS accommodates these requirements during receiving.			added or removed at this point. Containers are also assigned to the samples with unique identifiers. Samples are thus subsamples of Work Orders and containers are subsamples of samples. This parent/child relationship persists for the life of the sample within Element LIMS.
	F-9	Describe the LIMS ability to associate sample holding times with each sample based on its sampling time to produce maximum holding time/date(s) based on sample types and tests required.	x		Holding time intervals are defined in hours or days. Holding times are designed around Standard analysis holding times and are defined and associated with Test definitions within the Element LIMS SOP.
	F-10	Describe the system's ability to change ownership of a sample to either an individual or lab section. Include discussion of the LIMS' ability to either "push" samples to an individual/section or have the individual/section "pull" the sample to their ownership.	x		Within Element LIMS, sample locations are tracked and recorded and can be "transferred" to new locations. A location can be anything from a laboratory to a shelf within a refrigerator. Location is a status that is typically manually set when performing the physical transfer of samples.
	F-11	Elaborate appropriately and succinctly any Sample Receiving considerations not called out in this section that are deemed important differentiators or essential functionality.			Element LIMS has a large variety of Sample Receiving options. It is extremely flexible and user friendly. The users can define fields, COC reports, automated hold time calculations, sample conditions, bar-coded labels, and login reports and more.
G	**Chain of Custody**				
	G-1	GENERAL RESPONSE / DESCRIPTION for this section as noted on line 2.			
	G-2	Describe the LIMS process for handling chain of custody documents (i.e., when are they created, how are they linked to a sample/barcode label, etc.).	x		Element LIMS can attach and create COC documents during the sample login process. An actual COC document can be generated when a scheduled sample is pre-logged also. The COC document can be stored with the Work Order as a PDF file or a picture (.bmp, jpg, etc.) file. Alternatively, the EnviroChain service may be used to

					electronically replace paper CoCs with a web-enabled device.
	G-3	Describe the system's ability to create a chain of custody for samples that arrive without supporting documentation.	x		When a Work Order is generated with Element LIMS a form can be generated as a receipt of that Work Order. Since this is a Crystal Report format it can be designed to look like a CoC document.
	G-4	Describe the LIMS ability to link scanned chain of custody documents to samples.	x		Scanned CoCs are treated like any other scanned electronic record and these are attached as a file within the LIMS.
	G-5	Describe the system's ability to allow certain departments to print chain of custody documents at their location.	x		Permissions are stored within Element LIMS on a user basis. If a user has permission to view the Work Order screen then that user can print the supporting documentation, including the Work Order receipt.
	G-6	Elaborate appropriately and succinctly any Chain of Custody considerations not called out in this section that are deemed important differentiators or essential functionality.			In Element LIMS, users can build their own chain of custody report by adding their logo and it can remain the system and added to all reports. Element LIMS is driven by NELAC and GLP so the COC is a required end document with final reports. Element also has an internal COC function that allows users to track the movement of the sample within the laboratory.
H	**Sample Analysis and Tracking**				
	H-1	GENERAL RESPONSE / DESCRIPTION for this section as noted on line 2.			
	H-2	Describe the LIMS ability to provide methods for monitoring sample status throughout the sample life-cycle. Sample status codes shall automatically be assigned and updated by the system based on events or transactions occurring.	x		The life cycle of a Sample is tracked within Element LIMS. As the sample enters into different processes new status triggers are automatically assigned to the sample so that the user can identify the current stage of the sample.
	H-3	Describe the LIMS ability to allow users to record and track field data results.	x		As field automation has evolved, Element LIMS has supported a wide variety of electronic chain-of-custody formats for field data and sample logging. Element LIMS still supports the templates that found their way onto the first mobile laptops (Forms II Lite, EPA Excel CoC,

					Scribe, NetChain, etc.). While effective for field data, these legacy forms do not capture all the required data for a legally defensible electronic CoC. To provide more enhanced functionality, the EnviroChain online chain of custody (CoC) service leverages the schedule of routine sampling events configured in Element LIMS, providing field samplers a tool to help them document sample collection, record field data, and eliminate the need for a paper-based chain of custody process for environmental sampling. Field data may also be entered manually.
	H-4	Describe the process for assigning analysts (e.g., at schedule creation time, based on method certification, etc.) and the ability to alter this assignment based on actual work performed.	x		Analyses are assigned to analysts, and certifications may be recorded for specific analyses. Certifications and assignments are manually updated by the system administrator.
	H-5	Describe the ability of the system to allow for assignment of tests and/or bottles to multiple analysts or lab sections (e.g., if sample was sub-sampled into multiple bottles, the bottle could have the need for analysis in multiple lab sections).	x		Upon sample scheduling or login, each container is given a unique identifier. Analysts pick the specific container they will use based on a list of valid containers provided. If there are no valid containers the analyst can choose to run the analysis from a different container. The actual assigning of a container to an analysis is done at the benchsheet level.
	H-6	Describe the ability of the LIMS to track the physical location and designated "owner" of each bottle in the laboratory, including overnight refrigerator storage.	x		Element LIMS has an internal custody log that allows samples to be "transferred" between various locations within the laboratory. The individual containers are tracked using this utility for NELAC/ISO 17025 compliance.
	H-7	The system must provide the ability to create subsamples, assign tests to that subsample, reconcile the parent sample (remove tests from), maintain	x		This is typically done by adding another container to the sample. This container then has its own custody log and unique identifier appended to the original sample ID.

		parent/child relationship, and uniquely track custody of parent and child independently. Please describe how the LIMS accommodates these requirements after sample custody has been transferred to an individual or lab section.			
	H-8	There may be more than one bottle collected for a single sample. Describe how the system provides the ability to run tests from different bottles that are the same sample (e.g., VOC (524) – requires triplicate bottles but only use one for sampling purposes). This could be a grouping level above sample ID that allows the user to group/batch sample ID's into one. Analyses would be assigned to the group and not sample ID.	x		When a sample is created, containers are assigned to that sample. In the case of 3 VOA vials each container would be given a unique identifier (i.e. A,B,C…). The analyst can then pick which container is being used to perform the analysis.
	H-9	Describe the LIMS ability to provide an online review of results versus stated limits and/or boundaries.	x		Element LIMS allows for an on-line review of entered results. This on-line view utilizes color coding and tic marks to provide a visual indication when results are acceptable, within limits or outside of acceptable.
	H-10	Describe the number of configurable limit sets assignable to a test (e.g. high/low, regulatory compliance, operational standards, watershed protection standards, detection limits).	x		Sample monitoring is improved with real-time alerts and flags that identify conditions exceeding limits. Emails and dashboard updates generated by Element LIMS notify you of the conditions. Minimum Detection Limits, Minimum Reporting Limits, upper and lower limits and 5 upper limit notification flags may be configured for each analysis matrix. In addition, EPA flags ND, J, B, and U are hardcoded and may be applied automatically. Flags may also be triggered based on suspect results

					between independent tests (i.e. flag results if NH3 > TKN)
	H-11	Describe the LIMS ability to generate work lists using various filter criteria (e.g., laboratory section, analyst, customer, etc.).	x		Element LIMS can generate worklists at any time during the sample life cycle. This worklist can be queried by many criteria including the ones mentioned in this section. The query used to generate the worklist can be named and the information e-mailed to designated persons on a timed basis.
	H-12	Identify and describe the proposed system's assignment of work tasks, including the automatic assignment of tasks as well as due dates, holding times, etc.	x		In the Sample login screen tests and sample due dates are automatically calculated. These can also be edited by an assigned User. In addition, notes such as internal messages can be added at the login which will follow the life-cycle of the sample where other team members can be notified.
	H-13	Describe the LIMS ability to allow users to configure data entry screens.	x		Limited to modification of User Defined Fields. For various objects, 10 global user defined fields and in some cases 10 additional variable user defined fields are available. Objects include samples, batches, sequences, standards (only 5 user defined fields), calibrations, work orders, bids, projects, clients, analysis, flag level labels, coolers, field analyses, and invoices.
	H-14	Describe the LIMS ability to provide method references.	x		SOP's and other method References are attached as a pdf file and easily uploaded and viewed the User.
	H-15	Elaborating on C-11, Describe the LIMS ability to provide linking or embedding objects in association with samples and analyses.	x		Element LIMS may link PDF documents and images to objects such as samples, batches and standards.
	H-16	Describe the overall handling and assignment of data qualifiers, including the following:	x		See responses for H-16a-H16e below.
	H-16a	User options for calculations made with qualified data;	x		Calculations are incorporated as part of the test definition. These are accessible if needed at the end

					report. If more sophisticated calculations are needed then they can be attached in excel or pdf and utilized.
	H-16b	The ability to record special result values such as Not Detected, Not Measured, <, or Null	x		Element LIMS has the ability to store special result as Not Detected, < or Null as well as reporting result values as text.
	H-16c	The capability to correctly handle all special result values in mathematical computations (including averages and log average, etc.).	x		Special result values can be handled either through defining their analytes as special variables in known equations (i.e. SAR, C/A balance) or through definition of custom equations when defining analyses. Data qualifiers are not needed for this functionality.
	H-16d	The ability to define in advance how special result values will be handled in calculations. Note: qualifiers may be handled differently based on the sample type, customer, laboratory section, etc. (e.g., "<" may indicate use of MDL for Pretreatment but indicate "zero" result for Code Compliance).	x		Advance definition of special result handling is done in the base definitions of the analytical methods within the system. Data qualifiers are not needed for this functionality.
	H-16e	The ability to define unique sample qualifier codes indicating special circumstances or conditions may apply to the test result (e.g., multiple analysts executed test, etc.).	x		The laboratory defines the qualifier codes that it will need in the qualifier table. At data review these qualifiers can be assigned to an individual analyte or all analytes within the analysis.
	H-17	Describe the LIMS ability to provide information associated with sample analysis such as dilutions, sample prep, etc.	x		Element LIMS can add Information associated with results such as dilution factors, secondary results, data qualifiers, MDL, and PQL. In addition, Element LIMS can add any type of electronic data such as chromatograms, test preparation, raw data files from instruments and associate it with the original sample.
	H-18	Describe the LIMS performance of typical environmental calculations and statistical analysis.	x		The Quality Control Charts screen produces Levy-Jennings plots of Percent Recovery and Relative Percent Difference for various types of Quality Control Samples. The data can be plotted as a Control Chart, presented as a data grid, or exported to Excel. The Control Chart plots

					each QC Sample and displays the limits and 2 sigma and 3 sigma limits, as well as trending data. A mouse-over feature provides detailed information about the x-y coordinates of individual data points. The Control Limits, Mean, Standard Deviation, 2s, and 3s values are displayed beside the chart. The number of Samples Plotted and the number rejected (due to missing data) is also displayed. The number of Plotted/Rejected Samples can be set by the User. The default Control Limits for the method can be updated directly from the Control Chart screen using the 3s values. Trending statistics are also available, using a variety of Westgard Rules.
	H-19	Describe the LIMS library of statistical calculations.	x		Element LIMS has a library of calculations available for use. For QC samples these calculations include mean, standard deviation, 2s, 3s, and 4s. Levy-Jennings plots and Westgard Rules may be applied at the QC chart level.
	H-20	Describe the LIMS allowance for the creation of a customized library of statistical functions/calculations/definitions.	x		Element LIMS users can integrate create a library of customized calculations using the custom equation builder.
	H-21	Describe the method for establishing calculations (e.g., excel format, native to the software) and ability to utilize a calculation wizard or similar.	x		The system natively handles the majority of calculations involved with environmental sample processing - including dilution, preparation, solids correction, and miscible solvent compensation and rounding - via the normal analytical method setup options associated with each base analysis definition. If the native calculation options are not sufficient, users can define their own custom equations to be used for analytical result processing within each analysis. The analysis setup dialog includes a drag-drop interface for designing and testing these custom equations.

	H-22	Describe the LIMS ability to provide the entry of test results in multiple formats, including (at a minimum):	x		Data entry can be performed by preparation batch, analytical sequence or by work order with users manually typing in results, importing results from Microsoft Excel Spreadsheets, or importing them from instrument data files.
	H-22a	All results from one test performed on many samples.	x		To enter results for one test performed on multiple samples, the user would choose to enter data by Batch or by Sequence.
	H-22b	All results from many tests performed on one sample.	x		To enter results for many tests performed on one sample, the user would choose to enter data by Work Order.
	H-22c	All results from one test performed on one sample.	x		To enter results for one test performed on one sample, the user could choose to enter data by any of the available options.
	H-22d	All results from WET testing	x		Bioassay testing frequently includes a complex set of inter-related tests over the course of organism exposure. Although it is somewhat involved to set up the various interrelated tests and packages, the existing system includes data entry mechanisms for entry of WET results and supporting data either in one step or via multiple steps over the course of testing.
	H-23	Describe the LIMS ability for users outside the lab to view sample status.	x		Element MessageManager alerts the Users data is available and allows the user to report data and or view data but does not allow anyone to alter the data. Element Client Connect allows for customers to view their samples, track sample status, and view and/or download results via a web browser. This web browser can be an intra-net and well as the internet.
	H-24	Describe the assignment and configurability of significant figures; also defining number of digits after the decimal point and usage in calculations.	x		Significant figures and limiting decimals are defined within the analysis on a matrix basis. Element LIMS stores the initial result and during data review or reporting the significant figures and limiting decimals are

					applied. This allows for modified reporting in which a customer might want to see more or fewer digits.
	H-25	Describe the LIMS ability to provide comment fields attached to analytical results.			Users can apply comments directly to samples during log-in. When a sample is completed and the results are reported the analyst can also apply comments in a result comment field. Comment fields are available with many objects in the system.
	H-26	Describe the alerts and notifications available to users for such items as limit exceedance, overdue items, low inventory, etc.	x		During data review, Element LIMS uses color coded fields to help identify when a sample is out of limits. Proactive alerts may be distributed via email or a user dashboard for other urgent events (low inventory, instrument maintenance, etc.)
	H-27	Describe how the LIMS handles missing/blank sample analyses. Include missing or uncollected samples, incomplete tests within samples, and the process/need for purging/deleting the same.	x		Samples remain in the analysis pending status until ALL tests are completed for the sample. These tests can be removed from a sample or marked as cancelled. Partial reports can be printed for those analyses that are in the proper status for a final report.
	H-28	Describe the proposed system's ability to support calculations based on the results of multiple analyses.			Calculated analytes may be defined (ie. Hardness) as analyses. Flags may also be triggered based on suspect results between independent tests (ie. flag results if NH3 > TKN)
	H-29	Describe how the proposed system handles re-testing and/or the direct editing of test result values or correction factors.	x		Re-tests may be triggered by exceedances, or schedule by the analyst. Re-tests maintain the sample ID of the original container, plus the suffix "RE-x" where x is the number of repeats.
	H-29a	Describe how the above process changes if such data has already been approved.	x		If data has already been approved a user with review privileges can edit the data invoking the data audit trail. The user has the opportunity to enter comments for the reason of data change.
	H-30	Describe how the LIMS ensures analysts who lack certification and/or whose certification/training for a given		x	An analyst can enter results for a given analysis regardless of their certification status. At reporting time data can be flagged if the analyst is not valid to perform the analysis.

		test/method has expired are prohibited from entering results.			Data Review status may be limited based on an uncertified analyst, but not data entry. Further limits are planned for a future software release.
	H-31	Describe any annotation available to designate a test result as questionable.	x		Qualifiers are used to designate data that as being questionable. As many qualifiers can be used as needed.
	H-32	Describe the LIMS ability to import external / 3rd party analysis. (e.g., from contract laboratories), Please specify formats.	x		Element LIMS can accept data from 3rd Party analyses in a predefined Microsoft Access or Microsoft Excel format. These “transfer files” can then incorporated into the results report.
	H-33	Elaborate appropriately and succinctly any Sample Analysis and Tracking considerations not called out in this section that are deemed important differentiators or essential functionality.			The sample analysis and tracking functionality has been developed from years of experience of the Promium team both from a laboratory analyst and management point of view as well as input from our over 350 laboratory installations.
I	**QA/QC**				
	I-1	GENERAL RESPONSE / DESCRIPTION for this section as noted on line 2.			
	I-2	Describe the proposed system's ability to provide the storage and tracking of auditing information associated with samples, tests, and other analytical information retained within the LIMS. At minimum this should include such items as "last user", "last updated", replicate/re-test number, changed value, and associated comment for any changed or altered data.	x		Element LIMS includes three simultaneous global audit trails. The primary trail specifically tracks changes to analytical data while another tracks changes non-analytical items such as clients, projects and work orders. The general audit trail is always on. The analytical data trail turns on after data has been uploaded and its ‘locked’ flag has been set. The third audit trail is a qualifier audit trail, which records changes to the flags assigned to analytical data. There is also an imbedded icon that will assist in Audit trail from most screens; provided the personnel have authorization.
	I-3	Describe the LIMS ability to create, assign, and track all QA/QC tasks (e.g., duplicates, spikes, reference checks, calibration standards, blanks, etc.).	x		Results for QC samples are calculated within the system and displayed to the analyst during data review. Results are stored granularly and the individual data that was used to calculate the results is available for use outside of Element LIMS if required. Reviewers can add

					qualifiers to analytical data as well as upgrade the tracking status of an analysis. After predefined points in the analytical process, change-control features in the system will limit further modifications to a result or its qualifiers: these restrictions are based upon user-permissions and any actual changes are recorded to an audit trail within the database.
	I-4	Describe any differences between the entry and maintenance of QC test results versus standard sampling results.	x		QC samples, in regards to data entry, are treated the same as regular samples. QC samples will remain with a status QC and will be used for their designated calculations.
	I-5	Describe the proposed system's creation of QC codes.	x		Analyses are defined by matrix. Within each matrix there QC requirements for the QC required for a preparation batches. At the time samples are added to the benchsheet the QC is assigned based on the analysis matrix definition, including reference standards, duplicates, spikes and blanks. A unique code and GUID is assigned to the QC samples.
	I-6	Describe the LIMS ability to provide control charts including user-selectable data sets, exclusion of outlying data points, and optional automatic updating of control limits.	x		QC data is calculated and maintained within the database, the system easily provides real-time control charting and automatic updating of control limits based upon control charts. Charts and data can be printed from the charting dialog or can be saved to electronic formats. Data ranges for charts are selected by date. Options can be set to automatically exclude certain types of outlines from the charts or the user can manually specify rejected points among the chart data. Rejected data are still included in printed data tables but they are not included in calculation of the chart statistics. This data can then be used to update the limits within the base analysis method.
	I-7	Describe the LIMS ability to provide instant communication to an analyst of QA acceptance or data reliability.			Element LIMS uses a system of color codes and visual cues to indicate instantly to the reviewer the data is outside of QC acceptance ranges.

	I-8	Describe the LIMS ability to provide assessment and reporting of broad, long-term measures of QA performance (completeness, precision, accuracy, etc.).			Element LIMS includes a comprehensive control charting interface for long-term evaluation of the usual precision and accuracy statistics associated with environmental testing.
	I-9	Describe the LIMS QA/QC functionality and reporting capability for sample batch.	x		Element LIMS provides a means to associate QC samples with a sample batch/workgroup and instrument run. The number and type of QC samples that will be added to a batch is defined by the User at analysis set up. Types of QC include blanks, duplicates, matrix spikes, blank spikes, reference materials and post spikes. Element LIMS has the ability to track and verify the following standard types, Spike Mix, Surrogate, Reference, Calibration, Internal Standard, MS Tune, Reagent and Other user specific standards. Tracking includes prepared date, expiration date, vendor, lot number, and analytes within the standard and associated concentrations.
	I-10	Describe the LIMS ability to provide troubleshooting diaries.		x	Limited to comment fields at various objects.
	I-11	Describe the system's ability to provide QA/QC templates (reference libraries, calculations, codes, etc.).	x		QA/QC requirements such as types, frequency and naming conventions of QC samples are set up within the base definition of each analysis/matrix. Control limits for calibration acceptance, recovery limits, breakdown and precision are specified within the base definitions of the analytes within the base definition of the analysis but can then be customized further, if desired, when setting up projects so that specific projects can always use specific control limits.
	I-12	Describe the LIMS ability to provide a mandatory comment field on records updated or marked for deletion.	x		Element LIMS does not have a mandatory comment field within the data audit trail, but does proved an opportunity for users to enter comments as they see fit.
	I-13	Elaborate appropriately and succinctly any QA/QC considerations not called out in			Element LIMS follows QC requirements as laid out in EPA testing methods.

		this section that are deemed important differentiators or essential functionality.			
J	**Data Validation and Approval**				
	J-1	GENERAL RESPONSE / DESCRIPTION for this section as noted on line 2.			
	J-2	Describe the ability of the proposed system, at a minimum, to maintain two levels of data validation for an individual test (Senior/QC).	x		The primary analyst reviews the analytical data in a special review screen where problems such as control limits, blank contamination, mismatched dates, missing standards and a host of other issues are detected and flagged. The analyst can edit the posted data at this point or they can add qualifiers via a pop-up dialog. The system allows users to assign both pre-defined and custom text qualifiers at this point. The primary analyst indicates that they are finished with their review by 'locking' the data lines and updating the status of the samples to 'analyzed' or some equivalent name. A supervisor or peer reviewer uses this status to determine which samples in the system are awaiting their review. They then review the posted results, edit or modify them if necessary, and then update the status of them to 'reviewed'. The reviewed status is an indicator to the lab manager or project manager that the analytical results are ready to report to the client. The system allows users to assign both pre-defined and custom text qualifiers at this point. The user could also over-ride any numeric result at this point with a simple text result.
	J-3	Describe the LIMS ability to allow for validation/approval by a number of filter criteria (e.g., analyst, test, location, batch, etc.).	x		Please see J-2 Above
	J-4	Should a sample have items in multiple batches, all batches shall be validated	x		Before a Work Order (group of samples) is marked "reportable" all of the analyses on all of the samples

		before the samples status becomes "Reportable" (or similar status). Please describe the LIMS ability to meet this requirement.			have to be in the “Reviewed” status. Typically the individual analyses will all be in separate batches. As analyses are approved, reports can be generated for any and all analyses that are approved. A complete results report cannot be generated until all analyses within a Work Order are approved.
	J-5	Describe the LIMS ability to create test replicates without deletion of invalid tests.	x		Element LIMS has to ability to create re-shot/re-analysis of a test by creating another instance of the sample denoted with an RE-x appended to the sample ID (where x is the number of the rerun).
	J-6	Describe the LIMS notification process for those samples that are awaiting approval.	x		The status of sample analyses waiting would be at defined status the default within Element LIMS would be a status of "Analyzed"
	J-7	Describe the LIMS ability to flag results that are questionable by control charts even if results are valid and pass QA/QC.		x	Element LIMS does not have this capability.
	J-8	Describe the ability for an analyst to flag results in the LIMS that are questionable even if results are valid and pass QA/QC.	x		An analyst has the ability to flag data manually with predefined/custom qualifiers/flags
	J-9	Describe the LIMS ability to provide validation criteria information related to location (i.e., ability to establish location-specific limits).	x		At the Project setup the user has the ability to define Client/project specific analysis and/or QA/QC limit criteria.
	J-10	Elaborate appropriately and succinctly any Data Validation and Approval considerations not called out in this section that are deemed important differentiators or essential functionality.			
K	**Laboratory Management and Standards**				
	K-1	GENERAL RESPONSE / DESCRIPTION for this section as noted on line 2.			
	K-2	Describe the LIMS ability to provide online inventory of chemicals, reagent inventories, and supplies and the ability to	x		The Standards feature allows users to define laboratory standards and reagents. This log can trace the genealogy of standard from purchase through any and all dilutions

		record expiration dates. Please describe the method used to add inventory to the system, as well as whether or not the system has the ability to automatically decrement inventory based on sample runs.			with each generational step receiving its own unique identifier. Along with the analytical standards log Element LIMS has also recently added a consumables inventory. This function allows the laboratory to track consumables through receipt to distribution. This will also show a current inventory and a history.
	K-3	Describe the LIMS ability to track preventive and standard maintenance on instruments and alert staff when maintenance is required.	x		The Instrument Maintenance feature allows users to schedule maintenance events for instruments and see historical events in the life of that instrument.
	K-4	Describe the LIMS ability to maintain document attachments for items such as, but not limited to, procedures, safety information, project information/project plans, QA plans, resource planning, monitoring schedules, etc.	x		Element LIMS has the ability to attach documents as described. Documents can be attached as PDF files or image files. These documents can be viewed online or attached to reports as needed.
	K-5	Describe the LIMS ability to provide work assignment features for planning and scheduling the laboratory's workload. These features shall take into account:	x		The Query Analysis function has the ability to query the laboratory work load by the parameters listed (K-5a -- K-5d) as well as several more. Using This function the user can query the system for analysis that are not started, those needing to be reviewed (approved), or for those analysis that are ready to be reported. This function can query by date ranges such as received, sampled, due, or expires. The user could also query by samples that are going to expire within the next 2 days and then sort that list by due date. These queries can also be saved and e-mailed on a timed basis.
	K-5a	Sample priority	x		See K-5 response above.
	K-5b	Maximum valid holding time	x		See K-5 response above.
	K-5c	Sample age	x		See K-5 response above.
	K-5d	Due date	x		See K-5 response above.

	K-6	Describe the proposed system's existing testing methods library.	x		Element LIMS has an extensive Library of testing methods including all standard US EPA methods. During implementation these methods may be applied as a starter database and modified to fit the specific needs of the City.
	K-7	Describe the ability of the LIMS to track the actions taken to ensure bottles received in a lot meet specifications (e.g., NELAP requires that one bottle from a lot needs to be checked to verify that it meets specifications).	x		These samples could be submitted as regular samples into the laboratory. A project and schedule could be defined to ensure they are being tested on a regular basis.
	K-8	Elaborate appropriately and succinctly any Laboratory Management and Standards considerations not called out in this section that are deemed important differentiators or essential functionality.			
L	**Reporting and Data Export**				
	L-1	GENERAL RESPONSE / DESCRIPTION for this section as noted on line 2.			
	L-2	For L-5 through L-11 below, please indicate if the report and/or function is electronic, print, or both.			
	L-3	Please explain the Vendor's experience with Texas regulatory reporting for water and wastewater, including electronic or otherwise.	x		Promium currently has several customers within the state of Texas using Element to produce printed TRRP reports and printed reports using the landfill forms.
	L-4	Please indicate Vendor's experience/compliance with the EPA Electronic Data Interchange (EDI) programs and procedures.	x		The Element LIMS SOM01.2 package includes the XML EDD (SEDD Stage 3) and Forms. Promium have also been providing support for the CLP inorganics deliverable for the ILM05.4 statement of work (both EDD and Forms), supporting both SEDD stage 2 and 2b, and the report forms package for the new CLP inorganics ISM01.1 Statement of Work. Our current EDD library supports

					various state and federal programs beyond those required at the federal level.
	L-5	Describe any inherent system ad-hoc reporting functionality including the ability to export query results to third party software (i.e., Excel, Access, etc.). Description should include discussion on ability to save and share reports and to establish filters (e.g., saving the report template but allowing users to select specific criteria).			Users query data within the system, then select a pre-configured Crystal Reports template for data population. The resulting printout yields a consistent format with unique contents. An internal EDD builder feature also allows users to create their own xls files for export.
	L-6	Describe any inherent system functionality which enables/facilitates cross-source reporting (e.g., comparative analyses on different sampling locations).	x		Element LIMS is able to export results to third party applications and perform comparative analyses.
	L-7	Describe any inherent system graphing functionality.	x		Element LIMS has the ability to graph historical data and quality control data.
	L-8	Describe the trending and statistical analysis capabilities of the proposed LIMS.	x		Element LIMS performs statistical analysis on data, including mean and standard deviation. Levy-Jennings plots and Westgard rules can be applied to QC chart data.
	L-9	Describe the use or reliance on any third party ad-hoc reporting tools (e.g., Crystal Reports) for standard or non-standard reporting.	x		SAP Crystal Reports is utilized to create report formats to be used with Element LIMS for standard and non-standard reporting, The system allows users to browse from valid formats.
	L-10	The following reports are required to be included in the proposed system. The vendor must provide a minimum 10 days of report development ***in addition*** to the time necessary to complete those listed below. Samples of these reports are included on the CD.	x		Limited to the example files provided by the City. Please see cost proposal for details.
	L-10a	Analytical Report_WQI		x	Limited to the example files provided by the City. Please see cost proposal for details.

	L-10b	Analytical Report_Standard Version		x	Limited to the example files provided by the City. Please see cost proposal for details.
	L-10c	Bacteriological Monthly Report (TCEQ Electronic Reporting.pdf includes instructions for this report)		x	Limited to the example files provided by the City. Please see cost proposal for details.
	L-10d	Bacteriological Report to Engineering		x	Limited to the example files provided by the City. Please see cost proposal for details.
	L-10e	D2 Sheet		x	Limited to the example files provided by the City. Please see cost proposal for details.
	L-10f	DMR		x	Limited to the example files provided by the City. Please see cost proposal for details.
	L-10g	Exception Report		x	Limited to the example files provided by the City. Please see cost proposal for details.
	L-10h	Invoice		x	Limited to the example files provided by the City. Please see cost proposal for details.
	L-10i	Micro BenchSheet Form		x	Limited to the example files provided by the City. Please see cost proposal for details.
	L-10j	Monthly Distribution Report to TCEQ		x	Limited to the example files provided by the City. Please see cost proposal for details.
	L-10k	Monthly TOC Removal Report		x	Limited to the example files provided by the City. Please see cost proposal for details.
	L-10l	NELAC Report Req		x	Limited to the example files provided by the City. Please see cost proposal for details.
	L-10m	Sample Receipt		x	Limited to the example files provided by the City. Please see cost proposal for details.
	L-10n	TOCMOR v9 (RG-379 (TOCMOR instructions).pdf includes instructions for this report)		x	Limited to the example files provided by the City. Please see cost proposal for details.
	L-10o	TOCMORv4 (example)		x	Limited to the example files provided by the City. Please see cost proposal for details.
	L-10p	Tracking Sheets		x	Limited to the example files provided by the City. Please see cost proposal for details.
	L-10q	Water Quality Report	x		
	L-10r	WQI Report	x		

	L-10s	Cash Report	x		
	L-11	Provide a list of any "standard" reports to be supplied with the system. These reports may include those of an operational (e.g., analyses reporting), management (e.g., QA reporting, overdue analyses), transactional (e.g., audit trail) and/or general system nature.	x		Element LIMS has a large library of reports that are included with the system. They can be viewed at: https://www.promium.com/resources/element-lims-outputs/
	L-12	Describe the users' ability to restrict, segregate, or include the publication/reporting of raw (i.e., unapproved) data. If unapproved data is utilized in a report, describe the LIMS ability to denote the same visually on the report.	x		Data that has not been reviewed/approved is excluded from a Final Report. Data that has not been reviewed/approved can be included on a Draft Report; however, this data is indicated as "Draft". Modifications can be made to the crystal report to further designate the draft status of the data.
	L-13	Describe the method and process for affixing electronic signature to records, reports, and documents.	x		Signatures can be scanned and saved as graphics files. The signature graphics can be associated with users and saved in the primary database. The signature graphics are output to various reporting databases and can be added to reports. Defensible electronic signatures are captured as the user's login credentials plus date/time stamp. This can also be required for final data review.
	L-14	Describe the method external customers would utilize to view reports, results, etc. Include the file format(s) available for upload for these reports (the City would like to allow customers to view/print reports themselves in a format that does not allow changes by the client).	x		Clients can track their samples and view their data via the Element ClientConnect web portal. This gives the client the ability to view data that is approved by the lab and download any reports posted by the laboratory in read-only PDF format.
	L-15	Any report sent by the City must have the Fort Worth Lab logo. Please describe the	x		We assume this is a misprint and you would like the Midland logo. This can be accommodated in Element LIMS reports.

		ability of the LIMS to allow for logo insertion.			
	L-16	Describe the ability of the LIMS to identify which parameters are/are not accredited on each report and the ability to include the NELAP logo on reports. This is a requirement of NELAP.	x		Within the static tables the laboratory will list any and all programs for which they are certified. Within the analysis matrix definition the lab can then assign the parameters for which they are certified for a given matrix. This certification notation carries through to the reporting.
	L-17	Elaborate appropriately and succinctly any Reporting and Data Export considerations not called out in this section that are deemed important differentiators or essential functionality.			
M	**Instrument Interfaces**				
	M-1	GENERAL RESPONSE / DESCRIPTION for this section as noted on line 2.			
	M-2	Provide an overview and description of the methodology and general process utilized to interface instruments to the proposed LIMS. Note: The City has obtained 5 licenses for Labtronics' LimsLink and 3 licenses for Labtronics Collect 6.0. The proposer is welcome to utilize these licenses or specify an alternative.	x		The Element DataTool data import tool is bi-directional and is used to create and send worklists to analytical instruments, then import the results from instrumentation or spreadsheets into the Data Entry/Review table. DataTool uses interpreters that recognize the raw analytical data format for instruments. Data results from the instrument are brought into Element LIMS and associated correctly to the batched client and QC samples. Data can be reviewed and formatted through DataTool before import. Information such as analytical dilutions, upper limit values for data, and which column (for dual column work) can be specified through DataTool. DataTool currently supports over 300 instrument software systems and additional interpreters are available at no additional cost with a maintenance agreement.
	M-3	Please state whether the proposed system has previously interfaced with the			

		instruments listed below. (Please indicate the cost associated with each instrument interface in the Attachment C, "Cost Proposal" sheet.)			
	M-3a	Two (2) BOD Analyzers	x		Yes, depending on the vendor
	M-3b	One (1) Denver Analytical Balance	x		Yes, assuming the balance can output at csv or xls file.
	M-3c	Two (2) Ohaus Analytical Balances	x		Yes, assuming the balance can output at csv or xls file.
	M-3d	One (1) Shimadzu TOC Analyzer	x		Yes
	M-3e	One (1) Thermo TOX Analyzer	x		Yes
	M-4	Describe any additional/peripheral equipment required to support the proposed instrument interfaces.	x		None
	M-5	Describe any third party software utilized in the interfacing of instruments and the basic functionality/benefits of each.	x		None. The internal DataTool feature eliminates the need for external software.
	M-6	Describe the ability of the system to allow users to select the data to use from instrument analysis files. There may be more than one set of data and the user needs the ability to choose which is to be utilized.	x		Element DataTool has logic built-in to assist the reviewer in choosing which set of results to import. For example if a sample is run multiple times at different dilutions, DataTool can choose the in analytes from the various runs that are the best fit for results. Element LIMS also allows for multiple runs to all be loaded for a sample and be reported.
	M-7	Elaborate appropriately and succinctly any Instrument Interfaces considerations not called out in this section that are deemed important differentiators or essential functionality.			Promium provides instrument interpreters at no additional charge for any of our customers on an annual maintenance agreement.
N	**External Interfaces**				
	N-1	GENERAL RESPONSE / DESCRIPTION for this section as noted on line 2.			
	N-2	The proposed LIMS must provide the ability to export a text file of LIMS data for import into the City's internally-developed Access-based pretreatment system via an	x		An electronic data deliverable (EDD) can be written to export LIMS data in the format required by the city's internally developed system.

		Excel template (file format included in Appendix D).			
	N-3	Elaborate appropriately and succinctly any external-Interface considerations not called out in this section that are deemed important differentiators or essential functionality.			Element LIMS has an internal EDD builder that allows the LIMS administrator to develop several different EDD types using a graphical user interface.
O	**Handheld or Other Mobile Devices**				
	O-1	GENERAL RESPONSE / DESCRIPTION for this section as noted on line 2.			
	O-2	Provide a specification for handheld or other mobile devices that may be used in LIMS data gathering. Such specification(s) should be based on the Proposer's experience in delivering the same in a working environment. The City would use handheld devices for in-lab data collection (e.g., WETChem) as well as field results. Note: Recommended handheld devices should be quoted in Attachment C, "Cost Proposal".	x		The Element ClientConnect web portal includes the EnviroChain online sample submission application. Promium recommends using any internet-connected mobile device to access the web portal. Additional development is planned to expand functionality and native mobile capabilities.
	O-3	Describe the Proposer's experience with mobile data collection. Provide details on processes (e.g., synchronization, online availability, failure recovery, off-line capabilities, etc.) used in hand-held utilization.			EnviroChain is a web-based sample submission application that allows field samplers to electronically record field data and log samples directly into Element LIMS. And with a bi-directional integration, Element LIMS project, work order, and schedule information is automatically accessible in the field. Upon submission, sample log-in personnel are proactively notified of incoming samples, allowing them to prepare for the workload before the samples physically arrive at the lab.
	O-4	For mobile devices, the LIMS should provide a configurable data entry form	x		Configuration is limited to field data tests and names.

		and offer a bi-directional interface for such items as schedule download and automated upload of collected data. Please explain the proposed system's method of achieving this result.			
	O-5	Describe the Proposer's recommended mobile field unit recommendation for collecting composite sample data: start date and time, stop date and time, temperature, pH, flow information, aliquots, field comments, split samples, etc. to eliminate paper collection in the field.	x		EnviroChain tracks this data, and allows users to create their own fields.
	O-6	Elaborate appropriately and succinctly any Handheld Devices considerations not called out in this section that are deemed important differentiators or essential functionality.			
P	**Bar-Coding**				
	P-1	GENERAL RESPONSE / DESCRIPTION for this section as noted on line 2.			
	P-2	Provide an overview of the use of bar code label printing and scanning, and provide a recommendation on how best to incorporate this functionality into a lab's operations. Include such items as the configurability of labels, handling of sample split tracking, integration with sample schedules, ad-hoc production, etc.	x		Element LIMS supports barcode fonts 128, 3 of 9, and 2D. The general use of barcodes is for Internal Chain of Custody, disposal, Batching, Sample login, Consumables inventory and Standards. Labels can be configured using the SAP Crystal Reports software.
	P-3	Provide a recommendation for bar code scanners, printers, software, and any other hardware necessary to implement bar coding within the City.	x		In general, any device compatible with Microsoft Windows will work with Element LIMS.

	P-4	If third party products are used, describe the degree of integration with the core solution and any supplemental training needed to operate the software.	x		N/A
	P-5	Describe the proposed system's ability to integrate bar coded labels with established sample schedules so as to print for being affixed to bottles in advance.	x		Element LIMS produces sample labels which include bar codes for scheduled samples to be provided for samplers.
	P-6	Describe the LIMS ability to generate and read bar codes for identification, utilization on labels, chain of custody documents, and data entry purposes.	x		Cursor is positioned in field entry and is entered once the barcode is scanned.
	P-7	Describe the system's ability to allow certain departments to print bottle labels at their location.	x		Any user with proper permissions can print labels to any label capable printer to which they have access.
	P-8	Describe the ability to re-print a label, even if part of a larger batch.	x		Labels can be printed as a group or individual container.
	P-9	Describe the ability to print ad-hoc labels as in the case of a walk-in sample.	x		Sample labels can be printed at any time in the process. If the lab prefers there can be a separate label format for walk-in samples.
	P-10	Elaborate appropriately and succinctly any barcode/labeling considerations not called out in this section that are deemed important differentiators or essential functionality.			
Q	**Training and Documentation**				
	Q-1	GENERAL RESPONSE / DESCRIPTION for this section as noted on line 2.			
	Q-2	The City has facilities to accommodate training up to 10 people at a time. Describe the approach and curriculum for each of the classes listed below, including number of days, necessary skills of	x		Administrator training will be conducted primarily onsite, and with some offsite time via web conference. Content is focused on overall understanding of Element LIMS components, installation, database population, daily operations, and system maintenance.

		attendees, etc. (those identified should be considered the minimum requirement), and any others you recommend.			User training will be conducted onsite, with some possible follow up offsite via web conference. The timing of this training is dependent on the completion of certain tasks to be addressed earlier in the implementation process. As with Administrator training, whenever possible, training will include the use of actual laboratory data and the target laboratory database. Content will be adjusted to meet the specific needs of the City. All users should attend training and LIMS administrator(s) and power users should be mandatory.
	Q-2a	End-user training classes (The City will have approximately 35 participants for this session)	x		see above
	Q-2b	Separate System Administrator training classes for IT Administrator and Power Users (The City will have approximately 5 participants for this session)	x		see above
	Q-2c	Separate report training depending on the method of reporting proposed: How to write reports within the LIMS--from data to report.	x		High level report training is included in User training and an additional advanced course is available if requested.
	Q-2d	Follow-up training onsite within 30-90 days; explain how system proficiency is ensured after the follow-up training.	x		The cost proposal accommodates two on-site user training sessions
	Q-3	Describe the proposed system's training materials (e.g., video, online/CD training, workbooks) to enable future end users to learn the system without need of formal classroom based training. **Note: Offering a "train-the-trainer" curriculum is not sufficient for meeting this requirement.**	x		Live training is available to all users. The training sessions can be recorded to be used for future reference. In addition, video tutorials are available on a wide variety of subjects.

	Q-4	Describe any third party training necessary for use of the proposed system (e.g., Crystal Reports).	x		Promium offers an advanced course to instruct users how best to use SAP Crystal Reports with Element LIMS (not included in the scope of this proposal).
	Q-5	All training must be provided at City facilities. Designate any costs not covered in this proposal (e.g., travel by the City, and/or any assumptions on available facilities and equipment.)	x		Promium is available to conduct training on-site as permissible. At the time of this RFP submission, the COVID-19 pandemic is still restricting on-site activities. Promium will follow U.S. CDC guidelines and local regulations to protect the health of our employees and others.
	Q-6	Describe the proposed LIMS documentation, including all system administration guides, technical reference guides, training materials, end-user manuals, and report development guides.	x		A comprehensive user guide is provided with Element LIMS and links are incorporated into the application to provide convenient and contextual access. A wide array of video tutorials and supplemental topic-specific guides are also available on the Customer Support site.
	Q-7	Describe all online help and documentation, including search capabilities, context sensitive searching, etc.	x		The comprehensive manual is stored in a searchable PDF format.
	Q-8	Describe database documentation available, including entity relationship diagrams, table structures and definitions, and other associated elements.	x		Instructional material is available to assist with common tasks.
	Q-9	List any third party documentation to be delivered (e.g., Crystal Reports, hardware manuals, label printing guides, etc.)		x	No third party material is provided.
	Q-10	Describe any regular user conferences or user group seminars sponsored by the vendor.		x	With the COVID-19 pandemic, planning for any users groups was paused. There are none scheduled at this time but Promium is open to conducting such events.
	Q-11	Elaborate appropriately and succinctly any Training and Documentation considerations not called out in this section that are deemed important differentiators or essential methodologies.			

R	**System Support**				
	R-1	GENERAL RESPONSE / DESCRIPTION for this section as noted on line 2.			
	R-2	The system must be maintained to be current with any future O/S or database upgrades such that support for these systems has not expired. Describe the process utilized to ensure compatibility with future versions of the installed platform and the infrastructure environment.	x		Element LIMS has consistently maintained evolutionary synchronization with updates to Microsoft products and platforms. We maintain a balance between continuity to minimize disruption to customers, and advancement to keep up with technology.
	R-3	Describe the ability to provide the following minimum support items:			
	R-3a	The system should be provided with telephone and online support during standard business hours (8:00 a.m. to 5:00 p.m. CST). If the vendor's standard support hours fall outside of this time frame, describe the process that will used to support City.	x		Promium customer support is available during standard business hours from 7:00am to 7:00pm CST.
	R-3b	Response time of issues should be within 4 business hours.	x		Response time, during normal business hours, is generally within less than 4 business hours.
	R-3c	The system should be provided with annual upgrades and "bug" fixes as required.	x		Customers with current maintenance agreements are provided with access to all upgrades and bug fixes at all times. Releases are planned for yearly, quarterly, monthly, and weekly launch depending on the scope of impact. The goal is to maintain a stable environment for customers while keeping you up to date at reasonable intervals. Major releases are contemplated every 2-3 years. These releases constitute major changes to core functionality or architecture, additions of significant new features,

					incorporate of new technology, and/or launch of a new user interface. Minor releases, targeted for release on a quarterly and sometimes monthly basis, address the addition of new features or enhancement of existing functionality. Bug releases are produced as needed on a weekly or monthly basis depending on severity of the issue.
	R-3d	All upgrades or system patches must be provided with full documentation concerning the nature of the change and the process for its installation.	x		Documentation of changes is provided as appropriate.
	R-3e	Phone support must be available during the installation of any issued upgrade/patch.	x		Phone support is available during normal business hours and after hours support can be accommodated.
	R-4	Describe support procedures for incidents occurring outside normal business hours and/or emergency/critical situations.	x		After hours incidents can be submitted through the ticketing system. After hours emergency phone support is available.
	R-5	Describe the process for system updates such that no content, links, configuration settings, files, etc. are abandoned.	x		For on premise installations, the initial Element LIMS client application installation requires administrator privileges and occurs manually at each workstation during the initial implementation process. Subsequent configuration data of the LIMS is stored within the database itself. This enables the base configuration to be propagated from the database during any new client installation. IT personnel are typically required for the initial installation, but not subsequent updates.
	R-6	Provide a statement guaranteeing future compatibility and "seamless" upgrade assuming an annual support agreement is maintained.	x		An annual maintenance agreement provides you with access to all upgrades. Whenever possible, upgrades are designed to be compatible with all supported versions of the application.
	R-7	Describe any additional support functions offered as part of the proposed system (e.g., off-hours support availability).	x		Customers with an active maintenance agreement receive help desk support, online trouble ticketing,

					remote diagnostics, online video tutorials, and access to an online customer forum.
	R-8	Describe, with examples, the prioritization of support calls and the intended response time for resolution of each level of priority.	x		Promium employs a multi-layered approach to ongoing support including: 1. First line phone-based support: Primary support is provided by a live phone-based support desk (toll free number) staffed by individuals who have direct laboratory experience and extensive knowledge of Element LIMS. Each call is logged into an online ticketing system and all tickets are tracked from initiation through resolution. 2. Senior level support for escalations: Problems that cannot be rapidly addressed by the first line support team are escalated to individuals with a deeper knowledge of specific technical functionality or lab operations. 3. Management team for unresolved issues: Issues that cannot be resolved by the first and second line support team are escalated to the management team for resolution. This includes senior executives in the company. 4. On-line resources: The Promium Customer Support website is available 24/7 and provides a number of resources including training materials and software releases. On-line self-help resources are also available for troubleshooting and addressing known issues.
	R-9	Fully describe the path for support issue escalation.	x		see above

	R-10	Indicate the duration of continued maintenance and support for superseded releases.	x		Support is provided for two major versions (e.g. version 5 and 6, and then version 6 and 7).
	R-11	Describe any annual roadmap sessions available to communicate near-term functionality upgrades to clients.	x		Such a discussion can be scheduled.
	R-12	Provide the cost difference between standard business hour support and 24x7 support, if available.	x		Promium offers one high level of support to all customers. There are not tiered offerings.
	R-13	Describe any activities offered to ease the transition from implementation to support.	x		The implementation team is responsible for transitioning in conjunction with the go-live process. There is often an overlap of support during this time to assure continuity. Implementer will guide the process and make sure the transition is smooth.
	R-14	Elaborate appropriately and succinctly any System Support considerations not called out in this section that are deemed important differentiators or essential functionality.			
S	**Data Archival and Backup**				
	S-1	GENERAL RESPONSE / DESCRIPTION for this section as noted on line 2.			
	S-2	Describe any data archival utility feature including timing and frequency of archival, record selection and retention (e.g., by date, sample number, etc.), restore options, etc.	x		Element utilizes “virtual archiving” to maintain database performance without the need for a physical archive. As databases grow, performance generally suffers as a result. A physical archive improves performance by decreasing the size of the database, based on date. Similarly, virtual archiving specifies a smaller data set with the “active date range”. A default active date range (typically around one year) applies to all users upon login to Element LIMS. Limiting the active date range improves performance for all users. Of course, the active date range may be extended by any user for their

					active session, up to the full date range spanning all the data in the database. In this manner, a user is able to access the full data set from the virtual archive without the need for IT assistance with physically restoring an archive database.
	S-3	Is the LIMS provided with an inherent backup utility or does the system rely on the backup systems and processes of the operating environment (i.e., server and operating system)? Describe the functionality and/or the vendor's recommendation with respect to other tools/options for backup and/or archival.	x		Element LIMS relies on the backup capability of the server and the database. Typically we will define a maintenance plan within SQL Server to back up the database on a regular basis.
	S-4	Describe the proposed systems ability to retrieve archived data for inclusion in reports, and how report data may be used to obviate the need for voluminous long-term data storage. Include any 'restore' functionality and/or any limitations on the querability of such data.	x		See S-2 response above
	S-5	Describe the ability to purge data from the system after a specified amount of time.	x		Truncation tool is available based on date.
	S-6	Elaborate appropriately and succinctly any Data Archival and Backup considerations not called out in this section that are deemed important differentiators or essential functionality.			Element LIMS is designed to operate so that actual archival of data is a rare occurrence. Since the lab can routinely have a need to look up historical data Element is designed to run efficiently by only looking at a small portion of a large database. This "virtual archiving" is explained in S-2 above.
T	**Security**				
	T-1	GENERAL RESPONSE / DESCRIPTION for this section as noted on line 2.			
	T-2	The LIMS system shall provide security features to ensure that only authorized individuals enter, view and modify data.	x		Element LIMS allows for a system administrator to assign privileges on a user basis. These privileges determine if a user has authority to view a screen

		Access levels shall be definable to restrict use of system level functions (such as user authorization), and to provide data access levels to restrict the use of data entry, data approval, data retrieval, data modification, database structure creation or modification functions. Describe the security features of the proposed system, covering items such as system login, user validation			and/or edit data within that particular function. The administrator can also define privileges within a department that are assigned to a user if they are associated with that department. If this is used the administrator can still then modify privileges on a user basis. Passwords can be authenticated one of three ways. The most common way is that it is maintained within the LIMS. The second method of password authentication is to verify it against the network domain. The third way is the most secure which verifies it against the actual database security features.
	T-3	Describe the ability of the system to allow for complex passwords and forced expiration of passwords.	x		Element LIMS has 3 levels of password authentication: 1) Application, 2) Domain, 3) Database. Either of the last 2 options would allow for the password complexity requested.
	T-4	Describe the ability for the LIMS to allow restriction for:			
	T-4a	Individual screens			See response for T-2 above.
	T-4b	Menus			See response for T-2 above.
	T-4c	Tables			See response for T-2 above.
	T-4d	Reports			See response for T-2 above.
	T-4e	Quality control functions			See response for T-2 above.
	T-4f	Other (please specify)			See response for T-2 above.
	T-5	Describe the auditing information (e.g., last user, last updated) stored with each non-sample database record (e.g., inventory) including any user definable options for the same.	x		Element LIMS stores 4 separate audit trail tables for different types of information. The Data audit trail includes detailed information regarding changes to analytical results with date/time and who made changes as well as what the before and after values were. The General audit trail includes changes to supporting information such as clients, analysis codes and analytical standards. The Qualifier audit trail records the initial assignment as well as any subsequent changes to any

					comments associated with the processing of samples through the laboratory. Finally, the Container audit trail tracks the ownership and location of sample containers within the laboratory up to the point of disposal. All the audit trails include a single user-editable field where the user can provide an explanation for the change. Within the application, there are audit trail buttons on the dialogs so users can quickly bring up the audit trail information associated with the item or items currently viewed on the dialog.
	T-6	Elaborate appropriately and succinctly any Security considerations not called out in this section that are deemed important differentiators or essential functionality.			
U	**Invoicing and Future Considerations**				
	U-1	GENERAL RESPONSE / DESCRIPTION for this section as noted on line 2.			
	U-2	The City may provide analytical services to external agencies and send invoices as needed. Describe the proposed systems ability to track analyses by customer, to assign costs by sample or test, and to produce invoices. Please fully describe the system's fee structure capabilities.	x		Element LIMS allows users to quickly produce an invoice based upon a single work order or to split or combine work orders into any combination of one or more invoices. Invoices can then be electronically exported into some of the more commonly used accounting packages or they can be printed directly from Element LIMS. In order to maintain synchronization with the accounting system, Element LIMS includes a 'crediting' feature so that posted invoices must be credited before they can be modified and re-invoiced. Element LIMS also has a monthly invoicing capability as well, allowing for the invoicing of multiple work orders within a given month.
	U-3	Describe the LIMS contact management system used to maintain addresses and other relevant information that can be assimilated on an invoice.	x		Element LIMS tracks clients along with any number of individual contacts associated with that client. Information associated with contacts includes items such as phone, fax, email, miscellaneous info, and a

					password (used only if that client is allowed to access their data via the web interface application ClientConnect).
	U-4	Describe the proposed system's cost accounting and management functions for tracking invoice payment and for maintaining accounts payable information (e.g., from contract laboratories).		x	Element LIMS does not have formal cost accounting functionality. The system does integrate with Intuit QuickBooks and other accounting systems.
	U-5	Describe the ability of the system to import payment details from a spreadsheet and allow external customers to view the status of an invoice.	x		Element LIMS has the ability to export invoice information to an external accounting package for the tracking of invoice status.
	U-6	Elaborate appropriately and succinctly any Future Considerations not called out in this section that are deemed important differentiators or essential functionality.			
V	**Other Requirements**				
	V-1	Elaborate appropriately and succinctly any other requirements not called out in this document and are deemed important differentiators, essential functionality, or contributing methodologies.			

D. Project Experience and References

For twenty years and in collaboration with hundreds of laboratories, Promium has demonstrated a deep knowledge of environmental science and laboratory operations. The experience of our staff and our approach to software development has resulted in solutions that tightly align with the needs of environmental laboratories. Proof of our unique ability to address the requirements of laboratories like the City of Midland water laboratory is that our clients remain with us rather than switching to other solutions.

City of Abilene, Environmental Laboratory

Customer since: 2001 Size: 5 users
Contact: Mike Michaud Environmental Lab Program Manager
Phone/Email: 325.676.6041 mike.michaud@abilenetx.gov
Location: 4209 E Lake Road Abilene, TX 79601

Promium provided LIMS application, implementation, and training and continues to provide on-going support and upgrades. Element LIMS was implemented to automate the process of logging in samples, batching for analysis, managing quality control, and streamlining the reporting process. Manual activities were eliminated, and Element LIMS serves as a centralized information management system that increases access to critical analytical and operational data.

The City's Water Treatment System includes three Water Treatment plants with a treatment capacity of 46 million gallons daily and Treated Ground Storage capacity of 23.3 million gallons. The City of Abilene collects and treats wastewater from users in the city limits and from the cities of Buffalo Gap, Tuscola, Tye, and Hawley Independent School District. The Environmental Laboratory performs chemical analyses for process control to assist operators in maintaining performance levels at the water and wastewater treatment plants. The Laboratory also performs chemical analyses for state and federal compliance monitoring.

City of Arlington Laboratory Services

Customer since: 2011 Size: 8 users
Contact: Ann Lawson Laboratory Services Manager
Phone/Email: 817.457.7550 ann.lawson@arlingtontx.gov
Location: 1901-B Lakewood Dr, Arlington, TX 76013

Promium provided LIMS application, implementation and training, and continues to provide on-going support and upgrades. Element LIMS was implemented to increase efficiency in the laboratory. The login, analysis, quality control, and reporting workflows were streamlined, and many manual activities were eliminated.

As part of the Arlington Water Utilities Department which supplies water to more than 367,000 residents, the Arlington Lab is the quality assurance and technical support arm of the department. It provides sampling and analytical services to Water Utilities, Police, Community Development, Public Works, and citizens. The primary responsibilities are to ensure compliance with limits for chemical and bacteriological parameters established under the Federal Safe Drinking Water Act, and other federal and state regulations relating to water quality.

City of Longmont, Water Quality Laboratory

Customer since: 2013 Users: 7
Contact: Nicole Cummings Water Quality Analyst
Phone: (303) 774.4677 nicole.cummings@ci.longmont.co.us
Location: 501 East First Avenue, Longmont, CO 80501

Promium provided LIMS application, implementation, and training, and continues to provide on-going support and upgrades. Element LIMS was implemented to replace an outdated LIMS that had been in place for many years and was no longer supported. Element LIMS improved the process for sample logging, laboratory analysis, and report packaging and distribution.

The City of Longmont Water Quality Laboratory (COL WQL) is a municipal environmental testing laboratory that analyzes regulatory and process control samples for the Public Works and Natural Resources division as well as other small public utilities. The COL WQL provides sampling and analysis in support of the following: wastewater treatment plant, water treatment plants, distribution system, collection system, industrial pretreatment program, watershed program, swim beach monitoring, and internal quality control program.

Santa Clarita Valley Water Agency (SVC Water)

Customer since: 2013 Size: 3 users
Contact: Jeff Koelewyn Laboratory/Regulatory Affairs Supervisor
Phone/Email: 661.297.1600 x223 jkoelewyn@clwa.org
Location: 27234 Bouquet Canyon Road, Santa Clarita, CA 91350-2173

Promium provided LIMS application, implementation and training and continues to provide on-going support and upgrades. Element LIMS was implemented to replace paper-based manual systems and increased efficiency across the laboratory while streamlining analysis and reporting.

The Agency includes wastewater treatment facilities, wastewater lift and pumping stations, and the discharge outfall. The lab performs 11,000 analyses per year and is ELAP accredited. The Santa Clarita Valley Water Agency is a public water wholesaler that provides about half of the water that Santa Clarita households and businesses use. The Agency supplements local groundwater supplies with State Water Project water from northern California and other sources of imported water, and also provides recycled water.

Central Marin Sanitation Agency

Customer since: 2017 Size: 4 users
Contact: Mark Koekemoer Laboratory Director
Phone/Email: 415.459.1455 x147 mkoekemoer@cmsa.us
Location: 1301 Andersen Drive, San Rafael, CA 94901

Promium provided LIMS application, implementation and training and continues to provide on-going support and upgrades. Element LIMS was implemented to replace an outdated process using spreadsheets and manual tracking. There was a considerable improvement in sample login, sample management and monitoring throughout the lab, and streamlining the reporting process.

CMSA operates the largest wastewater treatment facility in Marin County, California. Approximately six billion gallons of wastewater are treated and released as clean effluent into San Francisco Bay each year, and they consistently meet and exceed all Federal and State regulatory requirements. The Agency includes wastewater treatment facilities, wastewater lift and pumping stations, and the discharge outfall. The lab performs 11,000 analyses per year and is ELAP accredited.

E. Implementation Plan

Promium will utilize an implementation process for your laboratory that is based on best practices and a focus on automating and streamlining the laboratory workflow. A well-executed implementation is key to fully leveraging the capabilities of Element LIMS and meeting the goals and objectives of the City.

The Promium implementation process is a step-by-step methodology that has been used successfully with over three hundred laboratories. Consisting of a seven key phases, the process includes the planning, installation, and deployment of Element LIMS, and training for administrators and users. Each phase is a key milestone culminating in preparation for going live. Promium will guide overall project management and communications, and apply knowledge, skills, and tools related to laboratory operations and Element LIMS functionality.

The implementation framework also involves a high level of engagement with the laboratory team. The Promium project lead will work directly with laboratory management and designated team members to gain insights into business policies and workflow in order to optimize the process for your laboratory. The Promium project lead, in collaboration with the laboratory project leader, will assure that tasks assigned to both teams, are defined, communicated, and completed as required.

Working together, we will achieve a successful implementation of Element LIMS and ultimately increase the efficiency of the laboratory, while expanding access to information and strengthening quality.

Element LIMS Implementation						
1 **Initiation and Site Assessment**	**2** **Configuration and Development**	**3** **Administrator Training**	**4** **Initial System Testing**	**5** **End User Training**	**6** **Parallel Testing and Validation**	**7** **Migrate and Go-Live**
• Project kickoff • Install software • Site Assessment • Project Plan	• Database population • Report/EDD development • Historical data migration	• IT Functions and Element Administration • Laboratory functions	• Initial testing of Element use in laboratory • Corrective action when required • Retesting as needed	• Element LIMS overview • Project Management • Sample control and laboratory functions • QA • Reporting and Invoicing	• Parallel test period • Verification • Sign off	• Migrate and verify production instance, go-live • Handoff conference with Promium Support • Project Closure
Communications		**Project Controls**		**Change Management**		

Stage 1 – Initiation & Site Assessment

The purpose of the Initiation and Site Assessment stage is to formally kick-off the project and to begin the planning and discovery process. Team formation, project planning, software installation, and an on-site assessment will take place. This stage is critical to establish the relationships, communication protocols, and framework that will govern the remainder of the project.

This stage will also begin the hands-on work involved in setting up Element LIMS and entering data into the system. There will be a combination of off-site and onsite work and significant involvement from the laboratory team.

Project Kickoff

- Introduction meeting
- Confirm project scope and objectives
- Outline implementation approach
- Detail customer resources that will be needed for project
- Review IT infrastructure and requirements
- Set initial visit dates

Install Software

- Provide installation directions to lab
- Get user list from lab

Site Assessment

- Interview key laboratory team members
- Review lab practices and workflows
- Review Element LIMS capabilities
- Review training, testing, and validation
- Define and review all print reports required
- Define and review all EDD formats required
- Define and review all other project requirements
- Review information needed for database population

Formal Project Plan

- Project scope and objectives
- Project deliverables and timeline
- Resource allocation
- Training plan
- Testing and validation plan
- Communications plan

Stage 2 – Configuration and Development

After the software installation, Promium will work with the laboratory team to begin the configuration of Element LIMS. This will include establishing initial configuration parameters and completing setup of key tables and fields. At this stage of the process. Laboratory personnel, typically an administrator, will be involved in collecting necessary information and populating additional portions of the database. In addition, if there is any functionality that requires modification of software code, Promium development resources will be deployed to complete the deliverables (modified electronic data deliverables, reports, interfaces, features).

Database Population

- Population of Element LIMS Static Tables
- Population of Client and Project Tables
- Population of Analyses and Prep Methods
- Population of User and Department tables
- Population of Reagent and Standard tables (via the Element LIMS interface)

Development

- SAP Crystal Report format modifications
- Customized Electronic Data Deliverables (EDDs)
- External application/interfaces

Historical Data Migration

- Assessment and planning
- Configuration of conversion tool
- Data conversion

Stage 3 - Administrator Training

Administrator training will be conducted primarily onsite, and with some offsite time via web conference. Content is focused on overall understanding of Element LIMS components, installation, database population, daily operations, and system maintenance.

IT Functions

- Element LIMS data hierarchy and functionality
- Element LIMS file structures and output files
- System messaging setup
- Use of SQL queries
- User management
- Using static tables

Lab Functions

- Creating analyses and prep methods in Element LIMS
- Adding and maintaining clients in Element LIMS
- Data Entry for prep batches and instrument sessions
- Setting up projects and schedules
- Lab standards and reagents
- Element DataTool operations (instrument data import)
- Departments and facilities
- User defined fields

Stage 4 - Initial System Testing

The System Testing phase involves substantial interaction between the Promium implementation team and the laboratory system administrator and other key personnel. This phase, which may run in parallel with some portions of Administrator training, will begin with an initial test period that includes sample login and processing laboratory test data through Element LIMS. This includes all aspects of sample management, data entry and review, and reporting of final results.

The results of the testing period will be analyzed and corrective action plans will be developed and followed as necessary. Additional testing of the system may be carried out if deemed necessary and follow-up will be performed.

Testing Activities

- Logging project-scheduled and ad-hoc samples into the system
- Assigning tests to samples
- Creating worklists for sample preparation and testing
- Batching by sample preparation or instrument session
- Printing sample labels and work order documents.
- Generating backlog and user reports
- Entering test results manually and through instrument connections
- Data Review and validation
- Running reports and EDD
- Creating invoices

Stage 5 – End User Training

User training will be conducted primarily onsite, with some possible follow up offsite via web conference. The timing of this training is dependent on the completion of certain tasks to be addressed earlier in the implementation process. As with Administrator training, whenever possible, training will include the use of actual laboratory data and the target laboratory database.

Training Activities

- Review of Element LIMS functionality, data hierarchy, navigation
- Sample receiving, login, and custody
- Project management
- Work order management
- Batching by preparation method and instrument run session
- Data entry and review
- Element DataTool (instrument data import)
- Analytical Reporting
- Generating quotations and invoices
- QA/QC functions
- Management reports

Stage 6 – Parallel Testing and Validation

Generally following the completion of user training, and after necessary setup and adequate data has been entered into the database, several weeks of parallel testing will take place. Choosing representative projects, laboratory personnel will log samples into the existing LIMS (if available) or manual processes, as well as in to Element LIMS.

Parallel testing will cease when all test methods calculations, instrument data interpreters, and interfaces with other databases or software as defined in the project plan have been validated and deemed acceptable. Promium will address any issues discovered during the parallel test period.

Parallel Testing

- Sample login
- Batching by preparation method and instrument run session
- Data entry and data review
- Reporting and invoicing
- Other assistance as needed

Verification and Sign Off

- Laboratory team verifies that Element LIMS is functional
- Laboratory team verifies that reports, EDDs, and other deliverables have been completed and are working satisfactorily

Stage 7 – Migrate and Go-Live

The Migration and Go-Live stage includes the creation of the production database (if not already in use), resetting the laboratory software to the production database, and going live in the production database. In this final phase, the laboratory team and Promium acknowledge that project requirements have been fulfilled and the project is closed.

The Promium implementation lead will initiate the transfer from an active implementation project to a completed implementation project and will establish a connection with the Promium customer support team for any further interactions.

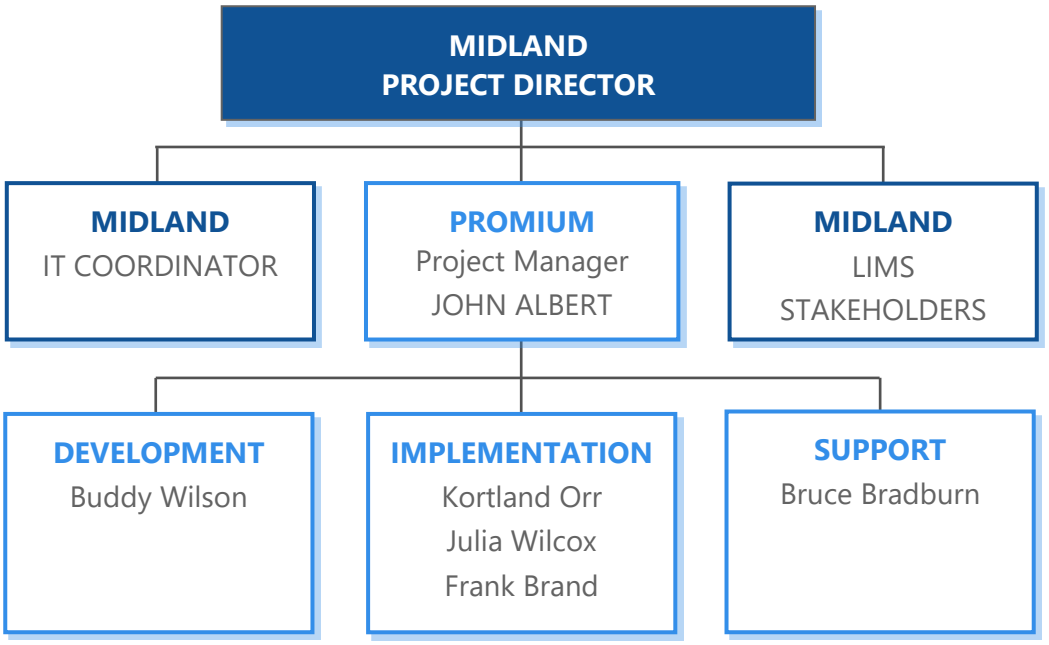
Go-Live Activities

- Migrate to production instance of Element LIMS and database
- Verify production instance
- Discontinue use of legacy system
- Transfer interaction to Promium Support
- Project Closure and final billing

F. Project Team and Resumes

A dedicated team from Promium will be assigned to the project for full implementation of Element LIMS in the Midland water laboratory facilities. All individuals that will be assigned to this project by Promium are Promium employees and have extensive experience relevant to environmental laboratory LIMS implementations of the same or similar in size and service to the City. Promium will provide a Project Manager who will direct the allocation of Promium resources and personnel to the project. One Implementation Engineer will be assigned as lead implementation engineer and primary point of contact during the implementation. Promium will allocate additional personnel from our Implementation, Software Development, and Support departments as required for the success of the project.

Project Organization Chart



Our Project Manager, **John Albert,** has over 30 years of comprehensive environmental laboratory experience, including 17 years as an analyst and LIMS administrator, and 17 years with Promium. He has installed Element LIMS and conducted training at over 130 laboratories for hundreds of users, including US EPA labs.

Our Element LIMS Implementation Engineer **Kortland Orr** has over 25 years of experience in environmental and commercial testing laboratories as an analyst and project manager. Since coming to Promium 11 years ago, he has been the lead implementer and trainer for over 75 Element LIMS implementation projects for public and private laboratories, including several US EPA labs.

Our Element LIMS Implementation Engineer **Julia Wilcox** has over 25 years of experience in the environmental testing field including time spent as an analyst, project manager, and quality

assurance director. Since coming to Promium 14 years ago, Julia has completed over 105 Element LIMS implementation projects for public and private laboratories.

Our Element LIMS Implementation Engineer **Frank Brand** has 25 years of LIMS administration and development experience in an environmental testing laboratory. He has been the lead implementation engineer and trainer for over 30 Element LIMS implementation projects for public and private environmental laboratories during his seven years with Promium.

Bruce Bradburn, our Technical Support Director, has over 26 years of experience in the environmental testing industry. Bruce has been with Promium for 19 years and in that time has directed implementation and support teams, including implementation for several EPA regions. Bruce manages the support team, oversees transitions from the Implementation team, coordinates resolution and prioritization of incoming technical support tickets, and addresses complex technical issues.

John Albert Director, Implementation Services

YEARS OF EXPERIENCE
28

YEARS WITH FIRM
17

EDUCATION
BS, Chemistry, Northern Arizona University

PROFESSIONAL HISTORY
LIMS Administrator, Rayonier Research Center, FL

Inorganic Chemistry Laboratory Manager, ENCO Environmental Laboratories, FL

Analytical Chemist, Clean Harbors Environmental Services, FL

Active Member of American Chemical Society

As Director of Implementation, John manages the installation and implementation of all Promium products. In addition to working as an implementer, John has also worked in Customer Support and has a broad understanding of customer needs and product capabilities. John has over 25 years of comprehensive environmental laboratory experience, including 17 years as an analyst and LIMS administrator in several public and private environmental testing and research laboratories.

As an implementer he has installed Element LIMS at multiple laboratories and conducted training for hundreds of users. John has developed Crystal Reports for numerous Element clients, developed and interpreted archival/historical databases, and interfaced hundreds of instruments.

In the past 17 years with Promium, John has directed the implementation of Element LIMS in over 130 environmental, water, and wastewater labs. His strong project management and organizational skills help guide successful implementations for all of our clients.

SELECT PROJECT EXPERIENCE

Michigan Department of Environment, Lansing, MI | 30-users

Tampa Electric Company, FL | 10-users

City of Longmont Water Quality Lab, CO | 7-users

State of Montana Department of Health and Human Services, Helena, MT | 5-users

City of Tucson Water Quality Laboratory, AZ | 25-users

Pima County Waste Water Management District, AZ | 21-users

US EPA Region 2 Laboratories, Edison, NJ | 21-users

State of Minnesota Department of Health | 25-users

Xcel Energy, Minneapolis, MN | 25-users

State of Oregon Dept. of Environmental Quality | 30-users

Siemens Water Technologies Corp, Rothschild, WI | 15-users

Julia Wilcox Senior Implementation Engineer

YEARS OF EXPERIENCE
25

YEARS WITH FIRM
14

EDUCATION
BS, Environmental Toxicology, University of California, Davis

PROFESSIONAL HISTORY
Project Assistant, Aspect Consulting

Technical Writer, AMSEC

Developer and Database Manager, EcoChem

Customer Service Director, Proposal Manager, Quanterra Inc. Environmental Testing Laboratory

Environmental Data Specialist, California Analytical Laboratory

SECURITY CLEARANCE
Confidential

Julia has over 25 years of experience in the environmental testing field including time spent as an analyst, project manager, and quality assurance director. Since coming to Promium 14 years ago, Julia has completed over 105 Element LIMS implementation projects for public and private laboratories.

Julia has a demonstrated in-depth working knowledge of Element and its many functions. Her background in environmental testing and technical writing provides comprehensive insight into laboratory and client needs. She has strong analytical and project management skills and contributes to the implementation of new software upgrades.

SELECT PROJECT EXPERIENCE

Michigan Department of Environment, Lansing, MI | 20-users

Central Marin Sanitation Agency, San Rafael, CA | 4-users

Santa Clarita Valley Water Agency, Santa Clarita, CA | 3-users

Palmdale Water District, CA | 3-users

City of Palo Alto, Regional Water Quality Control, CA | 8-users

Napa Sanitation District, CA | 4-users

ALS Truesdail Laboratories, Irvine, CA | 20-users

City of Orlando Environmental Lab Services, FL | 6-users

Environment Canada, Science and Technology Branch, Regional Environmental Laboratories, nationwide | 57-users

City of Portland Water Pollution Control Laboratory, OR | 20-users

Pima County Regional Wastewater Reclamation District, AZ | 21-users

State of Alaska Department of Environmental Conservation Laboratories, Anchorage, AK | 12-users

New Jersey Department of Environmental Protection | 8-users

State of Washington, Department of Ecology, Manchester Environmental Laboratory, Port Orchard, WA | 10-users

American Bottoms Regional Wastewater Treatment Facility, Sauget, IL | 9-users

Kortland Orr Implementation Engineer

YEARS OF EXPERIENCE
27

YEARS WITH FIRM
10

EDUCATION
BS, Zoology, Idaho State University

BS, Biology, Idaho State University

PROFESSIONAL HISTORY
Project Manager, Friedman & Bruya

Business Development Director, Brooks Rand Labs

Project Manager, Client Services Manager, Key Account Executive, TestAmerica Laboratories

Scientist, Weyerhaeuser Analysis and Testing

Health Physics Technician, Newport News Reactor Services

Analyst, Intermountain Analytical Services

SECURITY CLEARANCE
Confidential

Kortland has over 25 years of experience in environmental and commercial testing laboratories as an analyst and project manager. Since coming to Promium 11 years ago, Kortland has been the lead implementer and trainer for over 75 implementation projects for public and private laboratories. His strong technical and project management skills benefit our customers.

Kortland has been instrumental in developing training materials for many courses provided by Promium and on-line manuals for refresher courses. He provides thorough Element LIMS training to all different types of users.

SELECT PROJECT EXPERIENCE

Michigan Department of Environment, Lansing, MI | 30-users

Lansing Bureau of Water and Light | 6-users | Lansing, MI

Kern County Water Agency | 3-users | Bakersfield, CA

Advanced Technology Laboratories | 20-users | Long Beach, CA

Gainesville Regional Utilities | 10-users | Gainesville, FL

SunLabs | 11-users | Tampa and Orlando, FL

Mosaic Mining Environmental Laboratory | 10-users | South Fort Meade, FL

Express Analytics | 5-users | Hartland, WI

Complete Environmental Testing | 9-users | Stratford, CT

Earth Analytical Sciences | 15-users | Beaumont, TX

New Jersey Analytical Laboratories | 8-users | Pennington, NJ

US EPA Region 2 | 21-users | Edison, NJ

US EPA Region 8 | 10-users | Denver, CO

Microbac Laboratories | 26-users | Louisville, KY

Microbac Laboratories | 17-users | Erie, PA

PDC Laboratories | 50-users | Peoria, IL and St Louis, MO

Environmental Monitoring Technologies | 20-users | Chicago, IL

MASI Environmental Labs | 5-users | Cincinnati, OH

M.J. Reider | 16-users | Reading, PA

Frank Brand Implementation Engineer

YEARS OF EXPERIENCE
25

YEARS WITH FIRM
4

EDUCATION
BS, Chemistry, Monmouth College, New Jersey

PROFESSIONAL HISTORY
LIMS Administrator, Hampton-Clarke/Veritech

Frank has 25 years of LIMS administration and development experience in an environmental testing laboratory. In the last seven years with Promium he has been the lead implementer for over 35 projects.

Previously, as LIMS administrator, he led implementation, maintenance and ongoing configuration and training efforts for a LIMS system in a NELAC environmental laboratory. He created queries, VBA functions/procedures, user input forms, reports; imported routines for a multitude of different laboratory equipment, imported routines for data that originated from other laboratories, and exported routines.

Frank brings an extensive background in designing, coding, testing, and supporting an Access frontend database with a SQL server backend.

SELECT PROJECT EXPERIENCE

City of Baltimore, Department of Public Works, Water and Wastewater Bureau | 52 users | Baltimore, MD

Brevard County Utilities, Water Resources Laboratory | 3 users | Merritt Island, FL

City of Boise | 20 users | Boise, ID

Micmac Environmental Laboratory | 4 users | Presque Isle, ME

Aqua Protech Laboratories | 15 users | Fairfield, NJ

Lake County Public Works | 10 users | Libertyville, IL

Suburban Testing Labs | 20 users | Reading, PA

Enviro-Chem | 5 users | Sparks, MD

Seewald Laboratories | 10 users | Williamsport, PA

Tampa Bay Water | 10 users | Clearwater, FL

Phoslab Environmental Services, Inc | 5 users | Lakeland, FL

City of Meridian | 5 users | Meridian, ID

Renewable Water Resources | 10 users | Greenville, SC

Bruce Bradburn Director of Technical Support

YEARS OF EXPERIENCE
28

YEARS WITH FIRM
18

EDUCATION
MS, Chemistry, University of New Mexico

BS, Chemistry, Western Washington University

PROFESSIONAL HISTORY
Technical Laboratory Director, SVL Analytical

Laboratory Manager, Chemist and Quality Control Officer, The Spokane Tribe of Indians

Inorganic Chemist and Laboratory Manager, American Analytical Labs

Chemist, Northwest Laboratories

Bruce has 26 years of experience in the environmental testing industry. In the laboratory, Bruce has served as an analyst, technical supervisor, and laboratory manager. Bruce has been with Promium for 19 years and in that time has directed implementation and support teams. He has installed Element LIMS in numerous facilities across the United States including many of our Regional EPA Labs.

In his current position as Director of Technical Support, Bruce manages the support team, oversees transitions from the implementation team, coordinates resolution and prioritization of incoming technical support tickets, and addresses complex technical issues for all of our customers.

Bruce has an extensive knowledge of chemistry, laboratory operations, and Element LIMS functionality. Bruce is also a customer liaison to the Promium Development team and contributes ideas for new product features and functionality.

SELECT PROJECT EXPERIENCE

Washington Department of Ecology | Bremerton WA

Brooks Rand Laboratories | Seattle WA

USEPA Region 3 Laboratories | Ft Meade MD

USEPA Region 4 Laboratories | Athens, GA

USEPA Region 8 Laboratories | Denver CO

USEPA Region 9 Laboratories | San Francisco, CA

G. Cost Summary Form

Company Name: **Promium, LLC**

THE CITY OF MIDLAND
COST SUMMARY
FOR
21002758 LIMS

ITEM	DESCRIPTION	QTY	COST EA.	TOTAL
1	Laboratory Information Management Software (LIMS) Concurrent User Licenses	8	$ 7,062	$ 56,497
2	Cost for Maintenance and support after the first 12 months after implementation	8	$ 921	$ 7,369
	Additional Costs (if any):			
3	Advanced Implementation	1	$ 39,200	$ 39,200
4	Administrator Training	1	$ 5,960	$ 5,960
5	User Training	2	$ 7,780	$ 15,560
6	Defined Reports	1	$ 4,950	$ 4,950
7	10 Days Custom Report Development (80 Hours)	1	$ 13,200	$ 13,200
8	Legacy Data Migration	1	$ 10,000	$ 10,000
			TOTAL BID:	**$ 145,367**

VENDOR CONTACT:
All potential vendors shall direct ALL questions, areas for bid clarification and specification verification to the Purchasing Agent IN WRITING, via mail or fax as follows:

The City Of Midland
Office of the Purchasing Manager
P.O. Box 1152
Midland, TX 79702

OR

FAX: (432) 685-0523
E-mail: purchasing@midlandtexas.gov

All vendors on the bid list will then be notified of the questions and presented an answer. Verbal responses shall not be considered binding.

Award:
If the Contract is awarded, it will be awarded to either the lowest responsible bidder, or to the bidder who provides goods or services at the best value for the City of Midland. In determining the best value for the City of Midland, the City of Midland may consider the criteria enumerated in Section 252.043 of the Texas Local Government Code.

BID WAIVERS:

A. <u>WAIVER OF ATTORNEY FEES</u>: BY SUBMITTING THIS BID, BIDDER AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE BID, THE CONSTRUCTION, VALIDITY OR INTERPRETATION OF THE BID DOCUMENTS OR THE CONSTRUCTION, VALIDITY, INTERPRETATION, AWARD, OR BREACH OF THE CONTRACT. THE BIDDER SPECIFICALLY AGREES THAT

IF THE BIDDER BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS BID, THE CONSTRUCTION, VALIDITY OR INTERPRETATION OF THE BID DOCUMENTS, OR THE CONSTRUCTION, VALIDITY, INTERPRETATION, AWARD, OR BREACH OF THE CONTRACT, 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 BIDDER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH BIDDER MIGHT OTHERWISE BE ENTITLED.

BIDDER AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. THE BIDDER ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE BID DOCUMENTS INCLUDING BUT NOT LIMITED TO THE CONTRACT. THE BIDDER FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE BIDDER. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

THE BIDDER AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THESE BID DOCUMENTS, INCLUDING THE CONTRACT, WITH COMPETENT LEGAL COUNSEL PRIOR TO SUBMISSION OF THE BID OR EXECUTION OF THE CONTRACT.

B. WAIVER: BY SUBMITTING A BID, THE BIDDER AGREES TO WAIVE AND DOES HEREBY VOLUNTARILY AND INTENTIONALLY WAIVE, ABANDON AND RELINQUISH ANY CLAIM THE BIDDER HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY OF MIDLAND, TEXAS, AND THE CITY'S EMPLOYEES, AGENTS AND OFFICERS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE FOLLOWING:

1. **THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY BID;**
2. **WAIVER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE BID DOCUMENTS OR THE CONTRACT DOCUMENTS;**
3. **ACCEPTANCE OR REJECTION OF ANY BIDS; OR**
4. **AWARD OF THE CONTRACT.**

BY SUBMITTING A BID, THE BIDDER ACKNOWLEDGES THAT THE BIDDER UNDERSTANDS ALL OF THE TERMS OF THE BIDDING DOCUMENTS AND CONSENTS TO THE BIDDING PROCESS AND THE POSSIBILITY OF A NEGATIVE ASSESSMENT. BY SUBMITTING A BID, THE BIDDER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE BIDDER AND THE CITY OF MIDLAND, TEXAS. THE BIDDER AGREES THAT THIS IS THE INTENTIONAL RELINQUISHMENT OF A PRESENTLY EXISTING KNOWN RIGHT. BY SIGNING THE REQUEST FOR BID AND/OR BELOW, YOUR COMPANY AGREES TO THE ABOVE WAIVER(S).

Company Name: Promium, LLC

If this form is not signed and included with your bid documents your bid will be considered non-responsive and will be rejected.

Promium, LLC Company Name	May 10, 2021 Date
 Authorized Signature	425.286.9200 Phone
Andy Levy Print Above Name	425.286.9201 Fax

Element LIMS®

SOFTWARE	License: Purchase	Qty	Price	Total	Subscription
BASE SOFTWARE					
Configuration: Advanced					
Application Components	**Concurrent Users**	**8**	$ 7,062	$ 56,497	
- Project Management	Included				
- Sample Control	Included				
- Laboratory Analysis (including DataTool)	Included				
- Quality Assurance	Included				
- Reporting (Basic reports & EDDs)	Included				
	Subtotal			**$ 56,497**	
Element ClientConnect					
Laboratory Hosted		1	$ 4,700	**$ 4,700**	
	Discount		-100%	$ (4,700)	
	Subtotal			**$ -**	
IMPLEMENTATION SERVICES	Laboratory Hosted	**Qty**	**Price**	**Total**	
Advanced					
Includes a combination of 3-5 on-site visits and offsite hours. - Project initiation and assessment - Configuration and development - Initial system testing - Parallel testing and validation - Migrate and go-live		1	$ 39,200	$ 39,200	
	Subtotal			**$ 39,200**	
Additional Services					
Administrator Training	Quantity	1	$ 5,960	$ 5,960	
User Training User Training plus follow-up Training	Quantity	2	$ 7,780	$ 15,560	
EDDs, Reports, DMRs Cash Report	Dollars	1	$ 1,650	$ 1,650	
EDDs, Reports, DMRs Drinking Water; Wastewater; Wastewater NP	Dollars	1	$ 1,650	$ 1,650	
EDDs, Reports, DMRs E-2 Report csv	Dollars	1	$ 1,650	$ 1,650	
EDDs, Reports, DMRs 10 Days Custom Report Development	Hours	80	$ 165	$ 13,200	
	Subtotal			**$ 39,670**	
Legacy Data Migration					
Data Migration				$ 10,000	
	Subtotal Data Migration			**$ 10,000**	
TOTAL SOFTWARE AND SERVICES				**$ 145,367**	

MAINTENANCE (Updates, Helpdesk, Online resources)		Users	Price Per	Total	
1st Year Annual Maintenance	Included	8		Included	
2nd Year Annual Maintenance		*8*	*$ 921*	*$ 7,369*	
Total Maintenance - For Budgeting Purposes				**$ 7,369**	

H. Financial Information

Promium is a closely held, private Limited Liability Company based in the Seattle Washington area. The company is wholly owned and operated by the original founders—Scot Cocanour, CEO and Buddy Wilson, President/CTO.

Throughout the company's 23-year history of continuous operation in the laboratory information management business, Promium has produced consistent revenue growth and profitability. Currently the firm is effectively debt free and holding substantial cash reserves.

Promium has no outside investors or shareholders. The lack of external investor pressure means the firm is free to pursue its strategic initiatives.

Promium has never encountered bankruptcy, receivership, or creditor assignment.

I. Attachments

Attachment A – Execution of Offer

Attachment B – Signed Addendum 1, 2, and 3

EXECUTION OF OFFER

Date:

In compliance with this RFP, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all commodities or services at the prices quoted.

By executing this offer, Offeror affirms that he/she has not given, offered to give, nor intends to give at anytime hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to sign the offer, or signing it with a false statement, shall void the submitted offer or any resulting contracts, and the Offeror shall be removed from all proposal lists.

By the signature hereon affixed, the Offeror hereby certifies that neither the Offeror or the firm, corporation, or institution represented by the Offeror or anyone acting for such firm, corporation, or institution has violate the antitrust laws of this State, codified in Section 15.01, et seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the offer being made to any competitor or any other person in such line of business. By signing this offer, Offeror certifies that if a Texas address is shown as the address of the Offeror, Offeror qualifies as a Texas Resident Offeror as defined in Rule 1 TAC 113.8.

This offer consists of pages number 1 through _____.

Offeror/ COMPANY: _____

SIGNATURE (INK): _____

NAME: (TYPED/PRINTED) _____

TITLE: _____

STREET: _____

CITY/STATE/ZIP: _____

TELEPHONE: _____ FAX: _____

E-MAIL ADDRESS: _____

CITY OF MIDLAND

ADDENDUM

BID #21002758

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 1

DATE: April 26, 2021

The following is provided as a matter of clarification for all bidders as follows:

Event	Date*
Pre-proposal Conference	Wednesday, April 28, 2021
Cutoff Date for inquiries and clarification	Monday, May 10, 2021
Proposal Due Date	Friday, May 17, 2021
Notification of Vendor Interviews / Product Demonstrations	Monday, May 24, 2021
Present Recommendation to Council for Consideration (if BFO is NOT required)	Tuesday, June 8, 2021
Final Offer Due Date (if required)	Monday, June 22, 2021
Intended Date for Contract Award	Tuesday, June 29, 2021

Please find the attached LIMS Requirements excel spreadsheet.

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

_____
Company Name

_____ _____
Bidder Authorized Signature Date

_____ _____
Please Print Above Name Phone

CITY OF MIDLAND

ADDENDUM

BID #21002758

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 2

DATE: May 5, 2021

The following is provided as a matter of clarification for all bidders as follows:

Event	Date*
Proposal Due Date	Wednesday, May 19, 2021

1. What is the current system the City of Midland using?
   A. The current vendor is Lab Lite LLC.
2. Is there a timeline for this project?
   A. No timeline, but the preference is to complete before December 2021.
3. Is there a migration period?
   A. Yes, there will be a migration period. We will need to move over 5yrs of data. (2016 – 2021)
4. Is there a budget for this project?
   A. No budget.
5. Has there been any demos or talks to vendors about LIMS?
   A. No.
6. What is the number of users on the systems, main and current?
   A. There are 3 main and 8 current.

Please find the attached Wastewater Report, Wastewater-Non Potable Water Report, Drinking Water Report, Cash Report, and E-2 excel spreadsheet Report.

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

_____
Company Name

_____ _____
Bidder Authorized Signature Date

_____ _____
Please Print Above Name Phone

CITY OF MIDLAND

ADDENDUM

BID #21002758

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 3

DATE: May 6, 2021

1. Does the City of Midland plan to only make payment at the end of the project, once all Scope of Work items and Change Orders are complete and accepted? Or does the City plan to make payment on a Monthly Time and Materials, Milestone, or some other basis?
   A. The City is not opposed to following scheduled payment terms as set by the vendor. Vendor can present it with their proposal.

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

_____
Company Name

_____ _____
Bidder Authorized Signature Date

_____ _____
Please Print Above Name Phone

PRŌMIUM

3350 Monte Villa Parkway #220 Bothell, WA 98021
1.877.PROMIUM | www.promium.com

City Council Meeting

Item Number: 7

Meeting Date: September 28, 2021

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AUTHORIZING THE PURCHASE OF AN ESTIMATED ANNUAL SUPPLY OF CHEMICALS NEEDED FOR THE TREATMENT OF DRINKING WATER FOR FISCAL YEAR 2022 FROM MULTIPLE BIDDERS, FOR A TOTAL COST OF $2,195,113.50 (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Approval of a resolution approving the purchase of an estimated annual supply of 605,000 pounds and 40 – 150 pound cylinders of chlorine; 350,000 gallons of liquid ammonium sulfate 40%; 2,000 tons of Aluminum Sulfate; 20,000 gallons of polymer; 4,400 gallons of polymer for dewatering; 25 tons of powered activated carbon; 10,000 gallons of liquid copper sulfate pentahydrate 25%; 20,000 pounds of potassium permanganate and 75,000 pounds of sodium permanganate – 20% solution for the treatment of drinking water for Fiscal Year 2022.

Recommended City Council Action:

Approve

Fiscal Impact:

The amount of $2,195,113.50 is available in the FY2022 Water and Sewer operating budget.

Discussion:

The City Manager approved specifications and authorized advertisement for bids for an estimated annual supply of chemicals for the treatment of the City's drinking water. Eighty (80) bid requests were issued. We received eleven (11) bids. Staff recommends awarding each chemical to the respective low, most advantageous or sole bidders as shown in the table below. Please see the attached memo from Raymond Saddler, Water Purification Plant Superintendent, for more information.

Therefore, please consider a resolution awarding an estimated annual supply of water treatment chemicals as shown in the table below:

Items	Bidders	Cost
1 thru 3	DPC Industries, Inc. of Sweetwater, Texas	$416,047.50
4 thru 6	Chameleon Industries, Inc. of Mesquite, Texas	$1,268,500.00
7 & 8	Polydyne, Inc. of Riceboro, Georgia	$163,816.00
9	Donau Carbon US LLC of Dunnellon, Florida	$38,500.00
10	Shannon Chemical Inc. of Malvern, Pennsylvania	$148,700.00
11 & 12	Brenntag Southwest, Inc. of Houston, Texas	$159,550.00
	Total estimated cost for Fiscal Year 2022	**$2,195,113.50**

Tina Gauz

City Manager's Office

INTEROFFICE MEMORANDUM

TO: Regina Stephenson, Director of General Services

FROM: Raymond Saddler, Water Purification Plant Superintendent

SUBJECT: Drinking water treatment chemicals for FY2022

DATE: September 3, 2021

The recommendation for the drinking water treatment chemicals this year are as follows:

Items 1 through 3 for chlorine should be awarded to **DPC Industries, Inc**. We are recommending accepting the single bid from DPC Industries, Inc. DPC Industries has been the single bidder for the last 12 years. See chart below:

	2010	2011	2012	2013	2014	2015	2016	2017
Liquid Chlorine	.3435	.346	.354	.359	.347	.3365	.353	.367
Chlorine Cylinders	178.00	178.00	178.00	178.00	171.00	169.00	178.00	187.50
	2018	**2019**	**2020**	**2021**				
Liquid Chlorine	.397	.417	.421	.421				
Chlorine Cylinders	192.00	207.00	207.00	207.00				

Item 4 & 5 for liquid ammonium sulfate should be awarded to the low bidder, **Chameleon Industries**

Item 6 for aluminum sulfate should be awarded to the low bidder, **Chameleon Industries.**

Item 7 for polymer should be awarded to the low bidder **Polydyne,Inc.**

Item 8 for dewatering polymer should be awarded to the low bidder **Polydyne,Inc.**

Item 9 for powdered activated carbon should be awarded to the low bidder, **Donau Carbon US LLC**

Item 10 for liquid copper sulfate 25% should be awarded to the low bidder, **Shannon Chemicals**.

Item 11 & 12 for Potassium & Sodium permanganates should be awarded to the Non-low bidder, **Brenntag Southwest**. Due to the fact that the low bidders (Chemrite & Shannon Chemical) failed to complete in plant testing of proposed chemical to prove compatibility & efficiency with the City's water supply. Also Shannon Chemical was unable to deliver on the current contract awarded for the chemicals

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE PURCHASE OF AN ESTIMATED ANNUAL SUPPLY OF CHEMICALS NEEDED FOR THE TREATMENT OF DRINKING WATER FOR FISCAL YEAR 2022 FROM MULTIPLE BIDDERS, FOR A TOTAL COST OF $2,195,113.50

WHEREAS, the City Manager approved the specifications and authorized the advertisement for bids for 605,000 pounds and 40-150 pound cylinders of chlorine; 350,000 gallons of liquid ammonium sulfate 40%; 2,000 tons of aluminum sulfate; 20,000 gallons of polymer; 4,400 gallons of polymer for dewatering; 25 tons of powdered activated carbon; 10,000 gallons of liquid copper sulfate pentahydrate 25%; 20,000 pounds of potassium permanganate; and 75,000 pounds of sodium permanganate - 20% solution for the treatment of drinking water for fiscal year 2022; and

WHEREAS, Bid No. 22000008 was opened on September 1, 2021 with the lowest and/or most advantageous bids being submitted as follows and as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes:

Items	Bidders	Cost
1 thru 3	DPC Industries, Inc. of Sweetwater, Texas	$416,047.50
4 thru 6	Chameleon Industries, Inc. of Mesquite, Texas	$1,268,500.00
7 & 8	Polydyne, Inc. of Riceboro, Georgia	$163,816.00
9	Donau Carbon US LLC of Dunnellon, Florida	$38,500.00
10	Shannon Chemical Inc. of Malvern, Pennsylvania	$148,700.00
11 & 12	Brenntag Southwest, Inc. of Houston, Texas	$159,550.00
	Total estimated cost for Fiscal Year 2022	**$2,195,113.50**

WHEREAS, the Council finds the price proposed by the bidders as shown above to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to authorize the purchase of chemicals for the treatment of the City's drinking water from DPC Industries, Inc., of Sweetwater, Texas, Chameleon Industries, Inc. of Mesquite, Texas, Polydyne, Inc. of Riceboro, Georgia, Donau Carbon US LLC of Dunnellon, Florida, Shannon Chemical Inc. Of Malvern, Pennsylvania, and Brenntag Southwest, Inc. of Houston, Texas;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase chemicals for the treatment of the City's drinking water from DPC Industries, Inc., of Sweetwater, Texas, Chameleon Industries, Inc. of Mesquite, Texas, Polydyne, Inc. of Riceboro, Georgia, Donau Carbon US LLC of Dunnellon, Florida, Shannon Chemical Inc. Of Malvern, Pennsylvania, and Brenntag Southwest, Inc. of Houston, Texas, for a total cost of $2,195,113.50.

SECTION TWO. That upon receipt of proper invoice or statement approved by the City Manager, the City Comptroller is hereby authorized and directed to pay for said chemicals for the treatment of the City's drinking water out of funds available in the FY2022 Water and Sewer operating budget.

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

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

City of Midland - Bid Tabulation

BID # 22000008
FY 2021-2022 Annual Chemicals for the Water Plant
OPENED September 1, 2021

ITEM	QTY	DESCRIPTION	Calgon Carbon Corporation 3000 GSK Drive Moon Township, PA 15108 412-787-6630		TR International Trading Company 22817 102nd Place West Edmonds, WA 98020 206-357-5811		Chemrite, Inc. 5202 Belle Wood Court, Ste 104 Buford, GA 30518 770-271-5576		Univar Solutions USA Inc 8201 212th Street Kent, WA 98032 206-653-5075		Chameleon Industries Inc. P.O. Box 853027 Mesquite, TX 75185 972-880-1493		Polydyne Inc. 1 Chemical Plant Road Riceboro, GA 31323 912-880-2035	
			COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
1	555,000	Chlorine - City of Midland Water Purification Plant	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID
	lbs													
2	40	150 lb cylinders of Chlorine - Airport Wellfield	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID
	ea													
3	50,000	Chlorine - T-Bar Chlorination Station	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID
	lbs													
4	300,000	Liquid Ammonium Sulfate - Water Purification Plant	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	$1.35	$405,000.00	NO BID	NO BID
	gals													
5	50,000	Liquid Ammonium Sulfate - T-Bar Chlorination Station	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	$1.35	$67,500.00	NO BID	NO BID
	gals													
6	2,000	Aluminum Sulfate - Water Purification Plant	NO BID	NO BID	$510.00	$1,020,000.00	NO BID	NO BID	$534.16	$1,068,320.00	$398.00	$796,000.00	NO BID	NO BID
	tons													
7	20,000	Polymer - Water Purification Plant	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	$5.950	$119,000.00	$5.5420	$110,840.00
	gals												gal	
													Clarifloc C-338	
8	4,400	Polymer for dewatering - Water Purification Plant	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	$12.040	$52,976.00
	gals												gal	
													Clarifloc C-6240	
9	25	Powdered Activated Carbon	$2,420.00	$60,500.00	$1,778.00	$44,450.00	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID
	tons													
10	10,000	Liquid Copper Sulfate 25%	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	$15.50	$155,000.00	NO BID	NO BID
	gals													
11	20,000	Potassium Permanganate	NO BID	NO BID	NO BID	NO BID	$1.930	$38,600.00	NO BID	NO BID	NO BID		NO BID	NO BID
	lbs													
12	75,000	Sodium Permanganate - 20% Solution	NO BID	NO BID	NO BID	NO BID	$1.160	$87,000.00	NO BID	NO BID	NO BID		NO BID	NO BID
	lbs													
		TOTALS:		$60,500.00		$1,064,450.00		$125,600.00		$1,068,320.00		$1,542,500.00		$163,816.00

Bidding Summary:

80 **Bid requests were issued.**

11 **Bids listed above**

6 **NO BIDS were received.**

63 **Bidders did not respond**

City of Midland - Bid Tabulation

BID # 22000008
FY 2021-2022 Annual Chemicals for the Water Plant
OPENED September 1, 2021

ITEM	QTY	DESCRIPTION	Shannon Chemical Corporation P.O. Box 376 Malvern, PA 19355 610-363-9090		DPC Industries, Inc. No. 8 Place Industrial Drive Drawer 158 Sweetwater, TX 79556 877-236-6636		Donau Carbon US LLC 551 N US Hwy 41 Dunnellon, FL 34432 352-465-5959		Chemtrade Chemicals US LLC 90 East Halsey Road Parsippany, NJ 07054 800-441-2659		Brenntag Southwest, Inc. 704 E Wintergreen Road Lancaster, TX 70784 972-218-3500	
			COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
1	555,000 lbs	Chlorine - City of Midland Water Purification Plant	NO BID	NO BID	$0.6695	$371,572.50	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID
2	40 ea	150 lb cylinders of Chlorine - Airport Wellfield	NO BID	NO BID	$275.00	$11,000.00	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID
3	50,000 lbs	Chlorine - T-Bar Chlorination Station	NO BID	NO BID	$0.6695	$33,475.00	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID
4	300,000 gals	Liquid Ammonium Sulfate - Water Purification Plant	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	$1.64	$492,000.00	$1.950	$585,000.00
5	50,000 gals	Liquid Ammonium Sulfate - T-Bar Chlorination Station	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	$1.64	$82,000.00	$3.4400	$172,000.00
6	2,000 tons	Aluminum Sulfate - Water Purification Plant	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	$495.00	$990,000.00	$645.3900	$1,290,780.00
7	20,000 gals	Polymer - Water Purification Plant	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	$6.2400	$124,800.00
8	4,400 gals	Polymer for dewatering - Water Purification Plant	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID
9	25 tons	Powdered Activated Carbon	NO BID	NO BID	NO BID	NO BID	$1,540.00	$38,500.00	NO BID	NO BID	$1,567.000	$39,175.00
10	10,000 gals	Liquid Copper Sulfate 25%	$14.87 SLI-6400-25	$148,700.00	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID
11	20,000 lbs	Potassium Permanganate	$2.120 SE-3955 F	$42,400.00	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	$2.39	$47,800.00
12	75,000 lbs	Sodium Permanganate - 20% Solution	$1.210 SE-2355-20	$90,750.00	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	$1.4900	$111,750.00
		TOTALS:		$281,850.00		$416,047.50		$38,500.00		$1,564,000.00		$2,371,305.00

Bidding Summary:

80 **Bid requests were issued.**

11 **Bids listed above**

6 **NO BIDS were received.**

63 **Bidders did not respond**

City Council Meeting

Item Number: 8

Meeting Date: September 28, 2021

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: **RESOLUTION APPROVING THE SELECTION OF DUNAWAY ASSOCIATES, LLC, FREESE AND NICHOLS, INC., HALFF ASSOCIATES, INC., KIMLEY-HORN AND ASSOCIATES, INC., MAVERICK ENGINEERING, PARKHILL SMITH & COOPER, INC., DOING BUSINESS AS PARKHILL, STANTEC CONSULTING SERVICES, INC., AND WESTWOOD PROFESSIONAL SERVICES, INC. TO ASSIST THE ENGINEERING SERVICES DEPARTMENT BY PROVIDING PROFESSIONAL ENGINEERING SERVICES AND SERVICES PROVIDED IN CONNECTION THEREWITH ON AN AS-NEEDED BASIS; AUTHORIZING THE NEGOTIATION AND EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH EACH FIRM; PROVIDING THAT EACH AGREEMENT SHALL BE FOR A TERM NOT TO EXCEED THREE YEARS; AUTHORIZING THE NEGOTIATION AND EXECUTION OF TASK ORDERS IN ACCORDANCE WITH SUCH AGREEMENTS; PROVIDING THAT THE PAYMENT FOR EACH TASK ORDER EXECUTED IN ACCORDANCE WITH SUCH AN AGREEMENT SHALL NOT EXCEED $200,000.00; PROVIDING THAT THE TOTAL COST TO THE CITY FOR ALL TASK ORDERS EXECUTED EACH YEAR IN ACCORDANCE WITH EACH AGREEMENT SHALL NOT EXCEED $500,000.00 PER AGREEMENT PER YEAR; AND AUTHORIZING PAYMENT (DISTRICT: NONE) (GENERAL SERVICES)**

Purpose:

Approval of a resolution selecting eight (8) engineering firms to provide on-call engineering professional services on an as needed basis.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is not required at this time.

Discussion:

Motion 073-2021 authorized the City Manager to advertise a request for qualifications for professional services for up to eight (8) firms to assist the Engineering Services Department by providing professional engineering services, architecture services and real estate appraising services on an as-needed basis for three (3) years. One hundred sixty-eight (168) request for qualifications were issued. We received twenty-one (21) statements of qualifications. Staff recommends selecting Dunaway Associates, L.P., Freese and Nichols, Inc., Halff Associates, Inc., Kimley-Horn and Associates, Inc., Maverick Engineering, Parkhill Smith & Cooper, Inc., Stantec Consulting Services, Inc., and Westwood Professional Services, Inc. and entering into an agreement with each firm to provide these services. Please see the attached memo, from Matt Carr, City Engineer for additional information.

Tina Gauz

City Manager's Office

INTEROFFICE MEMORANDUM

TO: Erika Martinez, Purchasing Manager

FROM: Matt Carr, City Engineer

SUBJECT: Professional Services Contract for On-Call Engineering Contracts

DATE: September 13, 2021 **COUNCIL MEETING DATE:** September 28, 2021

Please carry a council agenda item to gain approval for us to enter into PSAs with Eight (8) firms to perform work for Engineering Services. The contracts will be task order style as used currently by us.

The eight firms, selected solely based on their qualifications are: (1) Dunaway Associates, L.P.; (2) Freese and Nichols, Inc.; (3) Halff Associates, Inc.; (4) Kimley-Horn and Associates, Inc.; (5) Maverick Engineering; (6) Parkhill Smith & Cooper, Inc.; (7) Stantec Consulting Services, Inc.; and (8) Westwood Professional Services, Inc. (Firms listed in alphabetical order)

Each of the eight firms will be considered prequalified to enter into a task order contract to perform engineering work as needed by Engineering Services. Funds to pay the firms will be determined at the time of issuance of each task order.

The contracts provide for the issuance of contracts that do not exceed: (A) $200,000.00 per task order, and (B) $500,000.00 per year. All task orders will be for services to supplement the engineering work performed by Engineering Services' staff. The contracts will also be available for use by other Departments of the City that require engineering services that are within the scope of the RFQ.

Please let me know if you have any questions.

cc: Jose Ortiz
Regina Stephenson

RESOLUTION NO. _____

RESOLUTION APPROVING THE SELECTION OF DUNAWAY ASSOCIATES, LLC, FREESE AND NICHOLS, INC., HALFF ASSOCIATES, INC., KIMLEY-HORN AND ASSOCIATES, INC., MAVERICK ENGINEERING, PARKHILL SMITH & COOPER, INC., DOING BUSINESS AS PARKHILL, STANTEC CONSULTING SERVICES, INC., AND WESTWOOD PROFESSIONAL SERVICES, INC. TO ASSIST THE ENGINEERING SERVICES DEPARTMENT BY PROVIDING PROFESSIONAL ENGINEERING SERVICES AND SERVICES PROVIDED IN CONNECTION THEREWITH ON AN AS-NEEDED BASIS; AUTHORIZING THE NEGOTIATION AND EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH EACH FIRM; PROVIDING THAT EACH AGREEMENT SHALL BE FOR A TERM NOT TO EXCEED THREE YEARS; AUTHORIZING THE NEGOTIATION AND EXECUTION OF TASK ORDERS IN ACCORDANCE WITH SUCH AGREEMENTS; PROVIDING THAT THE PAYMENT FOR EACH TASK ORDER EXECUTED IN ACCORDANCE WITH SUCH AN AGREEMENT SHALL NOT EXCEED $200,000.00; PROVIDING THAT THE TOTAL COST TO THE CITY FOR ALL TASK ORDERS EXECUTED EACH YEAR IN ACCORDANCE WITH EACH AGREEMENT SHALL NOT EXCEED $500,000.00 PER AGREEMENT PER YEAR; AND AUTHORIZING PAYMENT

WHEREAS, the City of Midland advertised a Request for Qualifications for firms to assist the Engineering Services Department by providing professional engineering services and services provided in connection therewith on an as-needed basis; and

WHEREAS, the firms identified in Section One hereof have agreed to perform said professional services; and

WHEREAS, the City Council finds that the firms identified in Section One hereof are qualified to perform said professional services; and

WHEREAS, the City Council finds that the fees proposed by the firms identified in Section One hereof are consistent with and not higher than the recommended practices and fees published by the applicable professional associations and do not exceed any maximum provided by law; and

WHEREAS, the City Council finds that the firms identified in Section One hereof

provide professional services for a fair and reasonable price; and

WHEREAS, the City Council finds it to be in the public interest to approve the selection of the firms identified in Section One hereof as the most highly qualified providers of said professional services based on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services;

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

SECTION ONE. That the selection of Dunaway Associates, LLC, Freese and Nichols, Inc., Halff Associates, Inc., Kimley-Horn and Associates, Inc., Maverick Engineering, Parkhill Smith & Cooper, Inc., doing business as Parkhill, Stantec Consulting Services, Inc., and Westwood Professional Services, Inc. to assist the Engineering Services Department by providing professional engineering services and services provided in connection therewith on an as-needed basis is hereby approved.

SECTION TWO. That the City Manager is hereby authorized and directed to negotiate and execute, on behalf of the City of Midland, a professional services agreement with each firm identified in Section One hereof for said professional services. Each professional services agreement shall be for a term not to exceed three years, and the agreements shall be in the forms of those attached hereto and incorporated herein as Exhibits "A" through "H" or forms substantially similar thereto.

SECTION THREE. That the City Manager is hereby authorized and directed to negotiate and execute, on behalf of the City of Midland, task orders in accordance with said professional services agreements; provided, however, (1) that the payment from the City for each task order shall not exceed $200,000.00 and (2) that the total cost to the City for all task orders executed each year in accordance with each agreement shall not exceed $500,000.00 per agreement per year.

SECTION FOUR. That the City Comptroller is hereby authorized and directed to

pay for all work performed under professional services agreements and task orders executed in accordance with this resolution, pursuant to the terms of said professional services agreements and task orders, from funds available in authorized projects or the Engineering Services Operating Budget, as appropriate, upon receipt of proper invoices or statements approved by the City Manager.

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:

_____
Regina Stephenson, General Services Director

_____
Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

PROFESSIONAL SERVICES AGREEMENT FOR MULTIPLE PROJECTS #21003914-1

THIS AGREEMENT is made and effective the 29 day of September 2021, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Dunaway Associates, LLC hereinafter referred to as "COMPANY."

WHEREAS, CITY desires to retain COMPANY, a professional engineering firm, to provide professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith on one or more projects in which the CITY is involved; and

WHEREAS, COMPANY desires to provide such services on such projects as may be agreed from time to time by the parties;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith for the City of Midland.

ARTICLE II. SERVICES TO BE PERFORMED

1. This Agreement shall apply to as many projects as CITY and COMPANY agree will be performed under the terms and conditions of this Agreement.
2. Each project that COMPANY performs for CITY hereunder shall be designated by a "Task Order." A Task Order shall be in the form of that attached hereto and incorporated herein as Exhibit "A" or a form substantially similar thereto. No Task Order shall be binding or enforceable unless and until it has been properly executed by both CITY and COMPANY. Each properly executed Task Order shall become a separate supplemental agreement to this Agreement.
3. COMPANY shall provide those services described in each properly executed Task Order.
4. COMPANY shall perform said services (1) with the professional skill and care ordinarily provided by competent professionals practicing in the same or similar locality and under the same or similar circumstances and professional license and (2) as expeditiously as is

prudent considering the ordinary professional skill and care of a competent professional. COMPANY represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform said services.

5. In resolving potential conflicts between this Agreement and the Task Order pertaining to a specific project, the terms of the Task Order shall control except to the extent that the terms of the Task Order conflicts with Article III below.

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY for said professional services in accordance with Part 5 of each Task Order; provided, however, (1) that the payment from CITY to COMPANY for each Task Order shall not exceed $200,000.00 and (2) that the total cost to CITY for all Task Orders executed by CITY and COMPANY each year in accordance with this Agreement shall not exceed $500,000.00 per year. COMPANY shall provide to CITY a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in the Task Order incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of the date on which COMPANY's invoice is received by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion of an invoice, CITY shall notify COMPANY of CITY's objection and the grounds therefor within 15 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. CITY 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 October 1, 2021 until September 30, 2024, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

CITY 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 CITY'S sole discretion to cancel the Agreement during the term of the Agreement without penalty to CITY. 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

COMPANY 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 CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

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

All reports, information and other data ("*Instruments of Service*"), given to, prepared or assembled by COMPANY under this Agreement, and any other related documents or items shall become the sole property of CITY and shall be delivered to CITY, without restriction, except that COMPANY may make copies of any and all Instruments of Service for its files. CITY shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of COMPANY, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Agreement shall be construed as creating a partnership or joint enterprise between CITY 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 CITY. Further, it is specifically understood and agreed that nothing in this agreement is intended or 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. 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 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 CITY as an additional insured and waive subrogation in favor of CITY.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city 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 CITY as an additional insured and waive subrogation in favor of CITY.

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 CITY.

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY 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 the City of Midland and policies that name the City of Midland 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 CITY. CITY 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 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. COMPANY SPECIFICALLY 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), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

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

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

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

ARTICLE XI. 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.**

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

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.

ARTICLE XIII. RELEASE

NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY 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. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE XIV. GENERAL PROVISIONS

A. Waiver. No waiver by CITY 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. 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. 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 contract 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 CITY: City Manager's Office
P.O. Box 1152
Midland, Texas 79702

If to COMPANY: Dunaway Associates, LLC
4000 N. Big Spring Street, Suite 101
Midland, Texas 79705

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 its legal representative, shall give the City Manager, or any other reasonable official of CITY, 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 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 COMPANY shall 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 (6) 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 provide such written notification 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 COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request 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 to the contrary, COMPANY's failure to comply with the requirements of this Section 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 CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Agreement are reasonable. The provisions and obligations of this Section shall survive the termination of this Agreement.

J. Prompt Pay Act. CITY 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, *et seq.*, as amended. COMPANY agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

L. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Agreement, Company hereby verifies:

- that Company does not boycott Israel and will not boycott Israel during the term of this Agreement;
- that Company does not boycott energy companies and will not boycott energy companies during the term of this Agreement; and
- that Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

To the extent that the Anti-Boycott Statutes do not apply to this Agreement, such verification is not required, and Company shall be deemed to have not made such verification.

M. Records Retention and Production of Information. To the extent that this Agreement constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to CITY for the duration of this Agreement; (ii) promptly provide to CITY any contracting information related to the Agreement that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Agreement, either: (a) provide at no cost to CITY all contracting information related to the Agreement that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to CITY.

N. Public Information. To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, COMPANY agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

O. 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 CITY is hereby made void and of no force or effect. CITY's sole and exclusive obligations under this Agreement are contained in the provisions of this Professional Services Agreement that precede the signature page(s), which evidences the parties' execution.

P. Company agrees that all iron or steel products produced through a manufacturing process and used in the project that is the subject of this Agreement shall be produced in the United States in accordance with Government Code § 2252.202, et seq., as amended.

[Signature Pages Follow].

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____§
§
COUNTY OF _____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Dunaway Associates, LLC, 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 ____day of _____, 20____.

_____
Notary Public, State of Texas

EXHIBIT "A"

TASK ORDER NO. _

This Task Order pertains to an Agreement by and between City of Midland, Texas, ("CITY"), and _____ ("COMPANY"), dated _____, 20___, ("the Agreement"). COMPANY shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

TASK ORDER NUMBER: ___
PROJECT NAME: _____

PART 1.0 PROJECT DESCRIPTION:

PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY COMPANY ON THE PROJECT:

PART 3.0 CITY'S RESPONSIBILITIES:

PART 4.0 PERIODS OF SERVICE:

PART 5.0 PAYMENTS TO COMPANY:

PART 6.0 OTHER:

This Task Order is executed this _____ day of _____, 20___.

CITY OF MIDLAND, TEXAS "CITY"		_____ "COMPANY"	
BY:	_____	BY:	_____
NAME:	Robert Patrick	NAME:	_____
TITLE:	City Manager	TITLE:	_____
ADDRESS:	P.O. Box 1152 Midland, TX 79702	ADDRESS:	_____ _____

EXHIBIT "B"

PROFESSIONAL SERVICES AGREEMENT FOR MULTIPLE PROJECTS #21003914-2

THIS AGREEMENT is made and effective the 29 day of September 2021, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Freese and Nichols, Inc. hereinafter referred to as "COMPANY."

WHEREAS, CITY desires to retain COMPANY, a professional engineering firm, to provide professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith on one or more projects in which the CITY is involved; and

WHEREAS, COMPANY desires to provide such services on such projects as may be agreed from time to time by the parties;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith for the City of Midland.

ARTICLE II. SERVICES TO BE PERFORMED

1. This Agreement shall apply to as many projects as CITY and COMPANY agree will be performed under the terms and conditions of this Agreement.
2. Each project that COMPANY performs for CITY hereunder shall be designated by a "Task Order." A Task Order shall be in the form of that attached hereto and incorporated herein as Exhibit "A" or a form substantially similar thereto. No Task Order shall be binding or enforceable unless and until it has been properly executed by both CITY and COMPANY. Each properly executed Task Order shall become a separate supplemental agreement to this Agreement.
3. COMPANY shall provide those services described in each properly executed Task Order.
4. COMPANY shall perform said services (1) with the professional skill and care ordinarily provided by competent professionals practicing in the same or similar locality and under the same or similar circumstances and professional license and (2) as expeditiously as is

prudent considering the ordinary professional skill and care of a competent professional. COMPANY represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform said services.

5. In resolving potential conflicts between this Agreement and the Task Order pertaining to a specific project, the terms of the Task Order shall control except to the extent that the terms of the Task Order conflicts with Article III below.

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY for said professional services in accordance with Part 5 of each Task Order; provided, however, (1) that the payment from CITY to COMPANY for each Task Order shall not exceed $200,000.00 and (2) that the total cost to CITY for all Task Orders executed by CITY and COMPANY each year in accordance with this Agreement shall not exceed $500,000.00 per year. COMPANY shall provide to CITY a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in the Task Order incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of the date on which COMPANY's invoice is received by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion of an invoice, CITY shall notify COMPANY of CITY's objection and the grounds therefor within 15 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. CITY 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 October 1, 2021 until September 30, 2024, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

CITY 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 CITY'S sole discretion to cancel the Agreement during the term of the Agreement without penalty to CITY. 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

COMPANY 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 CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

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

All reports, information and other data ("*Instruments of Service*"), given to, prepared or assembled by COMPANY under this Agreement, and any other related documents or items shall become the sole property of CITY and shall be delivered to CITY, without restriction, except that COMPANY may make copies of any and all Instruments of Service for its files. CITY shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of COMPANY, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Agreement shall be construed as creating a partnership or joint enterprise between CITY 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 CITY. Further, it is specifically understood and agreed that nothing in this agreement is intended or 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. 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 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 CITY as an additional insured and waive subrogation in favor of CITY.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city 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 CITY as an additional insured and waive subrogation in favor of CITY.

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 CITY.

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY 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 the City of Midland and policies that name the City of Midland 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 CITY. CITY 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.

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[Signature Pages Follow].

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____§
§
COUNTY OF _____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Freese and Nichols, Inc., 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 ____day of _____, 20____.

_____
Notary Public, State of Texas

EXHIBIT "A"

TASK ORDER NO. _

This Task Order pertains to an Agreement by and between City of Midland, Texas, ("CITY"), and _____ ("COMPANY"), dated _____, 20___, ("the Agreement"). COMPANY shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

TASK ORDER NUMBER: ___
PROJECT NAME: _____

PART 1.0 PROJECT DESCRIPTION:

PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY COMPANY ON THE PROJECT:

PART 3.0 CITY'S RESPONSIBILITIES:

PART 4.0 PERIODS OF SERVICE:

PART 5.0 PAYMENTS TO COMPANY:

PART 6.0 OTHER:

This Task Order is executed this _____ day of _____, 20___.

CITY OF MIDLAND, TEXAS "CITY"		_____ "COMPANY"	
BY:	_____	BY:	_____
NAME:	Robert Patrick	NAME:	_____
TITLE:	City Manager	TITLE:	_____
ADDRESS:	P.O. Box 1152 Midland, TX 79702	ADDRESS:	_____ _____

EXHIBIT "C"

PROFESSIONAL SERVICES AGREEMENT FOR MULTIPLE PROJECTS #21003914-3

THIS AGREEMENT is made and effective the 29 day of September 2021, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Halff Associates, Inc. hereinafter referred to as "COMPANY."

WHEREAS, CITY desires to retain COMPANY, a professional engineering firm, to provide professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith on one or more projects in which the CITY is involved; and

WHEREAS, COMPANY desires to provide such services on such projects as may be agreed from time to time by the parties;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith for the City of Midland.

ARTICLE II. SERVICES TO BE PERFORMED

1. This Agreement shall apply to as many projects as CITY and COMPANY agree will be performed under the terms and conditions of this Agreement.
2. Each project that COMPANY performs for CITY hereunder shall be designated by a "Task Order." A Task Order shall be in the form of that attached hereto and incorporated herein as Exhibit "A" or a form substantially similar thereto. No Task Order shall be binding or enforceable unless and until it has been properly executed by both CITY and COMPANY. Each properly executed Task Order shall become a separate supplemental agreement to this Agreement.
3. COMPANY shall provide those services described in each properly executed Task Order.
4. COMPANY shall perform said services (1) with the professional skill and care ordinarily provided by competent professionals practicing in the same or similar locality and under the same or similar circumstances and professional license and (2) as expeditiously as is

prudent considering the ordinary professional skill and care of a competent professional. COMPANY represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform said services.

5. In resolving potential conflicts between this Agreement and the Task Order pertaining to a specific project, the terms of the Task Order shall control except to the extent that the terms of the Task Order conflicts with Article III below.

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY for said professional services in accordance with Part 5 of each Task Order; provided, however, (1) that the payment from CITY to COMPANY for each Task Order shall not exceed $200,000.00 and (2) that the total cost to CITY for all Task Orders executed by CITY and COMPANY each year in accordance with this Agreement shall not exceed $500,000.00 per year. COMPANY shall provide to CITY a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in the Task Order incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of the date on which COMPANY's invoice is received by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion of an invoice, CITY shall notify COMPANY of CITY's objection and the grounds therefor within 15 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. CITY 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 October 1, 2021 until September 30, 2024, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

CITY 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 CITY'S sole discretion to cancel the Agreement during the term of the Agreement without penalty to CITY. 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

COMPANY 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 CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

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

All reports, information and other data ("*Instruments of Service*"), given to, prepared or assembled by COMPANY under this Agreement, and any other related documents or items shall become the sole property of CITY and shall be delivered to CITY, without restriction, except that COMPANY may make copies of any and all Instruments of Service for its files. CITY shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of COMPANY, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Agreement shall be construed as creating a partnership or joint enterprise between CITY 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 CITY. Further, it is specifically understood and agreed that nothing in this agreement is intended or 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. 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 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 CITY as an additional insured and waive subrogation in favor of CITY.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city 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 CITY as an additional insured and waive subrogation in favor of CITY.

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 CITY.

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY 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 the City of Midland and policies that name the City of Midland 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 CITY. CITY 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 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. COMPANY SPECIFICALLY 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), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

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

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

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

ARTICLE XI. 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.**

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

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.

ARTICLE XIII. RELEASE

NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY 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. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE XIV. GENERAL PROVISIONS

A. Waiver. No waiver by CITY 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. 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. 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 contract 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 CITY: City Manager's Office
P.O. Box 1152
Midland, Texas 79702

If to COMPANY: Halff Associates, Inc.
3300 North A St, Building 2, Suite 120
Midland, Texas 79705

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 its legal representative, shall give the City Manager, or any other reasonable official of CITY, 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 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 COMPANY shall 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 (6) 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 provide such written notification 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 COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request 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 to the contrary, COMPANY's failure to comply with the requirements of this Section 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 CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Agreement are reasonable. The provisions and obligations of this Section shall survive the termination of this Agreement.

J. Prompt Pay Act. CITY 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, *et seq.*, as amended. COMPANY agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

L. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Agreement, Company hereby verifies:

- that Company does not boycott Israel and will not boycott Israel during the term of this Agreement;
- that Company does not boycott energy companies and will not boycott energy companies during the term of this Agreement; and
- that Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

To the extent that the Anti-Boycott Statutes do not apply to this Agreement, such verification is not required, and Company shall be deemed to have not made such verification.

M. Records Retention and Production of Information. To the extent that this Agreement constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to CITY for the duration of this Agreement; (ii) promptly provide to CITY any contracting information related to the Agreement that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Agreement, either: (a) provide at no cost to CITY all contracting information related to the Agreement that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to CITY.

N. Public Information. To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, COMPANY agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

O. 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 CITY is hereby made void and of no force or effect. CITY's sole and exclusive obligations under this Agreement are contained in the provisions of this Professional Services Agreement that precede the signature page(s), which evidences the parties' execution.

P. Company agrees that all iron or steel products produced through a manufacturing process and used in the project that is the subject of this Agreement shall be produced in the United States in accordance with Government Code § 2252.202, et seq., as amended.

[Signature Pages Follow].

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____§
§
COUNTY OF _____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Halff Associates, Inc., 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 ____day of _____, 20____.

_____
Notary Public, State of Texas

EXHIBIT "A"

TASK ORDER NO. _

This Task Order pertains to an Agreement by and between City of Midland, Texas, ("CITY"), and _____ ("COMPANY"), dated _____, 20___, ("the Agreement"). COMPANY shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

TASK ORDER NUMBER: ___
PROJECT NAME: _____

PART 1.0 PROJECT DESCRIPTION:

PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY COMPANY ON THE PROJECT:

PART 3.0 CITY'S RESPONSIBILITIES:

PART 4.0 PERIODS OF SERVICE:

PART 5.0 PAYMENTS TO COMPANY:

PART 6.0 OTHER:

This Task Order is executed this _____ day of _____, 20___.

CITY OF MIDLAND, TEXAS "CITY"		_____ "COMPANY"	
BY:	_____	BY:	_____
NAME:	Robert Patrick	NAME:	_____
TITLE:	City Manager	TITLE:	_____
ADDRESS:	P.O. Box 1152 Midland, TX 79702	ADDRESS:	_____ _____

EXHIBIT "D"

PROFESSIONAL SERVICES AGREEMENT FOR MULTIPLE PROJECTS #21003914-4

THIS AGREEMENT is made and effective the 29 day of September 2021, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Kimley-Horn and Associates, Inc. hereinafter referred to as "COMPANY."

WHEREAS, CITY desires to retain COMPANY, a professional engineering firm, to provide professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith on one or more projects in which the CITY is involved; and

WHEREAS, COMPANY desires to provide such services on such projects as may be agreed from time to time by the parties;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith for the City of Midland.

ARTICLE II. SERVICES TO BE PERFORMED

1. This Agreement shall apply to as many projects as CITY and COMPANY agree will be performed under the terms and conditions of this Agreement.
2. Each project that COMPANY performs for CITY hereunder shall be designated by a "Task Order." A Task Order shall be in the form of that attached hereto and incorporated herein as Exhibit "A" or a form substantially similar thereto. No Task Order shall be binding or enforceable unless and until it has been properly executed by both CITY and COMPANY. Each properly executed Task Order shall become a separate supplemental agreement to this Agreement.
3. COMPANY shall provide those services described in each properly executed Task Order.
4. COMPANY shall perform said services (1) with the professional skill and care ordinarily provided by competent professionals practicing in the same or similar locality and under the same or similar circumstances and professional license and (2) as expeditiously as is

prudent considering the ordinary professional skill and care of a competent professional. COMPANY represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform said services.

5. In resolving potential conflicts between this Agreement and the Task Order pertaining to a specific project, the terms of the Task Order shall control except to the extent that the terms of the Task Order conflicts with Article III below.

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY for said professional services in accordance with Part 5 of each Task Order; provided, however, (1) that the payment from CITY to COMPANY for each Task Order shall not exceed $200,000.00 and (2) that the total cost to CITY for all Task Orders executed by CITY and COMPANY each year in accordance with this Agreement shall not exceed $500,000.00 per year. COMPANY shall provide to CITY a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in the Task Order incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of the date on which COMPANY's invoice is received by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion of an invoice, CITY shall notify COMPANY of CITY's objection and the grounds therefor within 15 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. CITY in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

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shall be suspended upon termination of the Agreement becoming effective.

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exclusive responsibility for the work. COMPANY is entirely free to do the work in its own way.

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herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of the City of Midland and policies that name the City of Midland 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 CITY. CITY 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 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. COMPANY SPECIFICALLY 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), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

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

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

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

ARTICLE XI. 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.**

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

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.

ARTICLE XIII. RELEASE

NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY 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. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE XIV. GENERAL PROVISIONS

A. Waiver. No waiver by CITY 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. 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. 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 contract 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 CITY: City Manager's Office
P.O. Box 1152
Midland, Texas 79702

If to COMPANY: Kimley-Horn and Associates, Inc.
4411 98th Street, Suite 300
Lubbock, Texas 79424

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 its legal representative, shall give the City Manager, or any other reasonable official of CITY, 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 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 COMPANY shall 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 (6) 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 provide such written notification 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 COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request 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 to the contrary, COMPANY's failure to comply with the requirements of this Section 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 CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Agreement are reasonable. The provisions and obligations of this Section shall survive the termination of this Agreement.

J. Prompt Pay Act. CITY 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, *et seq.*, as amended. COMPANY agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

L. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Agreement, Company hereby verifies:

- that Company does not boycott Israel and will not boycott Israel during the term of this Agreement;
- that Company does not boycott energy companies and will not boycott energy companies during the term of this Agreement; and
- that Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

To the extent that the Anti-Boycott Statutes do not apply to this Agreement, such verification is not required, and Company shall be deemed to have not made such verification.

M. Records Retention and Production of Information. To the extent that this Agreement constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to CITY for the duration of this Agreement; (ii) promptly provide to CITY any contracting information related to the Agreement that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Agreement, either: (a) provide at no cost to CITY all contracting information related to the Agreement that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to CITY.

N. Public Information. To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, COMPANY agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

O. 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 CITY is hereby made void and of no force or effect. CITY's sole and exclusive obligations under this Agreement are contained in the provisions of this Professional Services Agreement that precede the signature page(s), which evidences the parties' execution.

P. Company agrees that all iron or steel products produced through a manufacturing process and used in the project that is the subject of this Agreement shall be produced in the United States in accordance with Government Code § 2252.202, et seq., as amended.

[Signature Pages Follow].

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____§
§
COUNTY OF _____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Kimley-Horn and Associates, Inc., 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 ____day of _____, 20____.

_____
Notary Public, State of Texas

EXHIBIT "A"

TASK ORDER NO. _

This Task Order pertains to an Agreement by and between City of Midland, Texas, ("CITY"), and _____ ("COMPANY"), dated _____, 20___, ("the Agreement"). COMPANY shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

TASK ORDER NUMBER: ___
PROJECT NAME: _____

PART 1.0 PROJECT DESCRIPTION:

PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY COMPANY ON THE PROJECT:

PART 3.0 CITY'S RESPONSIBILITIES:

PART 4.0 PERIODS OF SERVICE:

PART 5.0 PAYMENTS TO COMPANY:

PART 6.0 OTHER:

This Task Order is executed this _____ day of _____, 20___.

CITY OF MIDLAND, TEXAS "CITY"		_____ "COMPANY"	
BY:	_____	BY:	_____
NAME:	Robert Patrick	NAME:	_____
TITLE:	City Manager	TITLE:	_____
ADDRESS:	P.O. Box 1152 Midland, TX 79702	ADDRESS:	_____ _____

EXHIBIT "E"

PROFESSIONAL SERVICES AGREEMENT FOR MULTIPLE PROJECTS #21003914-5

THIS AGREEMENT is made and effective the 29 day of September 2021, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Maverick Engineering hereinafter referred to as "COMPANY."

WHEREAS, CITY desires to retain COMPANY, a professional engineering firm, to provide professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith on one or more projects in which the CITY is involved; and

WHEREAS, COMPANY desires to provide such services on such projects as may be agreed from time to time by the parties;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith for the City of Midland.

ARTICLE II. SERVICES TO BE PERFORMED

1. This Agreement shall apply to as many projects as CITY and COMPANY agree will be performed under the terms and conditions of this Agreement.
2. Each project that COMPANY performs for CITY hereunder shall be designated by a "Task Order." A Task Order shall be in the form of that attached hereto and incorporated herein as Exhibit "A" or a form substantially similar thereto. No Task Order shall be binding or enforceable unless and until it has been properly executed by both CITY and COMPANY. Each properly executed Task Order shall become a separate supplemental agreement to this Agreement.
3. COMPANY shall provide those services described in each properly executed Task Order.
4. COMPANY shall perform said services (1) with the professional skill and care ordinarily provided by competent professionals practicing in the same or similar locality and under the same or similar circumstances and professional license and (2) as expeditiously as is

prudent considering the ordinary professional skill and care of a competent professional. COMPANY represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform said services.

5. In resolving potential conflicts between this Agreement and the Task Order pertaining to a specific project, the terms of the Task Order shall control except to the extent that the terms of the Task Order conflicts with Article III below.

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY for said professional services in accordance with Part 5 of each Task Order; provided, however, (1) that the payment from CITY to COMPANY for each Task Order shall not exceed $200,000.00 and (2) that the total cost to CITY for all Task Orders executed by CITY and COMPANY each year in accordance with this Agreement shall not exceed $500,000.00 per year. COMPANY shall provide to CITY a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in the Task Order incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of the date on which COMPANY's invoice is received by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion of an invoice, CITY shall notify COMPANY of CITY's objection and the grounds therefor within 15 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. CITY 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 October 1, 2021 until September 30, 2024, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

CITY 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 CITY'S sole discretion to cancel the Agreement during the term of the Agreement without penalty to CITY. 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

COMPANY 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 CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

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

All reports, information and other data ("*Instruments of Service*"), given to, prepared or assembled by COMPANY under this Agreement, and any other related documents or items shall become the sole property of CITY and shall be delivered to CITY, without restriction, except that COMPANY may make copies of any and all Instruments of Service for its files. CITY shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of COMPANY, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Agreement shall be construed as creating a partnership or joint enterprise between CITY 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 CITY. Further, it is specifically understood and agreed that nothing in this agreement is intended or 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. 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 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 CITY as an additional insured and waive subrogation in favor of CITY.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city 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 CITY as an additional insured and waive subrogation in favor of CITY.

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 CITY.

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY 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 the City of Midland and policies that name the City of Midland 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 CITY. CITY 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 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. COMPANY SPECIFICALLY 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), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

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A. Waiver. No waiver by CITY 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.

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Midland, Texas 79702

If to COMPANY: Maverick Engineering
1909 W. Wall Street, Suite K
Midland, Texas 79704

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

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

L. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Agreement, Company hereby verifies:

- that Company does not boycott Israel and will not boycott Israel during the term of this Agreement;
- that Company does not boycott energy companies and will not boycott energy companies during the term of this Agreement; and
- that Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

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P. Company agrees that all iron or steel products produced through a manufacturing process and used in the project that is the subject of this Agreement shall be produced in the United States in accordance with Government Code § 2252.202, et seq., as amended.

[Signature Pages Follow].

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____§
§
COUNTY OF _____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Maverick Engineering, 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 ____day of _____, 20____.

_____
Notary Public, State of Texas

EXHIBIT "A"

TASK ORDER NO. _

This Task Order pertains to an Agreement by and between City of Midland, Texas, ("CITY"), and _____ ("COMPANY"), dated _____, 20___, ("the Agreement"). COMPANY shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

TASK ORDER NUMBER: ___
PROJECT NAME: _____

PART 1.0 PROJECT DESCRIPTION:

PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY COMPANY ON THE PROJECT:

PART 3.0 CITY'S RESPONSIBILITIES:

PART 4.0 PERIODS OF SERVICE:

PART 5.0 PAYMENTS TO COMPANY:

PART 6.0 OTHER:

This Task Order is executed this _____ day of _____, 20___.

CITY OF MIDLAND, TEXAS "CITY"		_____ "COMPANY"	
BY:	_____	BY:	_____
NAME:	Robert Patrick	NAME:	_____
TITLE:	City Manager	TITLE:	_____
ADDRESS:	P.O. Box 1152 Midland, TX 79702	ADDRESS:	_____ _____

EXHIBIT "F"

PROFESSIONAL SERVICES AGREEMENT FOR MULTIPLE PROJECTS #21003914-6

THIS AGREEMENT is made and effective the 29 day of September 2021, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Parkhill Smith & Cooper, Inc. dba Parkhill hereinafter referred to as "COMPANY."

WHEREAS, CITY desires to retain COMPANY, a professional engineering firm, to provide professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith on one or more projects in which the CITY is involved; and

WHEREAS, COMPANY desires to provide such services on such projects as may be agreed from time to time by the parties;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith for the City of Midland.

ARTICLE II. SERVICES TO BE PERFORMED

1. This Agreement shall apply to as many projects as CITY and COMPANY agree will be performed under the terms and conditions of this Agreement.
2. Each project that COMPANY performs for CITY hereunder shall be designated by a "Task Order." A Task Order shall be in the form of that attached hereto and incorporated herein as Exhibit "A" or a form substantially similar thereto. No Task Order shall be binding or enforceable unless and until it has been properly executed by both CITY and COMPANY. Each properly executed Task Order shall become a separate supplemental agreement to this Agreement.
3. COMPANY shall provide those services described in each properly executed Task Order.
4. COMPANY shall perform said services (1) with the professional skill and care ordinarily provided by competent professionals practicing in the same or similar locality and under the same or similar circumstances and professional license and (2) as expeditiously as is

prudent considering the ordinary professional skill and care of a competent professional. COMPANY represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform said services.

5. In resolving potential conflicts between this Agreement and the Task Order pertaining to a specific project, the terms of the Task Order shall control except to the extent that the terms of the Task Order conflicts with Article III below.

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY for said professional services in accordance with Part 5 of each Task Order; provided, however, (1) that the payment from CITY to COMPANY for each Task Order shall not exceed $200,000.00 and (2) that the total cost to CITY for all Task Orders executed by CITY and COMPANY each year in accordance with this Agreement shall not exceed $500,000.00 per year. COMPANY shall provide to CITY a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in the Task Order incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of the date on which COMPANY's invoice is received by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion of an invoice, CITY shall notify COMPANY of CITY's objection and the grounds therefor within 15 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. CITY 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 October 1, 2021 until September 30, 2024, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

CITY 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 CITY'S sole discretion to cancel the Agreement during the term of the Agreement without penalty to CITY. 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

COMPANY 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 CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

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

All reports, information and other data ("*Instruments of Service*"), given to, prepared or assembled by COMPANY under this Agreement, and any other related documents or items shall become the sole property of CITY and shall be delivered to CITY, without restriction, except that COMPANY may make copies of any and all Instruments of Service for its files. CITY shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of COMPANY, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Agreement shall be construed as creating a partnership or joint enterprise between CITY 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 CITY. Further, it is specifically understood and agreed that nothing in this agreement is intended or 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. 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 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 CITY as an additional insured and waive subrogation in favor of CITY.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city 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 CITY as an additional insured and waive subrogation in favor of CITY.

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 CITY.

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY 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 the City of Midland and policies that name the City of Midland 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 CITY. CITY 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 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. COMPANY SPECIFICALLY 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), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

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

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

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

ARTICLE XI. 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.**

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

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.

ARTICLE XIII. RELEASE

NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY 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. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE XIV. GENERAL PROVISIONS

A. Waiver. No waiver by CITY 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. 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. 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 contract 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 CITY: City Manager's Office
P.O. Box 1152
Midland, Texas 79702

If to COMPANY: Parkhill Smith & Cooper, Inc. dba Parkhill
1700 W. Wall Street, Suite 100
Midland, Texas 79701

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 its legal representative, shall give the City Manager, or any other reasonable official of CITY, 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 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 COMPANY shall 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 (6) 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 provide such written notification 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 COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request 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 to the contrary, COMPANY's failure to comply with the requirements of this Section 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 CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Agreement are reasonable. The provisions and obligations of this Section shall survive the termination of this Agreement.

J. Prompt Pay Act. CITY 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, *et seq.*, as amended. COMPANY agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

L. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Agreement, Company hereby verifies:

- that Company does not boycott Israel and will not boycott Israel during the term of this Agreement;
- that Company does not boycott energy companies and will not boycott energy companies during the term of this Agreement; and
- that Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

To the extent that the Anti-Boycott Statutes do not apply to this Agreement, such verification is not required, and Company shall be deemed to have not made such verification.

M. Records Retention and Production of Information. To the extent that this Agreement constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to CITY for the duration of this Agreement; (ii) promptly provide to CITY any contracting information related to the Agreement that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Agreement, either: (a) provide at no cost to CITY all contracting information related to the Agreement that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to CITY.

N. Public Information. To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, COMPANY agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

O. 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 CITY is hereby made void and of no force or effect. CITY's sole and exclusive obligations under this Agreement are contained in the provisions of this Professional Services Agreement that precede the signature page(s), which evidences the parties' execution.

P. Company agrees that all iron or steel products produced through a manufacturing process and used in the project that is the subject of this Agreement shall be produced in the United States in accordance with Government Code § 2252.202, et seq., as amended.

[Signature Pages Follow].

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____§
§
COUNTY OF _____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Parkhill Smith & Cooper, Inc. dba Parkhill, 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 ____day of _____, 20____.

_____
Notary Public, State of Texas

EXHIBIT "A"

TASK ORDER NO. _

This Task Order pertains to an Agreement by and between City of Midland, Texas, ("CITY"), and _____ ("COMPANY"), dated _____, 20___, ("the Agreement"). COMPANY shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

TASK ORDER NUMBER: ___
PROJECT NAME: _____

PART 1.0 PROJECT DESCRIPTION:

PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY COMPANY ON THE PROJECT:

PART 3.0 CITY'S RESPONSIBILITIES:

PART 4.0 PERIODS OF SERVICE:

PART 5.0 PAYMENTS TO COMPANY:

PART 6.0 OTHER:

This Task Order is executed this _____ day of _____, 20___.

CITY OF MIDLAND, TEXAS "CITY"		_____ "COMPANY"	
BY:	_____	BY:	_____
NAME:	Robert Patrick	NAME:	_____
TITLE:	City Manager	TITLE:	_____
ADDRESS:	P.O. Box 1152 Midland, TX 79702	ADDRESS:	_____ _____

EXHIBIT "G"

PROFESSIONAL SERVICES AGREEMENT FOR MULTIPLE PROJECTS #21003914-7

THIS AGREEMENT is made and effective the 29 day of September 2021, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Stantec Consulting Services, Inc. hereinafter referred to as "COMPANY."

WHEREAS, CITY desires to retain COMPANY, a professional engineering firm, to provide professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith on one or more projects in which the CITY is involved; and

WHEREAS, COMPANY desires to provide such services on such projects as may be agreed from time to time by the parties;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith for the City of Midland.

ARTICLE II. SERVICES TO BE PERFORMED

1. This Agreement shall apply to as many projects as CITY and COMPANY agree will be performed under the terms and conditions of this Agreement.
2. Each project that COMPANY performs for CITY hereunder shall be designated by a "Task Order." A Task Order shall be in the form of that attached hereto and incorporated herein as Exhibit "A" or a form substantially similar thereto. No Task Order shall be binding or enforceable unless and until it has been properly executed by both CITY and COMPANY. Each properly executed Task Order shall become a separate supplemental agreement to this Agreement.
3. COMPANY shall provide those services described in each properly executed Task Order.
4. COMPANY shall perform said services (1) with the professional skill and care ordinarily provided by competent professionals practicing in the same or similar locality and under the same or similar circumstances and professional license and (2) as expeditiously as is

prudent considering the ordinary professional skill and care of a competent professional. COMPANY represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform said services.

5. In resolving potential conflicts between this Agreement and the Task Order pertaining to a specific project, the terms of the Task Order shall control except to the extent that the terms of the Task Order conflicts with Article III below.

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY for said professional services in accordance with Part 5 of each Task Order; provided, however, (1) that the payment from CITY to COMPANY for each Task Order shall not exceed $200,000.00 and (2) that the total cost to CITY for all Task Orders executed by CITY and COMPANY each year in accordance with this Agreement shall not exceed $500,000.00 per year. COMPANY shall provide to CITY a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in the Task Order incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of the date on which COMPANY's invoice is received by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion of an invoice, CITY shall notify COMPANY of CITY's objection and the grounds therefor within 15 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. CITY in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

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shall be suspended upon termination of the Agreement becoming effective.

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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. 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 COMPANY's work. COMPANY shall assume

exclusive responsibility for the work. COMPANY is entirely free to do the work in its own way.

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	$1,000,000.00 per occurrence
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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 the City of Midland and policies that name the City of Midland 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 CITY. CITY 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 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. COMPANY SPECIFICALLY 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), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

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

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

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

ARTICLE XI. 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.**

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

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.

ARTICLE XIII. RELEASE

NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY 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. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE XIV. GENERAL PROVISIONS

A. Waiver. No waiver by CITY 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. 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. 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 contract 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 CITY: City Manager's Office
P.O. Box 1152
Midland, Texas 79702

If to COMPANY: Stantec Consulting Services, Inc.
6080 Tennyson Pkwy, Ste. 200
Plano, Texas 75024

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 its legal representative, shall give the City Manager, or any other reasonable official of CITY, 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 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 COMPANY shall 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 (6) 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 provide such written notification 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 COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request 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 to the contrary, COMPANY's failure to comply with the requirements of this Section 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 CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Agreement are reasonable. The provisions and obligations of this Section shall survive the termination of this Agreement.

J. Prompt Pay Act. CITY 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, *et seq.*, as amended. COMPANY agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

L. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Agreement, Company hereby verifies:

- that Company does not boycott Israel and will not boycott Israel during the term of this Agreement;
- that Company does not boycott energy companies and will not boycott energy companies during the term of this Agreement; and
- that Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

To the extent that the Anti-Boycott Statutes do not apply to this Agreement, such verification is not required, and Company shall be deemed to have not made such verification.

M. Records Retention and Production of Information. To the extent that this Agreement constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to CITY for the duration of this Agreement; (ii) promptly provide to CITY any contracting information related to the Agreement that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Agreement, either: (a) provide at no cost to CITY all contracting information related to the Agreement that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to CITY.

N. Public Information. To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, COMPANY agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

O. 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 CITY is hereby made void and of no force or effect. CITY's sole and exclusive obligations under this Agreement are contained in the provisions of this Professional Services Agreement that precede the signature page(s), which evidences the parties' execution.

P. Company agrees that all iron or steel products produced through a manufacturing process and used in the project that is the subject of this Agreement shall be produced in the United States in accordance with Government Code § 2252.202, et seq., as amended.

[Signature Pages Follow].

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____§
§
COUNTY OF _____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Stantec Consulting Services, Inc., 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 ____day of _____, 20____.

_____
Notary Public, State of Texas

EXHIBIT "A"

TASK ORDER NO. _

This Task Order pertains to an Agreement by and between City of Midland, Texas, ("CITY"), and _____ ("COMPANY"), dated _____, 20___, ("the Agreement"). COMPANY shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

TASK ORDER NUMBER: ___
PROJECT NAME: _____

PART 1.0 PROJECT DESCRIPTION:

PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY COMPANY ON THE PROJECT:

PART 3.0 CITY'S RESPONSIBILITIES:

PART 4.0 PERIODS OF SERVICE:

PART 5.0 PAYMENTS TO COMPANY:

PART 6.0 OTHER:

This Task Order is executed this _____ day of _____, 20___.

CITY OF MIDLAND, TEXAS "CITY"		_____ "COMPANY"	
BY:	_____	BY:	_____
NAME:	Robert Patrick	NAME:	_____
TITLE:	City Manager	TITLE:	_____
ADDRESS:	P.O. Box 1152 Midland, TX 79702	ADDRESS:	_____ _____

EXHIBIT "H"

PROFESSIONAL SERVICES AGREEMENT FOR MULTIPLE PROJECTS #21003914-8

THIS AGREEMENT is made and effective the 29 day of September 2021, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Westwood Professional Services, Inc. hereinafter referred to as "COMPANY."

WHEREAS, CITY desires to retain COMPANY, a professional engineering firm, to provide professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith on one or more projects in which the CITY is involved; and

WHEREAS, COMPANY desires to provide such services on such projects as may be agreed from time to time by the parties;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith for the City of Midland.

ARTICLE II. SERVICES TO BE PERFORMED

1. This Agreement shall apply to as many projects as CITY and COMPANY agree will be performed under the terms and conditions of this Agreement.
2. Each project that COMPANY performs for CITY hereunder shall be designated by a "Task Order." A Task Order shall be in the form of that attached hereto and incorporated herein as Exhibit "A" or a form substantially similar thereto. No Task Order shall be binding or enforceable unless and until it has been properly executed by both CITY and COMPANY. Each properly executed Task Order shall become a separate supplemental agreement to this Agreement.
3. COMPANY shall provide those services described in each properly executed Task Order.
4. COMPANY shall perform said services (1) with the professional skill and care ordinarily provided by competent professionals practicing in the same or similar locality and under the same or similar circumstances and professional license and (2) as expeditiously as is

prudent considering the ordinary professional skill and care of a competent professional. COMPANY represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform said services.

5. In resolving potential conflicts between this Agreement and the Task Order pertaining to a specific project, the terms of the Task Order shall control except to the extent that the terms of the Task Order conflicts with Article III below.

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY for said professional services in accordance with Part 5 of each Task Order; provided, however, (1) that the payment from CITY to COMPANY for each Task Order shall not exceed $200,000.00 and (2) that the total cost to CITY for all Task Orders executed by CITY and COMPANY each year in accordance with this Agreement shall not exceed $500,000.00 per year. COMPANY shall provide to CITY a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in the Task Order incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of the date on which COMPANY's invoice is received by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion of an invoice, CITY shall notify COMPANY of CITY's objection and the grounds therefor within 15 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. CITY 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 October 1, 2021 until September 30, 2024, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

CITY 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 CITY'S sole discretion to cancel the Agreement during the term of the Agreement without penalty to CITY. 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

COMPANY 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 CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

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

All reports, information and other data ("*Instruments of Service*"), given to, prepared or assembled by COMPANY under this Agreement, and any other related documents or items shall become the sole property of CITY and shall be delivered to CITY, without restriction, except that COMPANY may make copies of any and all Instruments of Service for its files. CITY shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of COMPANY, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Agreement shall be construed as creating a partnership or joint enterprise between CITY 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 CITY. Further, it is specifically understood and agreed that nothing in this agreement is intended or 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. 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 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 CITY as an additional insured and waive subrogation in favor of CITY.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city 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 CITY as an additional insured and waive subrogation in favor of CITY.

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 CITY.

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY 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 the City of Midland and policies that name the City of Midland 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 CITY. CITY 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.

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BY EXECUTING THIS AGREEMENT, COMPANY 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. COMPANY SPECIFICALLY 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), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

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

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If to COMPANY: Westwood Professional Services, Inc.
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[Signature Pages Follow].

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____§

§

COUNTY OF _____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Westwood Professional Services, Inc., 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 ____day of _____, 20____.

_____

Notary Public, State of Texas

EXHIBIT "A"

TASK ORDER NO. _

This Task Order pertains to an Agreement by and between City of Midland, Texas, ("CITY"), and _____ ("COMPANY"), dated _____, 20___, ("the Agreement"). COMPANY shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

TASK ORDER NUMBER: ___
PROJECT NAME: _____

PART 1.0 PROJECT DESCRIPTION:

PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY COMPANY ON THE PROJECT:

PART 3.0 CITY'S RESPONSIBILITIES:

PART 4.0 PERIODS OF SERVICE:

PART 5.0 PAYMENTS TO COMPANY:

PART 6.0 OTHER:

This Task Order is executed this _____ day of _____, 20___.

CITY OF MIDLAND, TEXAS "CITY"		_____ "COMPANY"	
BY:	_____	BY:	_____
NAME:	Robert Patrick	NAME:	_____
TITLE:	City Manager	TITLE:	_____
ADDRESS:	P.O. Box 1152 Midland, TX 79702	ADDRESS:	_____ _____

PROFESSIONAL SERVICES AGREEMENT FOR MULTIPLE PROJECTS
#21003914-1

THIS AGREEMENT is made and effective the 29 day of September 2021, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Dunaway Associates, LLC hereinafter referred to as "COMPANY."

WHEREAS, CITY desires to retain COMPANY, a professional engineering firm, to provide professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith on one or more projects in which the CITY is involved; and

WHEREAS, COMPANY desires to provide such services on such projects as may be agreed from time to time by the parties;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith for the City of Midland.

ARTICLE II. SERVICES TO BE PERFORMED

1. This Agreement shall apply to as many projects as CITY and COMPANY agree will be performed under the terms and conditions of this Agreement.
2. Each project that COMPANY performs for CITY hereunder shall be designated by a "Task Order." A Task Order shall be in the form of that attached hereto and incorporated herein as Exhibit "A" or a form substantially similar thereto. No Task Order shall be binding or enforceable unless and until it has been properly executed by both CITY and COMPANY. Each properly executed Task Order shall become a separate supplemental agreement to this Agreement.
3. COMPANY shall provide those services described in each properly executed Task Order.
4. COMPANY shall perform said services (1) with the professional skill and care ordinarily provided by competent professionals practicing in the same or similar locality and under the same or similar circumstances and professional license and (2) as expeditiously as is

prudent considering the ordinary professional skill and care of a competent professional. COMPANY represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform said services.

5. In resolving potential conflicts between this Agreement and the Task Order pertaining to a specific project, the terms of the Task Order shall control except to the extent that the terms of the Task Order conflicts with Article III below.

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY for said professional services in accordance with Part 5 of each Task Order; provided, however, (1) that the payment from CITY to COMPANY for each Task Order shall not exceed $200,000.00 and (2) that the total cost to CITY for all Task Orders executed by CITY and COMPANY each year in accordance with this Agreement shall not exceed $500,000.00 per year. COMPANY shall provide to CITY a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in the Task Order incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of the date on which COMPANY's invoice is received by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion of an invoice, CITY shall notify COMPANY of CITY's objection and the grounds therefor within 15 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. CITY 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 October 1, 2021 until September 30, 2024, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

CITY 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 CITY'S sole discretion to cancel the Agreement during the term of the Agreement without penalty to CITY. 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

COMPANY 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 CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

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

All reports, information and other data ("*Instruments of Service*"), given to, prepared or assembled by COMPANY under this Agreement, and any other related documents or items shall become the sole property of CITY and shall be delivered to CITY, without restriction, except that COMPANY may make copies of any and all Instruments of Service for its files. CITY shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of COMPANY, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Agreement shall be construed as creating a partnership or joint enterprise between CITY 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 CITY. Further, it is specifically understood and agreed that nothing in this agreement is intended or 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. 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 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 CITY as an additional insured and waive subrogation in favor of CITY.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city 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 CITY as an additional insured and waive subrogation in favor of CITY.

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 CITY.

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY 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 the City of Midland and policies that name the City of Midland 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 CITY. CITY 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 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. COMPANY SPECIFICALLY 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), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

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

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

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

ARTICLE XI. 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.**

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

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.

ARTICLE XIII. RELEASE

NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY 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. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE XIV. GENERAL PROVISIONS

A. Waiver. No waiver by CITY 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. 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. 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 contract 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 CITY: City Manager's Office
P.O. Box 1152
Midland, Texas 79702

If to COMPANY: Dunaway Associates, LLC
4000 N. Big Spring Street, Suite 101
Midland, Texas 79705

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 its legal representative, shall give the City Manager, or any other reasonable official of CITY, 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 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 COMPANY shall 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 (6) 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 provide such written notification 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 COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request 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 to the contrary, COMPANY's failure to comply with the requirements of this Section 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 CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Agreement are reasonable. The provisions and obligations of this Section shall survive the termination of this Agreement.

J. Prompt Pay Act. CITY 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, *et seq.*, as amended. COMPANY agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

L. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Agreement, Company hereby verifies:

- that Company does not boycott Israel and will not boycott Israel during the term of this Agreement;
- that Company does not boycott energy companies and will not boycott energy companies during the term of this Agreement; and
- that Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

To the extent that the Anti-Boycott Statutes do not apply to this Agreement, such verification is not required, and Company shall be deemed to have not made such verification.

M. Records Retention and Production of Information. To the extent that this Agreement constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to CITY for the duration of this Agreement; (ii) promptly provide to CITY any contracting information related to the Agreement that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Agreement, either: (a) provide at no cost to CITY all contracting information related to the Agreement that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to CITY.

N. Public Information. To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, COMPANY agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

O. 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 CITY is hereby made void and of no force or effect. CITY's sole and exclusive obligations under this Agreement are contained in the provisions of this Professional Services Agreement that precede the signature page(s), which evidences the parties' execution.

P. Company agrees that all iron or steel products produced through a manufacturing process and used in the project that is the subject of this Agreement shall be produced in the United States in accordance with Government Code § 2252.202, et seq., as amended.

[Signature Pages Follow].

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____§
§
COUNTY OF _____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Dunaway Associates, LLC, 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 ____day of _____, 20____.

_____
Notary Public, State of Texas

EXHIBIT "A"

TASK ORDER NO. _

This Task Order pertains to an Agreement by and between City of Midland, Texas, ("CITY"), and _____ ("COMPANY"), dated _____, 20___, ("the Agreement"). COMPANY shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

TASK ORDER NUMBER: ___
PROJECT NAME: _____

PART 1.0 PROJECT DESCRIPTION:

PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY COMPANY ON THE PROJECT:

PART 3.0 CITY'S RESPONSIBILITIES:

PART 4.0 PERIODS OF SERVICE:

PART 5.0 PAYMENTS TO COMPANY:

PART 6.0 OTHER:

This Task Order is executed this _____ day of _____, 20___.

CITY OF MIDLAND, TEXAS "CITY"		_____ "COMPANY"	
BY:	_____	BY:	_____
NAME:	Robert Patrick	NAME:	_____
TITLE:	City Manager	TITLE:	_____
ADDRESS:	P.O. Box 1152 Midland, TX 79702	ADDRESS:	_____ _____

PROFESSIONAL SERVICES AGREEMENT FOR MULTIPLE PROJECTS
#21003914-2

THIS AGREEMENT is made and effective the 29 day of September 2021, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Freese and Nichols, Inc. hereinafter referred to as "COMPANY."

WHEREAS, CITY desires to retain COMPANY, a professional engineering firm, to provide professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith on one or more projects in which the CITY is involved; and

WHEREAS, COMPANY desires to provide such services on such projects as may be agreed from time to time by the parties;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

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3. COMPANY shall provide those services described in each properly executed Task Order.
4. COMPANY shall perform said services (1) with the professional skill and care ordinarily provided by competent professionals practicing in the same or similar locality and under the same or similar circumstances and professional license and (2) as expeditiously as is

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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 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. COMPANY SPECIFICALLY 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), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

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

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

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

ARTICLE XI. 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.**

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

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.

ARTICLE XIII. RELEASE

NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY 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. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE XIV. GENERAL PROVISIONS

A. Waiver. No waiver by CITY 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. 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. 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 contract 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 CITY: City Manager's Office
P.O. Box 1152
Midland, Texas 79702

If to COMPANY: Freese and Nichols, Inc.,
24 Smith Road, Sutie 501
Midland, Texas 79705

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 its legal representative, shall give the City Manager, or any other reasonable official of CITY, 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 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 COMPANY shall 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 (6) 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 provide such written notification 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 COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request 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 to the contrary, COMPANY's failure to comply with the requirements of this Section 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 CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Agreement are reasonable. The provisions and obligations of this Section shall survive the termination of this Agreement.

J. Prompt Pay Act. CITY 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, *et seq.*, as amended. COMPANY agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

L. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Agreement, Company hereby verifies:

- that Company does not boycott Israel and will not boycott Israel during the term of this Agreement;
- that Company does not boycott energy companies and will not boycott energy companies during the term of this Agreement; and
- that Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

To the extent that the Anti-Boycott Statutes do not apply to this Agreement, such verification is not required, and Company shall be deemed to have not made such verification.

M. Records Retention and Production of Information. To the extent that this Agreement constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to CITY for the duration of this Agreement; (ii) promptly provide to CITY any contracting information related to the Agreement that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Agreement, either: (a) provide at no cost to CITY all contracting information related to the Agreement that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to CITY.

N. Public Information. To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, COMPANY agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

O. 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 CITY is hereby made void and of no force or effect. CITY's sole and exclusive obligations under this Agreement are contained in the provisions of this Professional Services Agreement that precede the signature page(s), which evidences the parties' execution.

P. Company agrees that all iron or steel products produced through a manufacturing process and used in the project that is the subject of this Agreement shall be produced in the United States in accordance with Government Code § 2252.202, et seq., as amended.

[Signature Pages Follow].

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____§
§
COUNTY OF _____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Freese and Nichols, Inc., 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 ____day of _____, 20____.

_____
Notary Public, State of Texas

EXHIBIT "A"

TASK ORDER NO. _

This Task Order pertains to an Agreement by and between City of Midland, Texas, ("CITY"), and _____ ("COMPANY"), dated _____, 20___, ("the Agreement"). COMPANY shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

TASK ORDER NUMBER: ___
PROJECT NAME: _____

PART 1.0 PROJECT DESCRIPTION:

PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY COMPANY ON THE PROJECT:

PART 3.0 CITY'S RESPONSIBILITIES:

PART 4.0 PERIODS OF SERVICE:

PART 5.0 PAYMENTS TO COMPANY:

PART 6.0 OTHER:

This Task Order is executed this _____ day of _____, 20___.

CITY OF MIDLAND, TEXAS "CITY"		_____ "COMPANY"	
BY:	_____	BY:	_____
NAME:	Robert Patrick	NAME:	_____
TITLE:	City Manager	TITLE:	_____
ADDRESS:	P.O. Box 1152 Midland, TX 79702	ADDRESS:	_____ _____

PROFESSIONAL SERVICES AGREEMENT FOR MULTIPLE PROJECTS
#21003914-3

THIS AGREEMENT is made and effective the 29 day of September 2021, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Halff Associates, Inc. hereinafter referred to as "COMPANY."

WHEREAS, CITY desires to retain COMPANY, a professional engineering firm, to provide professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith on one or more projects in which the CITY is involved; and

WHEREAS, COMPANY desires to provide such services on such projects as may be agreed from time to time by the parties;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith for the City of Midland.

ARTICLE II. SERVICES TO BE PERFORMED

1. This Agreement shall apply to as many projects as CITY and COMPANY agree will be performed under the terms and conditions of this Agreement.
2. Each project that COMPANY performs for CITY hereunder shall be designated by a "Task Order." A Task Order shall be in the form of that attached hereto and incorporated herein as Exhibit "A" or a form substantially similar thereto. No Task Order shall be binding or enforceable unless and until it has been properly executed by both CITY and COMPANY. Each properly executed Task Order shall become a separate supplemental agreement to this Agreement.
3. COMPANY shall provide those services described in each properly executed Task Order.
4. COMPANY shall perform said services (1) with the professional skill and care ordinarily provided by competent professionals practicing in the same or similar locality and under the same or similar circumstances and professional license and (2) as expeditiously as is

prudent considering the ordinary professional skill and care of a competent professional. COMPANY represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform said services.

5. In resolving potential conflicts between this Agreement and the Task Order pertaining to a specific project, the terms of the Task Order shall control except to the extent that the terms of the Task Order conflicts with Article III below.

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY for said professional services in accordance with Part 5 of each Task Order; provided, however, (1) that the payment from CITY to COMPANY for each Task Order shall not exceed $200,000.00 and (2) that the total cost to CITY for all Task Orders executed by CITY and COMPANY each year in accordance with this Agreement shall not exceed $500,000.00 per year. COMPANY shall provide to CITY a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in the Task Order incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of the date on which COMPANY's invoice is received by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion of an invoice, CITY shall notify COMPANY of CITY's objection and the grounds therefor within 15 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. CITY 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 October 1, 2021 until September 30, 2024, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

CITY 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 CITY'S sole discretion to cancel the Agreement during the term of the Agreement without penalty to CITY. 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

COMPANY 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 CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

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

All reports, information and other data ("*Instruments of Service*"), given to, prepared or assembled by COMPANY under this Agreement, and any other related documents or items shall become the sole property of CITY and shall be delivered to CITY, without restriction, except that COMPANY may make copies of any and all Instruments of Service for its files. CITY shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of COMPANY, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Agreement shall be construed as creating a partnership or joint enterprise between CITY 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 CITY. Further, it is specifically understood and agreed that nothing in this agreement is intended or 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. 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 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 CITY as an additional insured and waive subrogation in favor of CITY.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city 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 CITY as an additional insured and waive subrogation in favor of CITY.

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 CITY.

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY 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 the City of Midland and policies that name the City of Midland 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 CITY. CITY 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.

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[Signature Pages Follow].

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____§
§
COUNTY OF _____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Halff Associates, Inc., 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 ____day of _____, 20____.

_____
Notary Public, State of Texas

EXHIBIT "A"

TASK ORDER NO. _

This Task Order pertains to an Agreement by and between City of Midland, Texas, ("CITY"), and _____ ("COMPANY"), dated _____, 20___, ("the Agreement"). COMPANY shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

TASK ORDER NUMBER: ___
PROJECT NAME: _____

PART 1.0 PROJECT DESCRIPTION:

PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY COMPANY ON THE PROJECT:

PART 3.0 CITY'S RESPONSIBILITIES:

PART 4.0 PERIODS OF SERVICE:

PART 5.0 PAYMENTS TO COMPANY:

PART 6.0 OTHER:

This Task Order is executed this _____ day of _____, 20___.

CITY OF MIDLAND, TEXAS "CITY"		_____ "COMPANY"	
BY:	_____	BY:	_____
NAME:	Robert Patrick	NAME:	_____
TITLE:	City Manager	TITLE:	_____
ADDRESS:	P.O. Box 1152 Midland, TX 79702	ADDRESS:	_____ _____

PROFESSIONAL SERVICES AGREEMENT FOR MULTIPLE PROJECTS
#21003914-4

THIS AGREEMENT is made and effective the 29 day of September 2021, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Kimley-Horn and Associates, Inc. hereinafter referred to as "COMPANY."

WHEREAS, CITY desires to retain COMPANY, a professional engineering firm, to provide professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith on one or more projects in which the CITY is involved; and

WHEREAS, COMPANY desires to provide such services on such projects as may be agreed from time to time by the parties;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith for the City of Midland.

ARTICLE II. SERVICES TO BE PERFORMED

1. This Agreement shall apply to as many projects as CITY and COMPANY agree will be performed under the terms and conditions of this Agreement.
2. Each project that COMPANY performs for CITY hereunder shall be designated by a "Task Order." A Task Order shall be in the form of that attached hereto and incorporated herein as Exhibit "A" or a form substantially similar thereto. No Task Order shall be binding or enforceable unless and until it has been properly executed by both CITY and COMPANY. Each properly executed Task Order shall become a separate supplemental agreement to this Agreement.
3. COMPANY shall provide those services described in each properly executed Task Order.
4. COMPANY shall perform said services (1) with the professional skill and care ordinarily provided by competent professionals practicing in the same or similar locality and under the same or similar circumstances and professional license and (2) as expeditiously as is

prudent considering the ordinary professional skill and care of a competent professional. COMPANY represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform said services.

5. In resolving potential conflicts between this Agreement and the Task Order pertaining to a specific project, the terms of the Task Order shall control except to the extent that the terms of the Task Order conflicts with Article III below.

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY for said professional services in accordance with Part 5 of each Task Order; provided, however, (1) that the payment from CITY to COMPANY for each Task Order shall not exceed $200,000.00 and (2) that the total cost to CITY for all Task Orders executed by CITY and COMPANY each year in accordance with this Agreement shall not exceed $500,000.00 per year. COMPANY shall provide to CITY a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in the Task Order incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of the date on which COMPANY's invoice is received by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion of an invoice, CITY shall notify COMPANY of CITY's objection and the grounds therefor within 15 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. CITY 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 October 1, 2021 until September 30, 2024, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

CITY 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 CITY'S sole discretion to cancel the Agreement during the term of the Agreement without penalty to CITY. 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

COMPANY 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 CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

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

All reports, information and other data ("*Instruments of Service*"), given to, prepared or assembled by COMPANY under this Agreement, and any other related documents or items shall become the sole property of CITY and shall be delivered to CITY, without restriction, except that COMPANY may make copies of any and all Instruments of Service for its files. CITY shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of COMPANY, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Agreement shall be construed as creating a partnership or joint enterprise between CITY 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 CITY. Further, it is specifically understood and agreed that nothing in this agreement is intended or 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. 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 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 CITY as an additional insured and waive subrogation in favor of CITY.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city 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 CITY as an additional insured and waive subrogation in favor of CITY.

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 CITY.

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY 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 the City of Midland and policies that name the City of Midland 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 CITY. CITY 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 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. COMPANY SPECIFICALLY 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), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

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

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

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

ARTICLE XI. 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.**

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

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.

ARTICLE XIII. RELEASE

NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY 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. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE XIV. GENERAL PROVISIONS

A. Waiver. No waiver by CITY 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. 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. 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 contract 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 CITY: City Manager's Office
P.O. Box 1152
Midland, Texas 79702

If to COMPANY: Kimley-Horn and Associates, Inc.
4411 98th Street, Suite 300
Lubbock, Texas 79424

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 its legal representative, shall give the City Manager, or any other reasonable official of CITY, 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 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 COMPANY shall 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 (6) 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 provide such written notification 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 COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request 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 to the contrary, COMPANY's failure to comply with the requirements of this Section 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 CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Agreement are reasonable. The provisions and obligations of this Section shall survive the termination of this Agreement.

J. Prompt Pay Act. CITY 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, *et seq.*, as amended. COMPANY agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

L. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Agreement, Company hereby verifies:

- that Company does not boycott Israel and will not boycott Israel during the term of this Agreement;
- that Company does not boycott energy companies and will not boycott energy companies during the term of this Agreement; and
- that Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

To the extent that the Anti-Boycott Statutes do not apply to this Agreement, such verification is not required, and Company shall be deemed to have not made such verification.

M. Records Retention and Production of Information. To the extent that this Agreement constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to CITY for the duration of this Agreement; (ii) promptly provide to CITY any contracting information related to the Agreement that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Agreement, either: (a) provide at no cost to CITY all contracting information related to the Agreement that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to CITY.

N. Public Information. To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, COMPANY agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

O. 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 CITY is hereby made void and of no force or effect. CITY's sole and exclusive obligations under this Agreement are contained in the provisions of this Professional Services Agreement that precede the signature page(s), which evidences the parties' execution.

P. Company agrees that all iron or steel products produced through a manufacturing process and used in the project that is the subject of this Agreement shall be produced in the United States in accordance with Government Code § 2252.202, et seq., as amended.

[Signature Pages Follow].

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____§
§
COUNTY OF _____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Kimley-Horn and Associates, Inc., 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 ____day of _____, 20____.

_____
Notary Public, State of Texas

EXHIBIT "A"

TASK ORDER NO. _

This Task Order pertains to an Agreement by and between City of Midland, Texas, ("CITY"), and _____ ("COMPANY"), dated _____, 20___, ("the Agreement"). COMPANY shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

TASK ORDER NUMBER: ___
PROJECT NAME: _____

PART 1.0 PROJECT DESCRIPTION:

PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY COMPANY ON THE PROJECT:

PART 3.0 CITY'S RESPONSIBILITIES:

PART 4.0 PERIODS OF SERVICE:

PART 5.0 PAYMENTS TO COMPANY:

PART 6.0 OTHER:

This Task Order is executed this _____ day of _____, 20___.

CITY OF MIDLAND, TEXAS "CITY"		_____ "COMPANY"	
BY:	_____	BY:	_____
NAME:	Robert Patrick	NAME:	_____
TITLE:	City Manager	TITLE:	_____
ADDRESS:	P.O. Box 1152 Midland, TX 79702	ADDRESS:	_____ _____

PROFESSIONAL SERVICES AGREEMENT FOR MULTIPLE PROJECTS
#21003914-5

THIS AGREEMENT is made and effective the 29 day of September 2021, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Maverick Engineering hereinafter referred to as "COMPANY."

WHEREAS, CITY desires to retain COMPANY, a professional engineering firm, to provide professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith on one or more projects in which the CITY is involved; and

WHEREAS, COMPANY desires to provide such services on such projects as may be agreed from time to time by the parties;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

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4. COMPANY shall perform said services (1) with the professional skill and care ordinarily provided by competent professionals practicing in the same or similar locality and under the same or similar circumstances and professional license and (2) as expeditiously as is

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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 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. COMPANY SPECIFICALLY 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), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

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

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

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

ARTICLE XI. 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.**

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

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.

ARTICLE XIII. RELEASE

NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY 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. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE XIV. GENERAL PROVISIONS

A. Waiver. No waiver by CITY 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. 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. 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 contract 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 CITY: City Manager's Office
P.O. Box 1152
Midland, Texas 79702

If to COMPANY: Maverick Engineering
1909 W. Wall Street, Suite K
Midland, Texas 79704

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 its legal representative, shall give the City Manager, or any other reasonable official of CITY, 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 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 COMPANY shall 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 (6) 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 provide such written notification 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 COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request 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 to the contrary, COMPANY's failure to comply with the requirements of this Section 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 CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Agreement are reasonable. The provisions and obligations of this Section shall survive the termination of this Agreement.

J. Prompt Pay Act. CITY 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, *et seq.*, as amended. COMPANY agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

L. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Agreement, Company hereby verifies:

- that Company does not boycott Israel and will not boycott Israel during the term of this Agreement;
- that Company does not boycott energy companies and will not boycott energy companies during the term of this Agreement; and
- that Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

To the extent that the Anti-Boycott Statutes do not apply to this Agreement, such verification is not required, and Company shall be deemed to have not made such verification.

M. Records Retention and Production of Information. To the extent that this Agreement constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to CITY for the duration of this Agreement; (ii) promptly provide to CITY any contracting information related to the Agreement that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Agreement, either: (a) provide at no cost to CITY all contracting information related to the Agreement that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to CITY.

N. Public Information. To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, COMPANY agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

O. 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 CITY is hereby made void and of no force or effect. CITY's sole and exclusive obligations under this Agreement are contained in the provisions of this Professional Services Agreement that precede the signature page(s), which evidences the parties' execution.

P. Company agrees that all iron or steel products produced through a manufacturing process and used in the project that is the subject of this Agreement shall be produced in the United States in accordance with Government Code § 2252.202, et seq., as amended.

[Signature Pages Follow].

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____§
§
COUNTY OF _____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Maverick Engineering, 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 ____day of _____, 20____.

_____
Notary Public, State of Texas

EXHIBIT "A"

TASK ORDER NO. _

This Task Order pertains to an Agreement by and between City of Midland, Texas, ("CITY"), and _____ ("COMPANY"), dated _____, 20___, ("the Agreement"). COMPANY shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

TASK ORDER NUMBER: ___
PROJECT NAME: _____

PART 1.0 PROJECT DESCRIPTION:

PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY COMPANY ON THE PROJECT:

PART 3.0 CITY'S RESPONSIBILITIES:

PART 4.0 PERIODS OF SERVICE:

PART 5.0 PAYMENTS TO COMPANY:

PART 6.0 OTHER:

This Task Order is executed this _____ day of _____, 20___.

CITY OF MIDLAND, TEXAS "CITY"		_____ "COMPANY"	
BY:	_____	BY:	_____
NAME:	Robert Patrick	NAME:	_____
TITLE:	City Manager	TITLE:	_____
ADDRESS:	P.O. Box 1152 Midland, TX 79702	ADDRESS:	_____ _____

PROFESSIONAL SERVICES AGREEMENT FOR MULTIPLE PROJECTS
#21003914-6

THIS AGREEMENT is made and effective the 29 day of September 2021, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Parkhill Smith & Cooper, Inc. dba Parkhill hereinafter referred to as "COMPANY."

WHEREAS, CITY desires to retain COMPANY, a professional engineering firm, to provide professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith on one or more projects in which the CITY is involved; and

WHEREAS, COMPANY desires to provide such services on such projects as may be agreed from time to time by the parties;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith for the City of Midland.

ARTICLE II. SERVICES TO BE PERFORMED

1. This Agreement shall apply to as many projects as CITY and COMPANY agree will be performed under the terms and conditions of this Agreement.
2. Each project that COMPANY performs for CITY hereunder shall be designated by a "Task Order." A Task Order shall be in the form of that attached hereto and incorporated herein as Exhibit "A" or a form substantially similar thereto. No Task Order shall be binding or enforceable unless and until it has been properly executed by both CITY and COMPANY. Each properly executed Task Order shall become a separate supplemental agreement to this Agreement.
3. COMPANY shall provide those services described in each properly executed Task Order.
4. COMPANY shall perform said services (1) with the professional skill and care ordinarily provided by competent professionals practicing in the same or similar locality and under the same or similar circumstances and professional license and (2) as expeditiously as is

prudent considering the ordinary professional skill and care of a competent professional. COMPANY represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform said services.

5. In resolving potential conflicts between this Agreement and the Task Order pertaining to a specific project, the terms of the Task Order shall control except to the extent that the terms of the Task Order conflicts with Article III below.

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY for said professional services in accordance with Part 5 of each Task Order; provided, however, (1) that the payment from CITY to COMPANY for each Task Order shall not exceed $200,000.00 and (2) that the total cost to CITY for all Task Orders executed by CITY and COMPANY each year in accordance with this Agreement shall not exceed $500,000.00 per year. COMPANY shall provide to CITY a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in the Task Order incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of the date on which COMPANY's invoice is received by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion of an invoice, CITY shall notify COMPANY of CITY's objection and the grounds therefor within 15 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. CITY 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 October 1, 2021 until September 30, 2024, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

CITY 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 CITY'S sole discretion to cancel the Agreement during the term of the Agreement without penalty to CITY. 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

COMPANY 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 CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

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

All reports, information and other data ("*Instruments of Service*"), given to, prepared or assembled by COMPANY under this Agreement, and any other related documents or items shall become the sole property of CITY and shall be delivered to CITY, without restriction, except that COMPANY may make copies of any and all Instruments of Service for its files. CITY shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of COMPANY, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Agreement shall be construed as creating a partnership or joint enterprise between CITY 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 CITY. Further, it is specifically understood and agreed that nothing in this agreement is intended or 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. 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 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 CITY as an additional insured and waive subrogation in favor of CITY.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city 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 CITY as an additional insured and waive subrogation in favor of CITY.

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 CITY.

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY 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 the City of Midland and policies that name the City of Midland 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 CITY. CITY 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.

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If to COMPANY: Parkhill Smith & Cooper, Inc. dba Parkhill
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The parties hereto may change the above-designated addresses by giving notice pursuant to the terms of this Section.

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[Signature Pages Follow].

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____§
§
COUNTY OF _____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Parkhill Smith & Cooper, Inc. dba Parkhill, 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 ____day of _____, 20____.

_____
Notary Public, State of Texas

EXHIBIT "A"

TASK ORDER NO. _

This Task Order pertains to an Agreement by and between City of Midland, Texas, ("CITY"), and _____ ("COMPANY"), dated _____, 20___, ("the Agreement"). COMPANY shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

TASK ORDER NUMBER: ___
PROJECT NAME: _____

PART 1.0 PROJECT DESCRIPTION:

PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY COMPANY ON THE PROJECT:

PART 3.0 CITY'S RESPONSIBILITIES:

PART 4.0 PERIODS OF SERVICE:

PART 5.0 PAYMENTS TO COMPANY:

PART 6.0 OTHER:

This Task Order is executed this _____ day of _____, 20___.

CITY OF MIDLAND, TEXAS "CITY"		_____ "COMPANY"	
BY:	_____	BY:	_____
NAME:	Robert Patrick	NAME:	_____
TITLE:	City Manager	TITLE:	_____
ADDRESS:	P.O. Box 1152 Midland, TX 79702	ADDRESS:	_____ _____

PROFESSIONAL SERVICES AGREEMENT FOR MULTIPLE PROJECTS
#21003914-7

THIS AGREEMENT is made and effective the 29 day of September 2021, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Stantec Consulting Services, Inc. hereinafter referred to as "COMPANY."

WHEREAS, CITY desires to retain COMPANY, a professional engineering firm, to provide professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith on one or more projects in which the CITY is involved; and

WHEREAS, COMPANY desires to provide such services on such projects as may be agreed from time to time by the parties;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall perform professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith for the City of Midland.

ARTICLE II. SERVICES TO BE PERFORMED

1. This Agreement shall apply to as many projects as CITY and COMPANY agree will be performed under the terms and conditions of this Agreement.
2. Each project that COMPANY performs for CITY hereunder shall be designated by a "Task Order." A Task Order shall be in the form of that attached hereto and incorporated herein as Exhibit "A" or a form substantially similar thereto. No Task Order shall be binding or enforceable unless and until it has been properly executed by both CITY and COMPANY. Each properly executed Task Order shall become a separate supplemental agreement to this Agreement.
3. COMPANY shall provide those services described in each properly executed Task Order.
4. COMPANY shall perform said services (1) with the professional skill and care ordinarily provided by competent professionals practicing in the same or similar locality and under the same or similar circumstances and professional license and (2) as expeditiously as is

prudent considering the ordinary professional skill and care of a competent professional. COMPANY represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform said services.

5. In resolving potential conflicts between this Agreement and the Task Order pertaining to a specific project, the terms of the Task Order shall control except to the extent that the terms of the Task Order conflicts with Article III below.

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY for said professional services in accordance with Part 5 of each Task Order; provided, however, (1) that the payment from CITY to COMPANY for each Task Order shall not exceed $200,000.00 and (2) that the total cost to CITY for all Task Orders executed by CITY and COMPANY each year in accordance with this Agreement shall not exceed $500,000.00 per year. COMPANY shall provide to CITY a monthly invoice. The monthly invoice shall set forth all service fees for the month and those expenses described in the Task Order incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of the date on which COMPANY's invoice is received by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion of an invoice, CITY shall notify COMPANY of CITY's objection and the grounds therefor within 15 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. CITY 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 October 1, 2021 until September 30, 2024, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

CITY 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 CITY'S sole discretion to cancel the Agreement during the term of the Agreement without penalty to CITY. 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

COMPANY 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 CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

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

All reports, information and other data ("*Instruments of Service*"), given to, prepared or assembled by COMPANY under this Agreement, and any other related documents or items shall become the sole property of CITY and shall be delivered to CITY, without restriction, except that COMPANY may make copies of any and all Instruments of Service for its files. CITY shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of COMPANY, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Agreement shall be construed as creating a partnership or joint enterprise between CITY 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 CITY. Further, it is specifically understood and agreed that nothing in this agreement is intended or 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. 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 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 CITY as an additional insured and waive subrogation in favor of CITY.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city 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 CITY as an additional insured and waive subrogation in favor of CITY.

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 CITY.

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY 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 the City of Midland and policies that name the City of Midland 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 CITY. CITY 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 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. COMPANY SPECIFICALLY 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), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

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

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

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

ARTICLE XI. 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.**

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

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.

ARTICLE XIII. RELEASE

NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY 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. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE XIV. GENERAL PROVISIONS

A. Waiver. No waiver by CITY 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. 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. 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 contract 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 CITY: City Manager's Office
P.O. Box 1152
Midland, Texas 79702

If to COMPANY: Stantec Consulting Services, Inc.
6080 Tennyson Pkwy, Ste. 200
Plano, Texas 75024

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 its legal representative, shall give the City Manager, or any other reasonable official of CITY, 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 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 COMPANY shall 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 (6) 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 provide such written notification 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 COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request 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 to the contrary, COMPANY's failure to comply with the requirements of this Section 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 CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Agreement are reasonable. The provisions and obligations of this Section shall survive the termination of this Agreement.

J. Prompt Pay Act. CITY 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, *et seq.*, as amended. COMPANY agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

L. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Agreement, Company hereby verifies:

- that Company does not boycott Israel and will not boycott Israel during the term of this Agreement;
- that Company does not boycott energy companies and will not boycott energy companies during the term of this Agreement; and
- that Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

To the extent that the Anti-Boycott Statutes do not apply to this Agreement, such verification is not required, and Company shall be deemed to have not made such verification.

M. Records Retention and Production of Information. To the extent that this Agreement constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to CITY for the duration of this Agreement; (ii) promptly provide to CITY any contracting information related to the Agreement that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Agreement, either: (a) provide at no cost to CITY all contracting information related to the Agreement that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to CITY.

N. Public Information. To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, COMPANY agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

O. 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 CITY is hereby made void and of no force or effect. CITY's sole and exclusive obligations under this Agreement are contained in the provisions of this Professional Services Agreement that precede the signature page(s), which evidences the parties' execution.

P. Company agrees that all iron or steel products produced through a manufacturing process and used in the project that is the subject of this Agreement shall be produced in the United States in accordance with Government Code § 2252.202, et seq., as amended.

[Signature Pages Follow].

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____§
§
COUNTY OF _____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Stantec Consulting Services, Inc., 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 ____day of _____, 20____.

_____
Notary Public, State of Texas

EXHIBIT "A"

TASK ORDER NO. _

This Task Order pertains to an Agreement by and between City of Midland, Texas, ("CITY"), and _____ ("COMPANY"), dated _____, 20___, ("the Agreement"). COMPANY shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

TASK ORDER NUMBER: ___
PROJECT NAME: _____

PART 1.0 PROJECT DESCRIPTION:

PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY COMPANY ON THE PROJECT:

PART 3.0 CITY'S RESPONSIBILITIES:

PART 4.0 PERIODS OF SERVICE:

PART 5.0 PAYMENTS TO COMPANY:

PART 6.0 OTHER:

This Task Order is executed this _____ day of _____, 20___.

CITY OF MIDLAND, TEXAS "CITY"		_____ "COMPANY"	
BY:	_____	BY:	_____
NAME:	Robert Patrick	NAME:	_____
TITLE:	City Manager	TITLE:	_____
ADDRESS:	P.O. Box 1152 Midland, TX 79702	ADDRESS:	_____ _____

PROFESSIONAL SERVICES AGREEMENT FOR MULTIPLE PROJECTS
#21003914-8

THIS AGREEMENT is made and effective the 29 day of September 2021, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Westwood Professional Services, Inc. hereinafter referred to as "COMPANY."

WHEREAS, CITY desires to retain COMPANY, a professional engineering firm, to provide professional engineering services, architecture services, landscape architecture services, land surveying services, real estate appraising services, and services provided in connection therewith on one or more projects in which the CITY is involved; and

WHEREAS, COMPANY desires to provide such services on such projects as may be agreed from time to time by the parties;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

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1. This Agreement shall apply to as many projects as CITY and COMPANY agree will be performed under the terms and conditions of this Agreement.
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3. COMPANY shall provide those services described in each properly executed Task Order.
4. COMPANY shall perform said services (1) with the professional skill and care ordinarily provided by competent professionals practicing in the same or similar locality and under the same or similar circumstances and professional license and (2) as expeditiously as is

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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 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. COMPANY SPECIFICALLY 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), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

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

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

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

ARTICLE XI. 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.**

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

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.

ARTICLE XIII. RELEASE

NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY 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. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE XIV. GENERAL PROVISIONS

A. Waiver. No waiver by CITY 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. 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. 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 contract 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 CITY: City Manager's Office
P.O. Box 1152
Midland, Texas 79702

If to COMPANY: Westwood Professional Services, Inc.
12701 Whitewater Drive, Suite 300
Minnetonka, MN 55343

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 its legal representative, shall give the City Manager, or any other reasonable official of CITY, 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 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 COMPANY shall 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 (6) 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 provide such written notification 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 COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request 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 to the contrary, COMPANY's failure to comply with the requirements of this Section 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 CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Agreement are reasonable. The provisions and obligations of this Section shall survive the termination of this Agreement.

J. Prompt Pay Act. CITY 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, *et seq.*, as amended. COMPANY agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

L. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Agreement, Company hereby verifies:

- that Company does not boycott Israel and will not boycott Israel during the term of this Agreement;
- that Company does not boycott energy companies and will not boycott energy companies during the term of this Agreement; and
- that Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

To the extent that the Anti-Boycott Statutes do not apply to this Agreement, such verification is not required, and Company shall be deemed to have not made such verification.

M. Records Retention and Production of Information. To the extent that this Agreement constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to CITY for the duration of this Agreement; (ii) promptly provide to CITY any contracting information related to the Agreement that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Agreement, either: (a) provide at no cost to CITY all contracting information related to the Agreement that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to CITY.

N. Public Information. To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, COMPANY agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

O. 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 CITY is hereby made void and of no force or effect. CITY's sole and exclusive obligations under this Agreement are contained in the provisions of this Professional Services Agreement that precede the signature page(s), which evidences the parties' execution.

P. Company agrees that all iron or steel products produced through a manufacturing process and used in the project that is the subject of this Agreement shall be produced in the United States in accordance with Government Code § 2252.202, et seq., as amended.

[Signature Pages Follow].

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

APPROVED ONLYAS TO FORM

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____§

§

COUNTY OF _____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Westwood Professional Services, Inc., 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 ____day of _____, 20____.

_____

Notary Public, State of Texas

EXHIBIT "A"

TASK ORDER NO. _

This Task Order pertains to an Agreement by and between City of Midland, Texas, ("CITY"), and _____ ("COMPANY"), dated _____, 20___, ("the Agreement"). COMPANY shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

TASK ORDER NUMBER: ___
PROJECT NAME: _____

PART 1.0 PROJECT DESCRIPTION:

PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY COMPANY ON THE PROJECT:

PART 3.0 CITY'S RESPONSIBILITIES:

PART 4.0 PERIODS OF SERVICE:

PART 5.0 PAYMENTS TO COMPANY:

PART 6.0 OTHER:

This Task Order is executed this _____ day of _____, 20___.

CITY OF MIDLAND, TEXAS "CITY"		_____ "COMPANY"	
BY:	_____	BY:	_____
NAME:	Robert Patrick	NAME:	_____
TITLE:	City Manager	TITLE:	_____
ADDRESS:	P.O. Box 1152 Midland, TX 79702	ADDRESS:	_____ _____

City Council Meeting

Item Number: 9

Meeting Date: September 28, 2021

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH JUSTICE BENEFITS, INC., TO PROVIDE FEDERAL REIMBURSEMENT OPPORTUNITIES AND CONSULTANT SERVICES FOR THE HEALTH AND SENIOR SERVICES DIVISION OF THE COMMUNITY SERVICES DEPARTMENT (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Approval of an agreement for federal reimbursement opportunities and consultant services.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is not required

Discussion:

Resolution 2012-369 approved the original award of an agreement for Federal Reimbursement Opportunities and Consultant Services for the Health and Senior Services Division to the sole source Justice Benefits, Inc. Staff recommends entering into an agreement once more with Justice Benefits, Inc. as the sole source for assisting and preparing MAC claims (Medicaid Administrative Claiming) for local health departments in Texas. Please see the attached memo from Cristina Burns, Community Services Director, for more information.

Therefore, please consider a resolution approving an agreement with Justice Benefits, Inc. of Dallas, Texas for two years for Federal Reimbursement Opportunities and Consultant Services for a fee of 18% of recovered funds.

Tina Jaug

City Manager's Office

CITY OF MIDLAND

Community Services Department
Health & Senior Service Division
Interoffice Memorandum

Date: September 28, 2021
To: Morris Williams, Deputy City Manager
From: Cristina Burns, Community Services Director
Subject: Federal Reimbursement Opportunities and Consultant Services

As the current agreement with Justice Benefits, Inc. expires on November 4, 2021, the Health & Senior Services Division is seeking a resolution to enter into an agreement with the sole source Justice Benefits, Inc. of Dallas, Texas, to continue providing Federal Reimbursement Opportunities and Consultant Services.

The Midland Health Department provides Medicaid administrative services by referring citizens to providers or through interagency coordination. For example, a service can be as simple as staff helping citizens who have come to the Health Department or who have phoned seeking direction. Staff assists them in finding a doctor, recruiting providers, or working with another agency to improve Medicaid services being offered to our citizens.

The Federal government, in return, will reimburse a percentage of local dollars spent in staff time. The consultant is responsible for collecting that information and then filing the paper work with the Federal government, seeking the reimbursement. In addition to labor and other costs, the consultant is paid a percentage of the reimbursement the Health Department generates.

Health & Senior Services was reimbursed $33,667.05 in FY 2020. As of the second quarter of 2021, the Health Department has been reimbursed $46,723.55 for FY 2021. These monies have been used to offset administrative costs, allowing the Health & Senior Services Division to maximize services.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH JUSTICE BENEFITS, INC., TO PROVIDE FEDERAL REIMBURSEMENT OPPORTUNITIES AND CONSULTANT SERVICES FOR THE HEALTH AND SENIOR SERVICES DIVISION OF THE COMMUNITY SERVICES DEPARTMENT

WHEREAS, the City Manager approved Justice Benefits, Inc., as the only firm assisting local health departments in Texas with preparing Medicaid Administrative Claims for Federal Reimbursement Opportunities and related consultant services for the Health and Senior Services Division of the Community Services Department; and

WHEREAS, Justice Benefits, Inc., charges a consultant services fee equal to eighteen percent (18%) of funds recovered, as shown on the proposal attached hereto as Exhibit A and incorporated herein for all purposes; and

WHEREAS, the City Council finds it to be in the public interest to execute a contract with Justice Benefits, Inc., for said services;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Justice Benefits, Inc., for the above-referenced services for a fee of eighteen percent (18%) of funds recovered by Justice Benefits, Inc. Said contract being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Justice Benefits, Inc., pursuant to the terms of said contract from funds recovered by Justice Benefits, Inc., upon receipt of proper invoices or statements approved by the City Manager.

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:

_____
Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

Exhibit A

Project Design

JBI specializes in MAC Claiming and has been successfully completing MAC claims for 17 years. JBI will assist the City of Midland by completing the following steps:

1. Identify reimbursable MAC activities and staff.
2. Gather the necessary financial information.
3. Process and submit the Medicaid Administrative Claim.
4. Ensure Federal and State approval of the Medicaid Administrative Claim.
5. Represent the City Health Department, as necessary, in all negotiation proceedings with the appropriate State agency.
6. Defend the agency's Medicaid Administrative Claim if it is audited by Federal or State representatives.

Timetable

As soon as the contract is awarded to JBI and the contract is approved, we will commence work. Due to the knowledge we have from identical work with other health departments, we will immediately commence the analysis and preparation of City of Midland's claims.

Work Plan

The work program to prepare the Medicaid Administrative Claim is divided into two phases and a total of ten steps. The first phase is concerned with the preparation of the Medicaid Administrative Claim itself. The second phase is concerned with the presentation of the completed claim to Health Department management and State or Federal officials. Following are descriptions of the ten steps required for completion of both phases of this engagement.

PHASE I Preparation of the Medicaid Administrative Claim

Step 1. Meet with the City of Health Department management staff

A. Review List of Employees - This is done in order to identify which employees job functions have reimbursable time for the following activities:

   a. **Medicaid Eligibility Determination**. Assisting an individual in applying for Medicaid, verifying Medicaid eligibility status, explaining Medicaid, gathering information related to the application, etc.

   b. **Medicaid Outreach.** Outreach campaigns that encourage Medicaid eligible or potentially eligible individuals to apply for Medicaid. Some examples of these campaigns are Early and Periodic Screening, Diagnosis and Treatment or the Comprehensive Care Program.

c. **Referral, Coordination and Monitoring of Medicaid Services.** Helping people find a doctor, schedule doctor appointments, coordinating care, following up on care received, explaining tests, advising on services, monitoring care, etc.

d. **Medicaid Transportation and Translation.** Arranging, scheduling, accompanying people to Medicaid Services and arranging for or providing translation services to access and understand Medicaid services.

e. **Medical Related Provider Relations.** Recruiting providers to increase or keep the medical/dental/mental health providers in a community.

f. **Program Planning, Development and Interagency Coordination.** Working with other agencies to improve Medicaid Services being offered to people.

This step is required in order to determine which employees should participate in the Random Moment Time Study to achieve maximum reimbursement.

B. **Review accounting system** - This crucial step is necessary in order for JBI staff to understand the proper treatment for items directly billed and the flow of revenue and expense accounts. This step also allows the consultants to familiarize themselves with the data available for use in preparation of the financial portion of the Medicaid Administrative Claim.

C. **Establish financial contact** - The appointment of an individual within the financial area of the client's organization is imperative for the smooth flow of any engagement. This person's involvement is limited to gathering the appropriate financial reports, and providing liaison support to JBI.

D. **Establish RMS system and Time Study contact** - This person's involvement is limited to reporting to time study participants pertinent information regarding the RMS system. JBI will also relay periodic information on the status of the time study to this individual.

Step 2. Create Time Study Participant List

This process is actually a derivative of the review list of employees. JBI identifies which employees' job functions have reimbursable time and then recommends which employees should participate in the Time Study. The culmination of this step is the decision of which employees should be time study participants.

Step 3. Train staff on use of Random Moment Sampling system

In order to accurately record their time, the time study participants must be trained on how to use the RMS system and appropriately code time. JBI will conduct the training sessions for the

participants in person or via webinar. The participants will learn what is expected of them and how to use the state RMS system.

Step 4. Obtain Department Financial Reports

JBI will work with the financial contact individual in order to gather the appropriate financial data. We will explain to the financial contact exactly what information will be needed in order to prepare the financial portion of the Medicaid Administrative Claim. Once the financial contact submits the appropriate financial reports to JBI, our staff will begin processing the financial portion of the claim.

Step 5. Calculate the Medicaid Eligibility Rate

JBI will also work with the Health Department to calculate the Medicaid Eligibility Rate. The Health Department will keep a tally of how many unduplicated patients were seen throughout the quarter and also how many unduplicated Medicaid eligible patients were seen throughout the quarter. Once the Health Department submits these numbers to JBI, our staff will be able to apply the Medicaid Eligibility Rate to the claim.

Step 6. Process Initial Medicaid Administrative Claim Draft

Utilizing the knowledge and data obtained through the prior five steps, we can process the Medicaid Administrative Claim in draft form.

PHASE II. Review of Plan, Presentations, and State Approval

Step 7. Review of Initial Medicaid Administrative Claim Draft

This segment of the engagement involves conducting secondary interviews with departmental representatives to review the initial draft of the Medicaid Administrative Claim. Comments received at this time are analyzed and if changes are required they are incorporated into the final claim.

Step 8. Finalize Medicaid Administrative Claim

At this point in the engagement, the JBI consultants assigned to this project, as well as the officers designated to review the results, prepare a final Medicaid Administrative Claim.

Step 9. Explain Results to Client

JBI is heavily committed to the full and complete understanding and satisfaction of any client's management regarding the initial results of our engagement.

Step 10. Submit Plan to State Agency

JBI will develop a submittal package that will be forwarded to the State Agency. JBI will handle the negotiations and seek approval of the Medicaid Administrative Claim. JBI staff has dealt with the State and Federal negotiators for over fifteen years.

Staff Training

The MAC program is very detailed and it is important to stay on top of all policies. To assist with this, JBI provides yearly on-site training with no additional charge for travel or the actual training time. JBI is available for refresher training or training new department staff as needed. JBI also provides webinars for department staff who may be unable to attend training.

JBI will train all appropriate staff on participating in the time study and performing the RMS system as it relates to the MAC program. JBI will be a secondary RMS and financial contact to ensure staff members are answering moments correctly and efficiently. JBI will provide each participant with a packet of information for reference while participating in the MAC program.

JBI's MAC staff has developed a detailed training manual that we utilize to train the department staff. This training helps to ensure that everyone has an understanding of the revenue the MAC program will bring in to their agency. The training demonstrates the importance the department staff plays in this program and is typically only needed at the implementation of the MAC claiming process. JBI will provide training manuals and PowerPoint materials during these training seminars.

In addition, the health department staff can reach our MAC program staff at any time with a toll free telephone number. We want to ensure that the department's staff is not burdened by additional paperwork throughout this process.

Random Moment Time Study

The Random Moment Time Study (RMTS) is a system that measures the amount of time spent on MAC reimbursable activities. Each participant must record selected moments in time and the activities that were performed at that exact moment. A RMTS "Moment" represents one minute at a time that is randomly selected from all available moments within the time study period. The RMTS is a federally accepted, statistically valid, random sampling technique that measures the participant's time performing work activities. The RMTS is a statewide time study sample that significantly reduces staff time needed to record participant activities.

The RMTS reasonably identifies staff time spent on activities during the given quarter. The purpose of the RMTS is to determine the percentage of time the health department incurs assisting individuals to access medically necessary Medicaid funded services through:

1. Medicaid Outreach
2. Medicaid Eligibility Determination
3. Medicaid Referral, Coordination, and Monitoring

4. Medicaid Transportation
5. Medicaid Translation
6. Medicaid Program Planning, Development & Interagency Coordination
7. Medicaid Provider Relations

Time study moments are randomly selected throughout the entire quarter. A time study moment represents one minute at the selected time. If a participant is sampled for a moment, their only responsibility is to document what they were doing at that precise minute.

Webinars

In addition to on-site trainings, JBI offers quarterly webinars to provide updates regarding policies and procedures with MAC claiming. This is a unique service which has proved beneficial for staff that may be spread out in different buildings or in different areas of the city/county. The JBI webinars are at no additional cost to our clients.

A webinar is used to conduct live meetings or presentations via the internet. In a webinar, each participant sits at his or her own computer and is connected to other participants via the internet. The attendees will simply enter a website address to enter the webinar.

Claim Submission

Each quarter, JBI will request financial information from the specified contact person and begin working on the MAC claim immediately. As once as the MAC claim is completed, JBI will send the completed claim to the health department in a timely manner. All approved MAC claims will be submitted to the HHSC by the appropriated deadline. JBI will then work with HHSC to ensure claim accuracy and prompt payment to the City of Midland.

JBI will partner with the City of Midland's financial office to ensure all revenues are documented correctly in order to complete the financial portion of the MAC claim. Our Financial Operations team will use the STAIRS system to confirm all financial information is entered correctly and efficiently. JBI will be a secondary financial contact responsible for ensuring the participant list is certified on a quarterly basis.

Monitoring & Improvement of MAC Process

As JBI has been working with health departments to file MAC claims since 1997, we have experienced many changes to our claiming procedures. We adhere to all state and federal guidelines and focus on methods to accurately maximize the MAC dollars. JBI constantly analyzes the methods used in putting our quarterly claims together.

Our financial operations staff utilizes our proprietary software to perform a quality analysis. Our job is to maximize every dollar for our clients, while ensuring it is compiled correctly. JBI's Financial Operations department acts as the final check in the quality assurance process to ensure that the highest standards are maintained when producing financial documents for our clients. To ensure the accuracy of each claim, JBI utilizes a triple check

quality assurance process on each document that has been completed. JBI's detailed QA Process includes over 50 specific items that each JBI staff must check.

Consultation with Health and Human Services Commission

JBI understands the importance of working with HHSC on any developments regarding MAC claiming. As the single state agency, they act as the pass through for federal funds as well as the auditing agency for federal programs under their authority. JBI has already established a relationship with HHSC and will continue to work with them to monitor and implement all MAC guidelines and procedures.

Audit Process

JBI has developed a detailed auditing procedure for our MAC clients. It is crucial to have a system of checks and balances in place with Medicaid Administrative Claiming. Prior to JBI coming onsite for an audit, JBI will request that the health department have specific financial documents ready for review.

JBI will review the quarterly financial data that is used for reimbursement in the MAC claim. The detailed audit reviews what is currently being claimed as well as all other funds related to the department. This process ensures that all allowable reimbursable costs are being claimed. Each year JBI will come on-site and pull a sample of transactions from the supplied data. JBI will then verify the expenditures by reviewing receipts, expense reports, etc.

Once an audit has been completed, JBI will provide the health department with our written recommendations and a corrective action plan, if needed. This allows the health department supervisors to see any needed changes and allows JBI to work with department staff on our recommended action plan.

Contract Fee Structure

JBI completes its contracts on a "no risk", contingent fee basis. JBI will do virtually all the work, including: Identifying the opportunities, coordinating with HHSC, applying our claiming methodology (which is Federally approved), providing onsite training for the department staff, documenting the costs, and preparing quarterly claims. During the course of this engagement, JBI will also look for other Federal revenue optimization opportunities within the agency.

JBI does not charge for travel or training. The City of Midland has no risk with JBI's contract. JBI's fee is eighteen percent (18%) of the recoveries, due only after the claims have been paid to the City of Midland.

FEDERAL REIMBURSEMENT OPPORTUNITIES
AND CONSULTANT SERVICES AGREEMENT
#22000012

THIS AGREEMENT is made and effective the 29th day of September, 2021, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "City," and Justice Benefits, Inc., hereinafter referred to as "Consultant."

ARTICLE I.
PURPOSE

The purpose of this Agreement is to state the terms and conditions under which Consultant shall provide certain consultant services regarding federal reimbursement opportunities for City.

ARTICLE II.
SERVICES TO BE PERFORMED

1. Consultant shall provide Federal Reimbursement Opportunities and Consultant Services as described in the Scope of Services attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

2. Consultant 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

City agrees to pay Consultant an amount equal to eighteen percent (18%) of funds recovered on behalf of City for the services described in Exhibit "A"; provided, however, that the funds paid by City to Consultant shall not exceed $100,000.00 per year. City agrees to pay Consultant for labor, direct incidental costs, and sub-contractor costs as set forth in Exhibit "A" upon presentation of proper monthly invoice(s). Said invoices shall set out labor fees for the month and those direct incidental costs and sub-contractor costs described in Exhibit "A" incurred during the previous month. All additional expenses and reimbursable expenses shall be

submitted to the City Manager for approval prior to Consultant's inclusion of the same in any submitted invoices. Within thirty (30) days of receipt of a monthly invoice, City shall pay the full amount of such invoice; provided, however, that if City objects to any portion of an invoice, City shall notify Consultant of City's objection and the grounds therefor within thirty (30) days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. In any event, City 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 November 5, 2021, until November 4, 2023. City may, at its option, renew this Agreement for the period of five (5) additional years in one-year increments. To exercise this option, City shall give Consultant notice of its intent to renew no less than thirty (30) days prior to the expiration of this agreement.

ARTICLE V.
TERMINATION AT WILL

City may terminate this Agreement at will for no or any reason upon giving at least one hundred eighty (180) days' written notice to Consultant. The parties to this Agreement understand and agree that it is in City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to City. Consultant 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 this Agreement shall be suspended upon termination of this Agreement becoming effective.

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

All reports, information and other data ("instruments of service"), given to, prepared or assembled by Consultant under this Agreement, and any other related documents or items shall become the sole

property of City and shall be delivered to City, without restriction, except that Consultant may make copies of any and all instruments of service for its files. City shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of Consultant, which consent shall not be unreasonably withheld.

ARTICLE VII.
INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Consultant shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Consultant 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 City and Consultant, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Consultant. No person performing any of the work and services described hereunder by Consultant shall be considered an officer, agent, servant or employee of City. 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. Consultant 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 Consultant's work. Consultant shall assume exclusive responsibility for the work. Consultant is entirely free to do the work in its own way.

ARTICLE VIII.
INSURANCE

Consultant 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 an occurrence basis. This insurance shall name City as an additional insured and waive subrogation in favor of City.

The Business Automobile Liability insurance provided by Consultant shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-CITY 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 City as an additional insured and waive subrogation in favor of City.

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

All insurance required pursuant to this Agreement shall provide for a waiver of subrogation in favor of City. All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name City as an additional insured on a claims occurred

basis. City shall be provided the notice by Consultant's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

Consultant 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 the City of Midland and policies that name the City of Midland as an additional insured on a claims-occurred basis (except workers' compensation).

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

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

ARTICLE IX.
ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, CONSULTANT 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. CONSULTANT SPECIFICALLY AGREES THAT IF CONSULTANT 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, CONSULTANT AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CONSULTANT MIGHT OTHERWISE BE ENTITLED.

CONSULTANT AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. CONSULTANT ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. CONSULTANT FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND CONSULTANT. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

ARTICLE X.
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.**

ARTICLE XI.
NO THIRD-PARTY BENEFICIARIES

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.

ARTICLE XII.
RELEASE

NOTWITHSTANDING ANY OTHER PROVISIONS, CONSULTANT 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 CONSULTANT 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 CITY'S NEGLIGENCE.

ARTICLE XIII.
GENERAL PROVISIONS

A. Waiver. No waiver by City 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 City: City Manager's Office
P.O. Box 1152
Midland, Texas 79702

If to Consultant: Justice Benefits, Inc.
2010 Valley View Lane, Ste 300
Dallas, TX 75234

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, Consultant or his 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 Consultant will settle, the physical and mailing addresses of Consultant at the time and date the claim was presented and the physical and mailing addresses of Consultant for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Consultant 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 Consultant that Consultant'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, Consultant's failure to comply with the requirements herein shall perpetually bar Consultant'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. Consultant agrees that the requirements of this entire Agreement are reasonable.

J. Prompt Pay Act. City and Consultant agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

K. Indemnity. **CONSULTANT 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, 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, ON ACCOUNT OF ANY NEGLIGENT ACT OF CONSULTANT, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT, AND CONSULTANT SHALL 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.**

CONSULTANT 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, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, 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, 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 CONSULTANT OR CONSULTANT'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 CONSULTANT SHALL 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.

CONSULTANT AGREES TO INDEMNIFY AND SAVE CITY 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 AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS AGREEMENT. WHEN CITY SO DESIRES, CONSULTANT SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. CONSULTANT, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF CONSULTANT OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS AGREEMENT, AND SHALL 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.

L. Consultant agrees that in the unlikely event any funds recovered by City as a result of this Agreement be subsequently disallowed, that the related fees paid to Consultant based on such disallowed reimbursements will be credited against future payments to Consultant, or be promptly repaid to City should this agreement be terminated. In any event, the monetary amount of damages and the full extent of Consultant's liability to City, if any, shall be strictly limited to the amount of funds paid to, or owed to, Consultant as a result of this Agreement.

M. Compliance. COMPANY agrees that it shall comply with Texas Government Code Section 2252.908, *et seq.*, as amended. COMPANY agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

N. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Agreement, Company hereby verifies:

- that Company does not boycott Israel and will not boycott Israel during the term of this Agreement;

- that Company does not boycott energy companies and will not boycott energy companies during the term of this Agreement; and

- that Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

To the extent that the Anti-Boycott Statutes do not apply to this Agreement, such verification is not required, and Company shall be deemed to have not made such verification.

O. Records Retention and Production of Information. To the extent that this Agreement constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to CITY for the duration of this Agreement; (ii) promptly provide to CITY any contracting information related to the Agreement that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Agreement, either: (a) provide at no cost to CITY all contracting information related to the Agreement that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to CITY.

P. Public Information. To the extent that this Agreement is a contract described by Section 552.371 of the Texas Government Code, COMPANY agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

Q. 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 CITY is hereby made void and of no force or effect. CITY's sole and exclusive obligations under this Agreement are contained in the provisions of this Professional Services Agreement that precede the signature page(s), which evidences the parties' execution.

R. Company agrees that all iron or steel products produced through a manufacturing process and used in the project that is the subject of this Agreement shall be produced in the United States in accordance with Government Code § 2252.202, et seq., as amended.

ARTICLE XIV.
ASSIGNMENT

Consultant 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 City. The issue on whether to grant consent to an assignment is in the sole discretion of City.

[Signature Pages Follow]

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

_____
Robert Patrick, City Manager

ATTEST

_____
Amy M. Turner, City Secretary

[Signature Page Follows]

CONSULTANT:

By: _____

Name:_____

Title: _____

STATE OF _____ §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2021, personally appeared, _____, an officer of Justice Benefits, Inc. , 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 ____day of _____, 2021.

_____

Notary Public, State of _____

Exhibit A

Project Design

JBI specializes in MAC Claiming and has been successfully completing MAC claims for 17 years. JBI will assist the City of Midland by completing the following steps:

1. Identify reimbursable MAC activities and staff.
2. Gather the necessary financial information.
3. Process and submit the Medicaid Administrative Claim.
4. Ensure Federal and State approval of the Medicaid Administrative Claim.
5. Represent the City Health Department, as necessary, in all negotiation proceedings with the appropriate State agency.
6. Defend the agency's Medicaid Administrative Claim if it is audited by Federal or State representatives.

Timetable

As soon as the contract is awarded to JBI and the contract is approved, we will commence work. Due to the knowledge we have from identical work with other health departments, we will immediately commence the analysis and preparation of City of Midland's claims.

Work Plan

The work program to prepare the Medicaid Administrative Claim is divided into two phases and a total of ten steps. The first phase is concerned with the preparation of the Medicaid Administrative Claim itself. The second phase is concerned with the presentation of the completed claim to Health Department management and State or Federal officials. Following are descriptions of the ten steps required for completion of both phases of this engagement.

PHASE I Preparation of the Medicaid Administrative Claim

Step 1. Meet with the City of Health Department management staff

A. Review List of Employees - This is done in order to identify which employees job functions have reimbursable time for the following activities:

   a. **Medicaid Eligibility Determination**. Assisting an individual in applying for Medicaid, verifying Medicaid eligibility status, explaining Medicaid, gathering information related to the application, etc.

   b. **Medicaid Outreach.** Outreach campaigns that encourage Medicaid eligible or potentially eligible individuals to apply for Medicaid. Some examples of these campaigns are Early and Periodic Screening, Diagnosis and Treatment or the Comprehensive Care Program.

c. **Referral, Coordination and Monitoring of Medicaid Services.** Helping people find a doctor, schedule doctor appointments, coordinating care, following up on care received, explaining tests, advising on services, monitoring care, etc.

d. **Medicaid Transportation and Translation.** Arranging, scheduling, accompanying people to Medicaid Services and arranging for or providing translation services to access and understand Medicaid services.

e. **Medical Related Provider Relations.** Recruiting providers to increase or keep the medical/dental/mental health providers in a community.

f. **Program Planning, Development and Interagency Coordination.** Working with other agencies to improve Medicaid Services being offered to people.

This step is required in order to determine which employees should participate in the Random Moment Time Study to achieve maximum reimbursement.

B. **Review accounting system** - This crucial step is necessary in order for JBI staff to understand the proper treatment for items directly billed and the flow of revenue and expense accounts. This step also allows the consultants to familiarize themselves with the data available for use in preparation of the financial portion of the Medicaid Administrative Claim.

C. **Establish financial contact** - The appointment of an individual within the financial area of the client's organization is imperative for the smooth flow of any engagement. This person's involvement is limited to gathering the appropriate financial reports, and providing liaison support to JBI.

D. **Establish RMS system and Time Study contact** - This person's involvement is limited to reporting to time study participants pertinent information regarding the RMS system. JBI will also relay periodic information on the status of the time study to this individual.

Step 2. Create Time Study Participant List

This process is actually a derivative of the review list of employees. JBI identifies which employees' job functions have reimbursable time and then recommends which employees should participate in the Time Study. The culmination of this step is the decision of which employees should be time study participants.

Step 3. Train staff on use of Random Moment Sampling system

In order to accurately record their time, the time study participants must be trained on how to use the RMS system and appropriately code time. JBI will conduct the training sessions for the

participants in person or via webinar. The participants will learn what is expected of them and how to use the state RMS system.

Step 4. Obtain Department Financial Reports

JBI will work with the financial contact individual in order to gather the appropriate financial data. We will explain to the financial contact exactly what information will be needed in order to prepare the financial portion of the Medicaid Administrative Claim. Once the financial contact submits the appropriate financial reports to JBI, our staff will begin processing the financial portion of the claim.

Step 5. Calculate the Medicaid Eligibility Rate

JBI will also work with the Health Department to calculate the Medicaid Eligibility Rate. The Health Department will keep a tally of how many unduplicated patients were seen throughout the quarter and also how many unduplicated Medicaid eligible patients were seen throughout the quarter. Once the Health Department submits these numbers to JBI, our staff will be able to apply the Medicaid Eligibility Rate to the claim.

Step 6. Process Initial Medicaid Administrative Claim Draft

Utilizing the knowledge and data obtained through the prior five steps, we can process the Medicaid Administrative Claim in draft form.

PHASE II. Review of Plan, Presentations, and State Approval

Step 7. Review of Initial Medicaid Administrative Claim Draft

This segment of the engagement involves conducting secondary interviews with departmental representatives to review the initial draft of the Medicaid Administrative Claim. Comments received at this time are analyzed and if changes are required they are incorporated into the final claim.

Step 8. Finalize Medicaid Administrative Claim

At this point in the engagement, the JBI consultants assigned to this project, as well as the officers designated to review the results, prepare a final Medicaid Administrative Claim.

Step 9. Explain Results to Client

JBI is heavily committed to the full and complete understanding and satisfaction of any client's management regarding the initial results of our engagement.

Step 10. Submit Plan to State Agency

JBI will develop a submittal package that will be forwarded to the State Agency. JBI will handle the negotiations and seek approval of the Medicaid Administrative Claim. JBI staff has dealt with the State and Federal negotiators for over fifteen years.

Staff Training

The MAC program is very detailed and it is important to stay on top of all policies. To assist with this, JBI provides yearly on-site training with no additional charge for travel or the actual training time. JBI is available for refresher training or training new department staff as needed. JBI also provides webinars for department staff who may be unable to attend training.

JBI will train all appropriate staff on participating in the time study and performing the RMS system as it relates to the MAC program. JBI will be a secondary RMS and financial contact to ensure staff members are answering moments correctly and efficiently. JBI will provide each participant with a packet of information for reference while participating in the MAC program.

JBI's MAC staff has developed a detailed training manual that we utilize to train the department staff. This training helps to ensure that everyone has an understanding of the revenue the MAC program will bring in to their agency. The training demonstrates the importance the department staff plays in this program and is typically only needed at the implementation of the MAC claiming process. JBI will provide training manuals and PowerPoint materials during these training seminars.

In addition, the health department staff can reach our MAC program staff at any time with a toll free telephone number. We want to ensure that the department's staff is not burdened by additional paperwork throughout this process.

Random Moment Time Study

The Random Moment Time Study (RMTS) is a system that measures the amount of time spent on MAC reimbursable activities. Each participant must record selected moments in time and the activities that were performed at that exact moment. A RMTS "Moment" represents one minute at a time that is randomly selected from all available moments within the time study period. The RMTS is a federally accepted, statistically valid, random sampling technique that measures the participant's time performing work activities. The RMTS is a statewide time study sample that significantly reduces staff time needed to record participant activities.

The RMTS reasonably identifies staff time spent on activities during the given quarter. The purpose of the RMTS is to determine the percentage of time the health department incurs assisting individuals to access medically necessary Medicaid funded services through:

1. Medicaid Outreach
2. Medicaid Eligibility Determination
3. Medicaid Referral, Coordination, and Monitoring

4. Medicaid Transportation
5. Medicaid Translation
6. Medicaid Program Planning, Development & Interagency Coordination
7. Medicaid Provider Relations

Time study moments are randomly selected throughout the entire quarter. A time study moment represents one minute at the selected time. If a participant is sampled for a moment, their only responsibility is to document what they were doing at that precise minute.

Webinars

In addition to on-site trainings, JBI offers quarterly webinars to provide updates regarding policies and procedures with MAC claiming. This is a unique service which has proved beneficial for staff that may be spread out in different buildings or in different areas of the city/county. The JBI webinars are at no additional cost to our clients.

A webinar is used to conduct live meetings or presentations via the internet. In a webinar, each participant sits at his or her own computer and is connected to other participants via the internet. The attendees will simply enter a website address to enter the webinar.

Claim Submission

Each quarter, JBI will request financial information from the specified contact person and begin working on the MAC claim immediately. As once as the MAC claim is completed, JBI will send the completed claim to the health department in a timely manner. All approved MAC claims will be submitted to the HHSC by the appropriated deadline. JBI will then work with HHSC to ensure claim accuracy and prompt payment to the City of Midland.

JBI will partner with the City of Midland's financial office to ensure all revenues are documented correctly in order to complete the financial portion of the MAC claim. Our Financial Operations team will use the STAIRS system to confirm all financial information is entered correctly and efficiently. JBI will be a secondary financial contact responsible for ensuring the participant list is certified on a quarterly basis.

Monitoring & Improvement of MAC Process

As JBI has been working with health departments to file MAC claims since 1997, we have experienced many changes to our claiming procedures. We adhere to all state and federal guidelines and focus on methods to accurately maximize the MAC dollars. JBI constantly analyzes the methods used in putting our quarterly claims together.

Our financial operations staff utilizes our proprietary software to perform a quality analysis. Our job is to maximize every dollar for our clients, while ensuring it is compiled correctly. JBI's Financial Operations department acts as the final check in the quality assurance process to ensure that the highest standards are maintained when producing financial documents for our clients. To ensure the accuracy of each claim, JBI utilizes a triple check

quality assurance process on each document that has been completed. JBI's detailed QA Process includes over 50 specific items that each JBI staff must check.

Consultation with Health and Human Services Commission

JBI understands the importance of working with HHSC on any developments regarding MAC claiming. As the single state agency, they act as the pass through for federal funds as well as the auditing agency for federal programs under their authority. JBI has already established a relationship with HHSC and will continue to work with them to monitor and implement all MAC guidelines and procedures.

Audit Process

JBI has developed a detailed auditing procedure for our MAC clients. It is crucial to have a system of checks and balances in place with Medicaid Administrative Claiming. Prior to JBI coming onsite for an audit, JBI will request that the health department have specific financial documents ready for review.

JBI will review the quarterly financial data that is used for reimbursement in the MAC claim. The detailed audit reviews what is currently being claimed as well as all other funds related to the department. This process ensures that all allowable reimbursable costs are being claimed. Each year JBI will come on-site and pull a sample of transactions from the supplied data. JBI will then verify the expenditures by reviewing receipts, expense reports, etc.

Once an audit has been completed, JBI will provide the health department with our written recommendations and a corrective action plan, if needed. This allows the health department supervisors to see any needed changes and allows JBI to work with department staff on our recommended action plan.

Contract Fee Structure

JBI completes its contracts on a "no risk", contingent fee basis. JBI will do virtually all the work, including: Identifying the opportunities, coordinating with HHSC, applying our claiming methodology (which is Federally approved), providing onsite training for the department staff, documenting the costs, and preparing quarterly claims. During the course of this engagement, JBI will also look for other Federal revenue optimization opportunities within the agency.

JBI does not charge for travel or training. The City of Midland has no risk with JBI's contract. JBI's fee is eighteen percent (18%) of the recoveries, due only after the claims have been paid to the City of Midland.

JUSTICE BENEFITS, INC.

Government Consulting Firm
1711 East Beltline Rd.
Coppell, TX 75019

Toll Free: (800) 835-2164
Phone: (972) 406-3700

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JBI Gets Results!

JUSTICE BENEFITS, INC.

JBI-LTD.COM

August 27, 2021

Whitney S. Craig, DrPH, MPH
Health Services Manager
City of Midland
3303 W. Illinois Ave, Sp. 22
Midland, TX 79703

Dear Ms. Craig:

It is the intent of Justice Benefits, Inc. (JBI) to enter into a new agreement for Professional Services with the City of Midland to complete claims for Medicaid Administrative Claiming (MAC). We are happy to extend our services in preparing your quarterly claims to obtain reimbursements for specific Medicaid activities.

JBI is the only firm assisting and preparing MAC claims to local health departments in Texas.

Some of JBI's unique comprehensive services are:

- JBI has a team of highly trained financial analysts with extensive governmental and financial experience working on your claim.
- JBI will accurately compile your MAC claim each year to ensure that each dollar has been maximized.
- JBI's financial staff works to ensure that only allowable costs are tabulated so the agency receives its fair share from the Federal Government.
- JBI verifies all claims through a quality assurance process before the final claim submission.
- JBI will monitor all guidelines and keep the agency updated on any policy changes that may occur.
- In the event the Federal Government does audit the agency, JBI will assist with audit support and provide all proper documentation.
- Any claims compiled by JBI are reviewed by a team of financial experts to ensure they stand up to any audit and are in compliance with HHSC guidelines.

We look forward to continuing our partnership with the City of Midland. As always, please feel free to contact me should you have any questions at (972) 406-3707 or at kfrye@jbi-ltd.com.

Sincerely,

Kelsey Frye
Regional Marketing Officer

City Council Meeting

Item Number: 10

Meeting Date: September 28, 2021

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AUTHORIZING THE PURCHASE OF AN ESTIMATED ANNUAL SUPPLY OF CHEMICALS FOR THE WATER RECLAMATION FACILITY FOR FISCAL YEAR 2022 FROM MULTIPLE BIDDERS, FOR A TOTAL COST OF $168,964.00 (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Approval of a resolution approving the purchase of an estimated annual supply of chemicals of Polymer, Copper Sulfate, and Liquid Sodium Hypochlorite for the Water Reclamation Facility for Fiscal Year 2022.

Recommended City Council Action:

Approve

Fiscal Impact:

The amount of $168,964 is available in the FY2022 Water and Sewer operating budget.

Discussion:

The City Manager approved specifications and authorized advertisement for bids for an estimated annual supply of chemicals for Water Reclamation Facility. Seventy-one (71) bid requests were issued. We received five (5) bids and one (1) bid was nonresponsive. Staff recommends awarding each chemical to the respective low, most advantageous or sole bidders as shown in the table below. There were no bids for item 4 for the annual supply for gypsum and will be purchased as needed during the year. Please see the attached memo from Bennie Jordan, Water Reclamation Facility Superintendent, for more information.

Therefore, please consider a resolution awarding an estimated annual supply of chemicals for Water Reclamation Facility as shown in table below:

Items	Bidders	Cost
1	Polydyne Inc	$160,080.00
2	Vineera Chemicals LLC	$45,240.00
3	Univar Solutions USA Inc	$17,644.00
4	No bids	$0.00
	Total estimated cost for Fiscal Year 2022	**$168,964.00**

Tina Jaug

City Manager's Office

INTEROFFICE MEMORANDUM

TO: **Regina Stephenson, General Services Director, Erika Martinez, Purchasing Manager**

FROM: **Bennie Jordan, Superintendent**

SUBJECT: **Recommend Award for Annual Chemical Supply for WRF**

DATE: **September 13, 2021**

Consider a resolution approving the award of purchases in the amount of $ 106,080.00 to the bidder Polydyne Inc. for the purchase of 110,400 pounds of Polymer Inc. delivered in 250 gallons totes as and when needed to the City of Midland. All items delivered and unloaded FOB to the City of Midland Water reclamation facility

Consider a resolution approving the award of a purchase in the amount of $ 45,240.00 to the bidder Vineera chemicals LLC for the purchase of 24,000 pounds of Copper Sulfate which will be delivered as and when needed to City of Midland Water Reclamation Facility. All items delivered and unloaded FOB to the city of Midland Water Reclamation Facility.

Consider a resolution approving the award of purchases in the amount of $ 17,644.00 to the bidder Univar Solutions USA Inc. for the purchase of 4400 gallons of 12.5% Liquid sodium hypochlorite delivered in 55-gallon drums as and when needed to the City of Midland. All items delivered and unloaded FOB to the City of Midland MBR facility.

The City of Midland uses Sodium Hypochlorite to disinfect reuse water for irrigation use at Midland College Campus. The City of Midland uses Polymer to dewater sludges which is then taken and disposed of at landfill. The City of Midland uses copper sulfate at the Sprayberry ponds to control biologic growth and for algae control in ponds at Sprayberry.

As for the no bid on the Gypsum, it is not needed at this time so we will wait until it is needed and then go out for bid at that time.

This purchase will cover all of fiscal year 2022. This is a regularly occurring budgeted expense each year.

Project funding will be paid from the Water Reclamation Facility Operating Fund. Staff recommendation is to award the contract in the amount of $ 17,644.00 for Liquid Sodium Hypochlorite, $106,800.00 for Polymer and $45,240.00 for Copper Sulfate.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE PURCHASE OF AN ESTIMATED ANNUAL SUPPLY OF CHEMICALS FOR THE WATER RECLAMATION FACILITY FOR FISCAL YEAR 2022 FROM MULTIPLE BIDDERS, FOR A TOTAL COST OF $168,964.00

WHEREAS, the City Manager approved the specifications and authorized the advertisement for bids for an estimated annual supply of Polymer, Copper Sulfate, and Liquid Sodium Hypochlorite for the Water Reclamation Facility for fiscal year 2022; and

WHEREAS, Bid No. 22000002 was opened on September 8, 2021 with the lowest and/or most advantageous bids being submitted as follows and as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes:

Items	Bidders	Cost
1	Polydyne Inc.	$160,080.00
2	Vineera Chemicals, LLC	$45,240.00
3	Univar Solutions USA Inc.	$17,644.00
4	No bids	$0.00

WHEREAS, the Council finds the price proposed by the bidders as shown above to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to authorize the purchase of chemicals for the Water Reclamation Facility from Polydyne Inc., Vineera Chemicals, LLC, and Univar Solutions USA Inc.;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase chemicals for the Water Reclamation Facility from Polydyne Inc., Vineera Chemicals, LLC, and Univar Solutions USA Inc., for a total cost of $168,964.00.

SECTION TWO. That upon receipt of proper invoice or statement approved by the City Manager, the City Comptroller is hereby authorized and directed to pay for said chemicals for the Water Reclamation Facility out of funds available in the FY2022 Water and Sewer operating budget.

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

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Robert Patrick, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

City of Midland - Bid Tabulation

BID # 22000002 **Annual Chemicals for Water Reclaimation Facility** **OPENED** September 8, 2021			Polydyne Inc. 1 Chemical Plant Road Riceboro, GA 31323 912-880-2035 Boyd Stanley		Vineera Chemicals LLC 24044 Cinco Village Center Blvd #100 Katy, TX 77494 281-962-7770 Vinoth Manoharan		Chemrite Inc 5202 Belle Wood Court Ste 104 Buford, GA 30518 770-271-5576 Aaron Opp		Univar Solutions USA Inc 12720 E US Hwy 92 trl:427 Dover, FL 33527 206-653-5075 770-271-5576	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
1	110,400	Annual Supply of Polymer	$1.45	$160,080.00	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID
	lbs		lbs							
2	24,000	Annual Supply of Copper Sulfate	NO BID	NO BID	$1.885	$45,240.00	$2.48	$59,520.00	NO BID	NO BID
	lbs						Copper Medium Crystal			
2.A	24,000	Annual Supply of Copper Sulfate	NO BID	NO BID	$0.000	$0.00	$2.05	$49,200.00	NO BID	NO BID
	lbs	Cooper Sulfate F30								
3	4,400	Annual Supply of Liquid Sodium Hypochlorite	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	$220.55	$17,644.00
	gallons								per drum	
4	200	Annual Supply of Gypsum	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID
	Ton									
		Delivery:	7-10 Days A.R.O		3-5 Business Days		N/A		10/1/2021	
		TOTALS:		$160,080.00		$45,240.00		$59,520.00		$17,644.00

Bidding Summary:

71 Bid requests were issued.

4 Bids listed above

1 NO BIDS were received.

44 Bidders did not respond.

1 Incomplete Proposals

City Council Meeting

Item Number: 11

Meeting Date: September 28, 2021

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH PARAGON ROOFING, INC., THROUGH THE INTERLOCAL PURCHASING SYSTEM, FOR THE PURCHASE AND INSTALLATION OF STANDING SEAM METAL ROOFING AT FIRE STATION 6 FOR A TOTAL COST OF $195,049.25; APPROVING $4,950.75 FOR CONTINGENCIES; AND APPROPRIATING FUNDS FOR SAID CONTRACT (DISTRICT 4) (GENERAL SERVICES)

Purpose:

Approval of a resolution approving a contract with Paragon Roofing, Inc., through the interlocal purchasing system (TIPS) for the purchase and installation of standing seam metal roofing at Fire Station 6 for a cost of $195,049.25 plus $4,950.75 in contingencies for a total cost of $200,000.00.

Recommended City Council Action:

Approve

Fiscal Impact:

The amount of $200,000 is available in the FY2021 General Fund operating budget, and will be transferred and appropriated to a project in the Capital Fund (005).

Discussion:

Staff recommends awarding a contract to Paragon Roofing, Inc to replace the roof at Fire Station 6 located at 301 Tradewinds Blvd. Paragon Roofing, Inc. has been awarded a contract through The Interlocal Purchasing System (TIPS) Program. We are members of the TIPS Program cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing

goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases. Please refer to the memo from Regina Stephenson, General Services Director, for further discussion concerning this procurement.

Therefore, please consider a resolution awarding a contract for labor and materials for installation of a standing seam metal roof system at Fire Station 6 located at 301 Tradewinds Blvd to Paragon Roofing, Inc. of Dallas, Texas through The Interlocal Purchasing System (TIPS) for a cost of $195,049.25 plus $4,950.75 in contingencies for a project cost of $200,000.00; and appropriating funds for said contract.

Tina Dawg

City Manager's Office

INTEROFFICE MEMORANDUM

TO: Tina Jauz, Assistant City Manager

FROM: Regina Stephenson, General Services Director

SUBJECT: Requisition 22000031 - Roof Replacement for Fire Station 6

DATE: September 14, 2021

The roofs on Fire Station 6 and Fire Station 10 were damaged by hail approximately 2 years ago. The Texas Municipal League Intergovernmental Risk Pool (TMLIRP) prepared a detailed assessment and proposal for Fire Station 10. The Fire Station 10 roofing project was awarded at the May 11, 2021 City Council meeting and is almost complete. We received the final assessment from TMLIRP for the Fire Station 6 roof on September 14, 2021.

According to the assessment, TMLIRP's recommendation is to replace the damaged roof on Fire Station 6 with a new standing seam metal roof. The scope of work will include the installation of a Standing Seam Metal roof assembly, including accessories, flashings, and the installation of a High Temp Peel N Stick membrane under the standing seam metal roof assembly. The contractor will also install Snowbreaker ice and snow guards and will remove and replace all gutters and downspouts. The cost for the Fire Station 6 roofing system project is $195,049.25.

The majority of the cost for the roof replacement will be recovered from TMLIRP when the work is completed.

Therefore, please consider awarding a contract for labor and materials for installation of a standing seam metal roof system at Fire Station 6 located at 301 Tradewinds Blvd to Paragon Roofing, Inc. of Dallas, Texas through The Interlocal Purchasing System (TIPS) for a cost of $195,049.25 plus $4,950.75 in contingencies for a project cost of $200,000.00.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH PARAGON ROOFING, INC., THROUGH THE INTERLOCAL PURCHASING SYSTEM, FOR THE PURCHASE AND INSTALLATION OF STANDING SEAM METAL ROOFING AT FIRE STATION 6 FOR A TOTAL COST OF $195,049.25; APPROVING $4,950.75 FOR CONTINGENCIES; AND APPROPRIATING FUNDS FOR SAID CONTRACT

WHEREAS, The Interlocal Purchasing System is a program in which the City participates on purchases in accordance with Tex. Loc. Gov't Code § 271.102; and

WHEREAS, Paragon Roofing, Inc., has submitted a total proposed cost to the City of $195,049.25 for the purchase and installation of standing seam metal roofing at Fire Station 6, through The Interlocal Purchasing System; and

WHEREAS, the Council finds the price proposed by Paragon Roofing, Inc., for the purchase and installation of standing seam metal roofing at Fire Station 6 to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to approve a contract with Paragon Roofing, Inc., for the purchase and installation of Standing seam metal roofing at Fire Station 6 through The Interlocal Purchasing System; and

WHEREAS, the City Council finds it to be in the public interest to approve $4,950.75 for contingencies;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Paragon Roofing, Inc., for the purchase and installation of standing seam metal roofing at Fire Station 6, through The Interlocal Purchasing System, for a total cost of $195,049.25. Said contract being attached hereto as Exhibit A and incorporated herein for all purposes.

SECTION TWO. That the sum of $4,950.75 for contingencies is hereby approved.

SECTION THREE. That the sum of $200,000.00 is available in the FY2021 General Fund operating budget and is hereby appropriated and transferred into a project account in the Capital Fund (500).

SECTION FOUR. That the City Comptroller is hereby authorized and directed to pay Paragon Roofing, Inc., in accordance with the terms and conditions of the above-referenced contract from funds available in the above-referenced project account in the Capital Fund (500) upon proper receipt of invoices or statements approved by the City Manager.

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:

_____
Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

THE CITY OF MIDLAND

CONTRACT

Contract No. 22000031

THIS CONTRACT, effective the 29th day of September, 2021 by and between the City of Midland, hereinafter referred to as "CITY", and Paragon Roofing, Inc., hereinafter referred to as "COMPANY", is made for the following considerations:

1. **Cost:** Total Proposal: $ 195,049.25 DOLLARS

2. **Scope of Work:** COMPANY shall perform all work described for roof replacement for Fire Station 6 located at 301 Tradewinds Blvd, Midland, Texas in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

EXHIBIT A..... Specifications and Proposal
EXHIBIT B.....Intentionally Omitted
EXHIBIT C..... Bonding instructions for Public Works Contract of $50,000 and more
EXHIBIT D..... Wage Scale

3. **City:** The words "CITY's Representative" or "representative" shall mean Regina Stephenson or the designee under whose supervision these contract documents, including the plans and specifications, were prepared, or who may inspect work performed under this Contract; or such other representative, supervisor, or inspector as may be authorized by CITY to act in any particular capacity under this Contract.

4. **City's Representative:** CITY's Representative may make periodic visits to the site to observe the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract documents. CITY's representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, nor will such representative be responsible for the construction means, methods, techniques, sequences or procedures, or the safety precautions incident thereto. CITY's representative will not be responsible for COMPANY's failure to perform the work in accordance with the contract.

5. **Company:** Unless otherwise stipulated, COMPANY shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and all water, light, power, fuel,

transportation and all other facilities necessary for the execution and completion of the work covered by the contract documents. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of a good quality. COMPANY shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

5.1. COMPANY shall, at its expense, obtain all permits and licenses necessary for the performance of this contract and pay all fees and taxes required by law, and comply with all laws, ordinances, rules and regulations governing COMPANY's performance of the contract, including all environmental laws and regulations, whether state or federal.

5.2. All work shall be done and all materials furnished in strict conformity with the contract and specifications.

6. **Minor Work Not Mentioned:** All minor detail of the work not specifically mentioned in the Specifications but obviously necessary for the proper completion of the work, such as the proper connection of new work to old, shall be considered as incidental to and a part of the work for which the prices are named in the contract. COMPANY will not be entitled to any additional compensation therefor unless specifically stated otherwise. Otherwise the term "extra work" as used in this contract shall mean and include all work that may be required by CITY to be done by COMPANY to accomplish any alteration or addition to the work as shown on the Specifications.

6.1. COMPANY shall perform all extra work under the direction of CITY's Representative when presented with a written work order signed by CITY's Representative, subject, however, to the right of the COMPANY to require written confirmation of such extra work order by CITY. Payment for extra work shall be as agreed in the work order.

7. **Safety:** COMPANY shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws. All machinery and equipment and other physical hazards shall be guarded in accordance with federal, state or municipal laws or regulations.

8. **INDEMNITY: COMPANY 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, 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, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY 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. THE OBLIGATIONS CONTAINED IN THIS SECTION 8 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

8.1. **COMPANY 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, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, 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, 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 COMPANY OR COMPANY'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 CONTRACT, AND COMPANY 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. THE OBLIGATIONS CONTAINED IN THIS SECTION 8.1 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.**

8.2. **COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE CITY 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 AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND**

ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND 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. THE OBLIGATIONS CONTAINED IN THIS SECTION 8.2 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

9. **Start of Work:** COMPANY shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 90 calendar days after release to proceed.

10. **Clean Up:** COMPANY shall promptly remove from CITY's premises all materials condemned by CITY's Representative on account of failure to conform to the contract, whether actually incorporated in the work or not, and COMPANY shall at its own expense promptly replace such condemned materials with other materials conforming to the requirements of the contract. COMPANY shall also bear the expense of restoring all work of other contractors damaged by any such removal or replacement. If COMPANY does not remove and replace any such condemned materials within a reasonable time after a written notice by CITY, CITY may remove and replace such at COMPANY's expense.

11. **Warranty:** Neither the final payment nor any provision in this contract shall relieve COMPANY of responsibility for faulty materials or workmanship, and he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of substantial completion. CITY shall give notice of observed defects with reasonable promptness.

12. **Remedy:** CITY may, on account of subsequently discovered evidence, withhold whole or part of any payment to such extent as may be necessary to protect itself from loss on account of:

12.1. Defective work not remedied; or

12.2. Claims filed or reasonable evidence indicating possible filing of claims; or

12.3. Failure of COMPANY to make payments promptly to subcontractors or for material or labor which CITY may pay as an agent for the COMPANY; or

12.4. Damages to another contractor or subcontractor.

When the above grounds to withhold payment are removed, or COMPANY provides a surety bond satisfactory to CITY, which will protect CITY in the amount withheld, payment may be released.

13. **Funding Out:** In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable in any fiscal period for contract payments due under the contract, then this contract shall terminate on the last day of the fiscal period for which full appropriations were made, without penalty or expense to CITY of any kind whatsoever.

14. **Wage Scale:** COMPANY agrees to pay all workmen in his employ no less than the generally prevailing wage rate for employees of similar category in the Permian Basin Area, as is depicted in the wage rate scale attached hereto as EXHIBIT D, and incorporated herein by reference for all legal purposes.

14.1. 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 Contract, and all terms and requirements under said laws, by such incorporation, are made terms and requirements of this Contract, to which the parties to this Contract have agreed to be bound.

15. **Prompt Pay Act:** CITY and COMPANY agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

16. **Payment:** After all work is completed by COMPANY, including all Change Orders altering the original scope and amount of said contract are completed, and CITY has inspected and approved that the work is completed and in compliance with the contract and all subsequent Change Orders, CITY shall thereafter issue payment to COMPANY in the amount of the contract and all Change Orders. CITY shall be the final judge of when the work is completed by COMPANY. CITY, in its sole discretion, shall determine if the work under the contract and under any Change Orders has been done to CITY's requirements. CITY may make periodic payments to COMPANY, however such periodic payments may only be made pursuant to this paragraph, and only after all work and all Change Orders are completed by COMPANY and approved by CITY. For contracts exceeding $25,000 and construction time exceeds ninety days, requests for progress payments may be made to the extent of the materials and labor completed at the end of each month. Upon approval by the Owner's Representative the request and invoice shall be forwarded for payment less 5% retainage. The total of these payments shall not exceed 95% of the total contract amount.

17. **No Third Party Beneficiary:** CITY's approval of this contract does not create a third party beneficiary. There is no third party beneficiary to this contract. No person or entity who is not a party to

this contract shall have any third party beneficiary or other rights hereunder.

18. WAIVER OF ATTORNEY FEES: BY EXECUTING THIS CONTRACT, COMPANY 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 OR ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THIS CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS CONTRACT. COMPANY SPECIFICALLY AGREES THAT IF COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS CONTRACT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS CONTRACT, 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, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

COMPANY AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY-EXISTING KNOWN RIGHT. COMPANY ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS CONTRACT. COMPANY FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND COMPANY. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OR GOVERNMENTAL IMMUNITY AND SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

COMPANY IS RELYING ON ITS OWN JUDGMENT. COMPANY HAD THE OPPORTUNITY TO DISCUSS THIS CONTRACT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION. THE OBLIGATIONS CONTAINED IN THIS SECTION 18 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

19. **Governmental Immunity:** By executing this contract 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.

20. **Insurance:**

COMPANY shall at all times during the term of this Contract 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 CITY as an additional insured and waive subrogation in favor of CITY.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city 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 Contract. This insurance shall name CITY as an additional insured and waive subrogation in favor of CITY.

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 Contract. The Workers' Compensation shall waive all rights of subrogation in favor of CITY.

All insurance required pursuant to this Contract shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Contract, except for Workers' Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY 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 Contract 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 the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers' compensation).

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

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.

21. **Assignment**: COMPANY shall not, either directly or indirectly, assign all or any part of this Contract or any interest, right or privilege herein, without the prior written consent of CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

22. **RELEASE: NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY 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. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS CONTRACT**.

23. **Governing Law and Venue:** This contract shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this contract 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 contract or the performance of this contract shall be in Midland County, Texas.

24. **Independent Contractor:** COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine

of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Contract shall be construed as creating a partnership or joint enterprise between CITY 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 CITY. Further, it is specifically understood and agreed that nothing in this contract is intended or 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 Contract 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 COMPANY's work. COMPANY shall assume exclusive responsibility for the work. COMPANY is entirely free to do the work in its own way.

25. **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 Contract, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Contract) 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 COMPANY shall 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 (6) 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 provide such written notification 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 COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request 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 to the contrary, COMPANY's failure to comply with the requirements of this Section 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

CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Contract are reasonable. The provisions and obligations of this Section shall survive the termination of this Contract.

26. **Consideration:** The terms of this Contract are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

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

28. **Compliance:** COMPANY agrees that it shall comply with Texas Government Code Section 2252.908, *et seq.*, as amended. COMPANY agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

29. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Contract, Company hereby verifies:

- that Company does not boycott Israel and will not boycott Israel during the term of this Contract;
- that Company does not boycott energy companies and will not boycott energy companies during the term of this Contract; and
- that Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Contract against a firearm entity or firearm trade association.

To the extent that the Anti-Boycott Statutes do not apply to this Contract, such verification is not required, and Company shall be deemed to have not made such verification.

30. **Records Retention and Production of Information.** To the extent that this Contract constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Contract as provided by the records retention requirements applicable to CITY for the duration of this Contract; (ii) promptly provide to CITY any contracting information related to the Contract that is in the custody or possession of COMPANY on request of CITY;

and (iii) on completion of the Contract, either: (a) provide at no cost to CITY all contracting information related to the Contract that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to CITY.

31. **Public Information.** To the extent that this Contract is a contract described by Section 552.371 of the Texas Government Code, COMPANY agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

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

33. Company agrees that all iron or steel products produced through a manufacturing process and used in the project that is the subject of this Contract shall be produced in the United States in accordance with Government Code § 2252.202, et seq., as amended.

EXECUTED IN DUPLICATE 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

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____ §
§
COUNTY OF_____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Paragon Roofing, Inc. , 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 ____day of _____, 20____.

_____
Notary Public, State of_____

PARAGON ROOFING INC.

"Pattern of Excellence" since 1989

EXHIBIT "A"

September 14th, 2021

City of Midland
Fire Station #6
301 Tradewinds Blvd
Midland, Texas

THE INTERLOCAL PURCHASING SYSTEM

ROOFING PROPOSAL

We are pleased to submit this proposal for the roofing at the Fire Station #6 for the City of Midland through Paragon Roofing Inc. TIPS contract number 200201. This proposal includes both labor and materials for the installation of 14,260 square feet of mechanically seamed standing seam replacement as outline in the attached vetting sheet

WORK INCLUDES

1. See attached specifications labeled ***"Exhibit A" – 4T Specifications for roof replacement.***
2. See attached TIPS vetting sheet labeled ***"Exhibit B"*** for specific quantities, building locations and pricing
3. Includes performance payment bond

PROJECT TERMS AND CONDITIONS

1. Contractor shall carry Worker's Compensation and General Liability Insurance.
2. Contractor shall coordinate all schedules and work hours with the Owner or the designated representative. Standard work hours shall apply to this project. Only one mobilizations is included to complete the entire scope of work
3. Once work commences, Contractor shall proceed diligently to final completion.
4. Payment Schedule shall be as follows with all invoices due upon receipt:

   A. Contractor to submit invoices for those units/TMLIRP ID# as completed and audited on or before the 25th of each month. Payment less 10% retainage by the 10th of the following month

COMMERCIAL
MULTI-FAMILY
RESIDENTIAL

1601 N. Walton Walker Blvd.
Dallas, TX 75211
o. 214.630.6300 | f. 214.630.6677

paragonroofinginc.com

City of Midland
Page Two
September 14th, 2021

5. Price is good for delivery of materials for 45 days from the date of this proposal.

TOTAL VALUE OF ROOFING WORK AS OUTLINED ABOVE:

	$ 195,049.25
Tax 8.25%	$ N/A
Total:	**$ 195,049.25**

***NOTE:**

1. Deteriorated/damaged metal framing to be replaced at $6.00 per LF
2. Deteriorated/damaged metal trusses to be replaced at $15.00 per LF

ACCEPTANCE

If accepted the city will need to simply issue a Purchase Order to Paragon Roofing, Inc. by email Quentan@paragonroofinginc.com using the city's normal procedure.

Should you have any questions or concerns please contact our office at the number listed below.

Mr. Quentan Tobolka
VP of Steep Slope & Multi Family Sales
m. 214.336.0316

ACCEPTED:

Company: _____

Printed Name: _____

Authorized Signature: _____

Title: _____

Date: _____

COMMERCIAL
MULTI-FAMILY
RESIDENTIAL

1601 N. Walton Walker Blvd.
Dallas, TX 75211
o. 214.630.6377 | f. 214.630.6677

paragonroofinginc.com

TMLIRP	TIPS VETTING SHEET-ROOFING	Paragon Roofing, Inc	Claim Manager: Patti Tabor			9.14.21

City of Midland
Fire Station #6

VETTING SHEET

TML ID	BLDG/UNIT #	Physical Address Adjuster Scope of Work	TMLIRP BEST Program 4T PARTNERSHIP LLC Scope of Work	UNITS S.F./L.F./EACH	UNIT QTY TOTAL	ADJUSTMENT vs TIPS DELTA
	Fire Station #6	301 Tradewinds Blvd Midland, TX 79706				
		Project Mgmt.	**Full time PM**			**included**
		R&R Metal Standing Seam		s.f.	14260	$ 176,500.00
		R&R Underlayment/Peel-n-stick		s.f.	14260	included
		R&R Ridge Cap		l.f.	206	included
		R&R Plumbing stack flashings		each	10	included
		R&R "GreenHeck" Vent/Replace with New		each	2	$ 900.00
		Remove Gooseneck / Replace with new		each	1	$ 550.00
		R&R Rake Metal (8" face)		l.f.	359	$ 1,400.00
		R&R Fascia Metal (8" face)		l.f.	480	$ 2,000.00
		Remove and dispose of debris		each	4	included
		Weather Tightness Warranty 20 years				included
		5 Year Contractor Guaranty				included
		Paint all flashings				included
						included
		R&R Gutters and downspouts				$ 2,900.00
	Member option	Snow Ice Guards				$ 2,400.00
	Building Total					**$ 186,650.00**

EXECUTIVE SUMMARY:				TIPS 9.13.21 BASE PROPOSAL
BASE PROPOSAL	Upgrade from 26-gauge to 24 gauge	TOTAL		$ 186,650.00
TIPS FEE	TIPS FEE			$ 3,733.00
BOND FEE	P&P BOND			$ 4,666.25
TAX	EXCLUDE			
TOTAL PROPOSAL+BOND+TIPS				$ 195,049.25
WARRANTY / GUARANTY:				
Manufacture Warranty		Weather Tightness		20-year
Contractor Warranty		Contractor		5-Year
UNIT PRICES:				UNIT COST
R&R PLYWOOD		S.F.		$ 7.00
R&R FASCIA-wood		L.F.		$ 10.00
ALTERNATE / UPGRADES:				

CONTRACTOR NOTES:

Cost to include all material, lobor,bond,warranties to perform work

Proposal to be good for 90 days

EXCLUSIONS / COMMENTS: Pricing does not include replacement or detach and rest of windows and sill and jam metal repair. Due to volatility in metal prices this pricing is only valid until May 15th. Purchase order needs to be placed by May 15th to lock pric

CITY OF MIDLAND
FIRE STATION #6

Site Guidelines / Scope of Work / Specifications
Prepared for: Jamee Higgins-Risk management

TMLIRP CLAIM: PR99503

SCOTT FRANKLIN

SITE GUIDELINES / SCOPE OF WORK:

1. **Contractor Proposal Form**: Contractor to submit response on Proposal response form. No other forms will be accepted.

2. **Pre-Construction Meeting**: Prior to the execution contractor will attend a Pre-Construction meeting (Contractor Project Manager, Superintendent, Manufacture Representative, Owner and Consultant) to review execution, scheduling, and general guidelines for the project. Contractor will submit submittals (PDF, Application Guidelines, Field Drawings, Warranties, Guaranties) prior to the Pre-Construction meeting for all required products and MSDS sheets. Contractor to provide a Project Contact Sheet with names, cell phones and email for all personnel to be involved with scope of work. (Project Manager, Site Project Manager, Crew Superintendent and Office Contact) Contractor should submit a soft copy of these documents no later than 10 days prior to this meeting.

3. **Site/ Project Manager:** Contractor to provide and maintain a minimum of one (1) non-working Project Manager to oversee operations, safety compliance and coordination with site personnel. Project Manager will report to Owner/Site Representative a minimum of once each morning and once each afternoon to assure site personnel are advised on all areas that construction activity will be taking place, coordination of any lifting activities and verify any areas of possible moisture entry from prior night or day.

4. **First Responder Facility:** Contractor to include all required / necessary accommodations to assure that facility remains operational, no debris left on or near emergency vehicles and all other accommodations to assure emergency vehicles and personnel have clear entry and exit of the facility.

5. **Project Team Contact Sheet**: Contractor to provide an emergency contact sheet with email and cell phone contact numbers for all key personnel. Contractor to bring to Pre-Construction meeting.

6. **Staging area:** Contractor will maintain a single designated staging area. Based on city approval. All material storage, equipment storage is required to be kept at staging unless in use. All breaks, Lunches, and safety meetings to be held in staging area at all times. Unless authorized and identified with the Pre-Construction minutes. Contractor will stage equipment, material, and Company/ Crew vehicles in the assigned staging area location. Contractor will conduct safety meetings, lunch and breaks in the staging area. Contractor will maintain a Porta John and wash area within the area. Staging area should be marked with safety cones and caution tape to help prevent accidental access by the public.

7. **Demolition and debris:** Contractor will include all required debris control and removal of all demolition, wrappers and other. If required Contractor will

utilize waste removal company currently under contract with the city. Any and all receptacle bins must remain covered at all times when not being loaded to protect from any wind-blown debris.

8. **Storage:** Contractor is responsible for assuring that all material is secure on the roof and ground. All trash and debris should be bagged on a regular basis. Site should be free of wind-blown wrappers, trash, or debris. Contractor will maintain surrounding grounds with no debris, wrappers, water bottles etc. Contractor will bag all debris unless using a Skytrac and box for debris. At no time may contractor throw or discharge any materials or debris from roof.

9. **Signage**: Contractor will post one sign at the **staging area** identifying the site is an active construction site. Signage should include Company name, Office contact (Phone and Email) Site Project Manager name and phone number.

10. **Ground Protection**: Contractor will mark with cones on the ground whenever working within 10' of the perimeter over doors, exits and vehicle garage doors.

11. **Rain & Weather**: Contractor will have personnel on site or within 15-30 min. from the job site 7 days a week and including Holidays until substantially complete. At any time that the building is exposed to weather (Rain, Wind or Other) Contractor will meet Owner representative to assure all water tie offs are in place and to assure there is no moisture entry into the building. Contractor is responsible for keeping the building in a watertight condition from start of construction until complete. If crew or personnel dispatch for holidays or weekends contractor is required to maintain a minimum of two personnel 15-mile radius to respond, should it rain and to daily inspect of staging area, inspection of roof loaded material and to inspect all water tie offs a minimum of twice daily on non-workdays. Contractor to provide on his proposal the maximum number of crew days expected. (excludes rain / wind days)

12. **Site Safety**: Contractor will adhere to all safety requirements while performing work on the site. This will include but not limited to the following:

    a) Compliance with all OSHA requirements -See attached OSHA Bulletin-Roofing

    b) Compliance with all City requirements

    c) **Staging Area:** Contractor will maintain a clean and orderly staging area throughout execution. Staging area will include a porta john and be clearly marked with cones and caution tape. The area is to be clearly marked to avoid any accidental entry by the public. Contractor will maintain all crew trucks, lifting equipment, ext. in this area.

d) **Lifting Equipment**: Lifting Equipment will always be stored in staging if not being used. Contractor will protect all parking lot surfaces with plywood to prevent any dripping of hydraulic oil or other. Contractor will chain the wheel to the axle when not in use. Contractor will provide a copy of the key or passcode to equipment. Contractor will avoid creating ruts or damage to the surrounding areas, buildings and/or land scape. Any signs of leaking or significant issues with Hydraulic equipment contractor will immediately switch out equipment and do so without interruption to the work. Contractor to flag all below grade sprinklers and other before traversing over sidewalks and/ or landscape.

e) **Fire Extinguisher**: Contractor will always maintain a fire Extinguisher in the staging area and at the roof where any gas filled generators are in use.

f) **Fall Protection**: Contractor will install all required warning lines and fall protection as required throughout the execution of the work to protect the public and city personnel while on site performing repairs.

g) **Building Access:** Contractor will provide their own access to and from the roof. Contractor crew is to refrain from entry, interior roof hatch or exit of the building. Only the Project Manager and Crew Superintendent shall access or traffic the building but only with an approved City escort. Contractor to provide proper notice and schedule thru facility contact.

h) Contractor will install safety cones along sidewalk leading up to all primary entrances and exits that are to remain open during repairs / construction.

i) Contractor will comply with all required work hours and special designated days by the city. Contractor should include and anticipate any costs associated with overtime and night or weekend work to complete this project. No change orders for overtime, weekend or night work will be permitted.

j) Contractor and crew will comply with all Covid-19 rules and procedures while on site performing work.

k) Contractor and crew will refrain from any smoking on site. Contractor, Crew and Contractor vehicles will refrain from any drug or illegal substances on person or use while performing work. No alcohol or other on site whether containers are empty or full. This includes person and/or vehicles.

13. **Crew Safety Vests:** All Contractor personnel on site will wear safety vest to allow ease of identification for building personnel and public. Contractor Crew Superintendent and Project Manager will wear a different colored safety vest for ease of identification of Owner Personnel and the Public.

6. **Permit Fee(s):** Contractor will include any Permit costs and will include any administration cost for submitting and/for filing for a permit. Should a permit be required the contractor will include all costs for submitting for permit and any cost to collect the permit and post the permit at the appropriate locations.

7. **Safety Spotter:** Contractor will provide spotter personnel at the front and rear of any lifting equipment when equipment is be moved outside of staging area to assure that no public property or personnel can be damaged or hurt during operation. Contractor will also utilize a spotter any time the crew may be working within 10'-15' of the perimeter of the roof. Should the contractor be required to expose the roof to below to occupant or public. (i.e., Skylights) Contractor will coordinate with City with City contact for coordination of the Area being exposed. Any such type of area should also be marked with cones to prevent the public from accidently walking into this area.

8. **Access:** Contractor will provide their own exterior access to the building. All access points are to be removed when contractor is not on site or construction activity is not in process. Anyone accessing thru the building must comply with all COVID-19 and CDC Guidelines. Contractor personnel will perform temperature checks each day and document each crew member result.

9. **Electrical Power:** Contractor will supply all the contractor required power for operation of equipment. Contractor is not allowed at any time to use Owner's water, electrical receptacle or other in execution of this scope of work. Operation of generators will be kept away from any air intake or other type that would draw exhaust into the building. Contractor will keep all generators in a place to minimize noise to the occupants.

10. **Reconnect/ Disconnect:** Contractor is not authorized or allowed to disconnect any Mechanical units on the building. If for any reason the contractor feels it is necessary to disconnect a mechanical unit this must be approved in advance and scheduled with the Owner. It is expected that there will be some units which require disconnect / reconnect. All mechanical penetrations are to be flashed with ATR hub or Curbed type flashing. No pitch pans.

11. **Background Information**: Contractor will supply all required background information required to comply with Brazos City requirements and the Brazos City Sheriff's office.

12. **Insurance**: Contractor will submit proof of insurance (Certificate of Insurance) showing coverage that meets or exceeds all city requirements. All Insurance will be kept in good standing throughout execution of work. Any deviation could be reason for the City to terminate the contract.

13. **Exterior ladder / Stairs**: Contractor will include in their proposal and provide their own exterior access to the building. All exterior ladder access is to be properly secured when in use and removed during any times the crew is not on scene.

14. **Warranty Signage**: Contractor will post a fixed steel embossed sign at the Hatch access or wall or in location of the City choosing to notify anyone who access the roof the Date Installed, Manufacture, Contractor name and phone number, Manufacture warranty period (start and expiration), Warranty number and the assembly that was installed.

15. **Occupant Notification**: Contractor to post 8 ½ x 11" Notification at access / entry doors and exits notifying public and occupant of work currently active on at this site.

16. **Treated Wood**: Any and all wood installation or replacement shall be "Treated" to prevent moisture and decay and be compatible will roof membrane and accessories.

CLOSEOUT DOCUMENTS & PAYMENT PROCESSING

Contractor will submit a single and final invoice upon completion of the repairs for the **City of Midland Fire Station #6** to include the following:

1. **Contractor Warranty:** Contractor will provide the **Contractor 5-year workmanship warranty** for all work performed.
2. **Final Inspection** 4T Partnership will schedule an inspection with the Contractor and the Owner/City to perform a walk through and inspection of the completed Roof assembly and all areas included in the contractor's scope of work. 4T Partnership will forward minutes and documentation of any items in need of correction or repair. Any punch items will be corrected during inspection or can be performed, and contractor can submit photos showing corrective action.
3. **Contractor Invoice** – Contractor will submit a Final invoice with confirmation of completion of all punch list items and reference RFP II and building name with address.
4. **Manufacture "Weather Tightness Guaranty"** – Contractor will submit a copy and provide the Owner with an original of the required 20-year NDL Guaranty. The Guaranty should reference the Correct Owner / Member Name, Building Address and include execution by the Manufacture appropriate representative.
5. **"Conditional" Lien Release**- Contractor will submit a "Conditional Lien: Release with closeout documents including separate releases for any listed sub-contractors.
6. **Performance & Payment Bond**- Contractor will submit a copy of the Payment & Performance bond.

7. **Punch List Items Documentation**- Contractor will provide any necessary punch list / corrective action list and documentation showing each correction if required after the final inspection.

DELIVERY, STORAGE, AND HANDLING

- Store all materials in compliance with Manufacture requirements to avoid water damage and store rolled goods on end. Comply with manufacturer's recommendations for job-site storage and protection. If necessary, cover with lose tap or plastic and allow to breath.
- Contractor will adhere to all requirements regarding stagging location, site management and occupant safety to assure that both Contractor(s) crew and public / City personnel and the public are protected at all times.
- Contractor will supply a duplicate key or Code to operate all equipment being stored on site to facilitate (if necessary) moving this equipment if required by first responders.
- Contractor / Crew will prevent any blowing debris throughout the execution of the work. All material will be properly secured. Any material roof loaded must be tied or secured when not performing repairs on site. All debris will be bagged and placed in a receptacle or dump trailer.
- Contractor will at no time while positioned on the roof load material or equipment from ridge to eave over entrance and exits of the buildings.
- Contractor will not overload or otherwise damage the integrity of the building. Any damage to the building will be the responsibility of the contractor.

JOB CONDITIONS

- The Contractor preparing a proposal in response to this acknowledges that all work is to be performed while current activities within these buildings continue or proceed. Contractor will take and include all associated costs for signage, caution tape and safety cones to assure the tenant and public are protected from harm. **This is a first responder building.**
- Proceed with installation work only after substrate is prepared, clean, smooth, and dry.
- Proceed with installation work only when weather conditions allow. Follow primary manufacturer's recommendations during application throughout.
- Contractor agrees to schedule work on individual building / Roof area only after verification that the City does not have any pre-schedule events and/or conflicts without penalty or cost to the City. All stage moves *(to alternate deck areas are to be communicated and coordinated with the City)*
- **Scheduling Updates/City communication**: Contractor Project Manager will advise the Member each day on the prior days weather forecast. Each day that the forecast includes a greater than 30% (for that window of time) chance of rain and/or

Winds forecast to be in excess of 15-20 mph the contractor will have the option to schedule a “no-work” weather delay day. Contractor shall keep a daily record of all work and rain days throughout until completion.

- Contractor is at all times required to maintain a watertight condition on all buildings being repair / under construction. Contractor and his Insurance Company will be responsible for any damage to the interior and/or exterior) caused due to negligence on the contractor’s part. The contractor agrees to keep all buildings in a watertight condition until such time that the Building / Scope of work has been substantially completed and closeout documents submitted.
- COVID-19 / Pandemic: Contractor will adhere to all guidelines, procedures and policies regarding the City’s official and published requirements concerning Covid-19 and PPE and include in his/her proposal all necessary costs to comply.

End of Site Guidelines / Scope of Work

SECTION 07 41 13 - METAL ROOF PANELS Midland Fire Station #6

PART 1 - GENERAL

1.1 SCOPE: The Midland Fire Station #6, located at 301 Tradewinds, Midland, Texas 79701 request contractors provide a new standing seam metal roof for their fire station. The scope of work will include the installation of a Standing Seam Metal roof assembly, including the accessories, Flashings, and the installation of a High Temp Peel N Stick membrane under the standing seam metal roof assembly. Contractor to install Snowbreaker Ice and Snow guards.

1.2 **Gutters & Downspouts**: Contractor to include removal and replacement of all gutters and downspouts.

1.3 During the installation the contractor shall take the necessary step to maintain the landscape, the debris and removal at the end of each day fasteners, nails, and scrap materials to be placed in the dumpsters or hauled from the project, daily.

1.4 **Contact:** Communication will be between the designated contact person and the roofing contractor. The Midland Fire Department.

Jamee Higgins-Risk management Division

Phone: (432) 685-7246 Email: JHiggins@MidlandTexas.gov

1.5 **Lightning Protection**: Contractor to provide separate cost to install and certify Lightning Protection system

1.5 SECTION INCLUDES

A. Trapezoidal rib, seamed joint, standing seam metal roof panels, with related metal trim and accessories and provide for a High Temp Peel N Stick membrane below the standing seam metal roof assembly.

1.6 RELATED REQUIREMENTS

A. Division 01 Section "Sustainable Design Requirements" for related LEED® general requirements.

B. Division 05 Section "Steel Decking" for continuous metal decking supporting metal panels.

C. Division 05 Section "Cold-Formed Metal Trusses" for cold-formed metal trusses supporting metal panels.

D. Division 06 Section "Sheathing" for sheathing substrate for metal roof panels.

E. Division 07 Section Thermal Insulation for thermal insulation installed under metal panels.

F. Division 07 Section "Air Barriers" for air barriers within roof assembly and adjacent to roof assembly.

G. Division 07 Section "Metal Wall Panels" for factory-formed metal wall [and soffit] panels.

H. Division 07 Section "Sheet Metal Flashing and Trim" for formed sheet metal copings, flashings, reglet, and roof drainage items in addition to items specified in this Section.

I. Division 07 Section "Manufactured Roof Specialties" for manufactured copings, reglet, and roof drainage items in addition to items specified in this Section.

J. Division 07 Section "Joint Sealants" for field-applied Joint Sealants.

1.7 REFERENCES

A. American Architectural Manufacturer's Association (AAMA): www.aamanet.org:

1. AAMA 621 - Voluntary Specifications for High Performance Organic Coatings on Coil Coated Architectural Hot Dipped Galvanized (HDG) & Zinc-Aluminum Coated Steel Substrates.
2. AAMA 809.2 - Voluntary Specification Non-Drying Sealants.

B. American Society of Civil Engineers (ASCE): www.asce.org/codes-standards:

1. ASCE 7 - Minimum Design Loads for Buildings and Other Structures.

C. ASTM International (ASTM): www.astm.org:

1. ASTM A 653 - Specification for Steel Sheet, Zinc-Coated (Galvanized) or Zinc-Iron Alloy-Coated (Galvannealed) by the Hot-Dip Process.
2. ASTM A 755 - Specification for Steel Sheet, Metallic Coated by the Hot-Dip Process and Pre-painted by the Coil-Coating Process for Exterior Exposed Building Products.
3. ASTM A 792/A 792M - Standard Specification for Steel Sheet, 55 % Aluminum-Zinc Alloy-Coated by the Hot-Dip Process.
4. ASTM A 980 - Standard Specification for Steel, Sheet, Carbon, Ultra High Strength Cold Rolled.
5. ASTM C 645 - Specification for Nonstructural Steel Framing Members.
6. ASTM C 920 - Specification for Elastomeric Joint Sealants.
7. ASTM D 1003 - Standard Test Method for Haze and Luminous Transmittance of Transparent Plastics.
8. ASTM D 2244 - Test Method for Calculation of Color Differences from Instrumentally Measured Color Coordinates.

9. ASTM D 4214 - Test Methods for Evaluating Degree of Chalking of Exterior Paint Films.
10. ASTM E 1514 - Standard Specification for Structural Standing Seam Steel Roof Panel Systems.
11. ASTM E 1592 - Standard Test Method for Structural Performance of Sheet Metal Roof and Siding Systems by Uniform Static Air Pressure Difference.
12. ASTM E 1646 - Standard Test Method for Water Penetration of Exterior Metal Roof Panel Systems by Uniform Static Air Pressure Difference.
13. ASTM E 1680 - Standard Test Method for Rate of Air Leakage Through Exterior Metal Roof Panel Systems.
14. ASTM E 1980 - Practice for Calculating Solar Reflectance Index of Horizontal and Low-Sloped Opaque Surfaces.

D. Cool Roof Rating Council (CRRC®): www.coolroofs.org/productratingprogram.html:

1. CRRC-1-2008 - CRRC Product Rating Program.

E. FM Global (FM): www.fmglobal.com:

1. ANSI/FM 4471 - Approval Standard for Class 1 Panel Roofs.

F. International Accreditation Service (IAS):

1. **IAS AC 472** - Accreditation Criteria for Inspection Programs for Manufacturers of Metal Building Systems, Part B.

G. Underwriters Laboratories, Inc. (UL): www.ul.com:

1. UL 580 - Tests for Uplift Resistance of Roof Assemblies

H. US Environmental Protection Agency: www.energystar.gov/index.cfm:

1. ENERGY STAR® Reflective Roof Products.

I. US Green Building Council (USGBC): www.usgbc.org:

1. LEED - Leadership in Energy and Environmental Design (LEED) Green Building Rating Systems.

1.8 ADMINISTRATIVE REQUIREMENTS

A. Preinstallation Meeting: Prior to erection of framing, conduct preinstallation meeting at site attended by owner, architect, manufacturer's technical representative, inspection agency and related trade contractors.

1. Coordinate building framing in relation to metal panel system.
2. Coordinate openings and penetrations of metal panel system.

3. Coordinate work of Division 07 Sections "Roof Specialties" and "Roof Accessories" and openings and penetrations and manufacturer's accessories with installation of metal panels.

1.9 QUALITY ASSURANCE

A. Manufacturer/Source: Provide metal roof panel assembly and accessories from a single manufacturer providing fixed-base roll forming, and accredited under IAS AC 472 Part B.

B. Manufacturer Qualifications: Approved manufacturer listed in this Section with minimum five years' experience in manufacture of similar products in successful use in similar applications.

1. Approval of Comparable Products: Submit the following in accordance with project substitution requirements, within time allowed for substitution review:

a. Product data, including certified independent test data indicating compliance with requirements.
b. Samples of each component.
c. Sample submittal from similar project.
d. Project references: Minimum of five installations not less than five years old, with owner and architect contact information.
e. Sample warranty.
f. IAS AC 472 certificate.

2. Substitutions following award of contract are not allowed except as stipulated in Division 01 General Requirements.
3. Approved manufacturers must meet separate requirements of Submittals Article.

C. Installer Qualifications: Experienced installer certified by metal panel manufacturer with minimum of five years' experience with successfully completed projects of a similar nature and scope.

1. Installer's Field Supervisor: Experienced mechanic certified by metal panel manufacturer supervising work on site whenever work is underway.

D. **Buy American Compliance**: Materials provided under work of this Section shall comply with the following requirements:

1. Buy American Act of 1933 BAA-41 U.S.C §§ 10a – 10d.
2. Buy American provisions of Section 1605 of the American Recovery and Reinvestment Act of 2009 (ARRA).

1.10 ACTION SUBMITTALS

A. Product Data: Manufacturer's data sheets for specified products.

B. LEED Submittals:

1. Credit SS 7.2 Heat Island Effect - Roof: Product data indicating compliance with solar reflectance index requirement.
2. Credit MR 4 Recycled Content: Product data indicating the following:

a. Material costs for each product having recycled content.
b. Percentages by weight of post-consumer and pre-consumer recycled content for each item.
c. Total weight of products provided.

C. Shop Drawings: Show layouts of metal panels. Include details of each condition of installation, panel profiles, and attachment to building. Provide details at a minimum scale 1 ½" per foot of edge conditions, joints, fastener and sealant placement, flashings, openings, penetrations, roof accessories, lightning arresting equipment, and special details. Make distinctions between factory and field assembled work.

1. Indicate points of supporting structure that must coordinate with metal panel system installation.
2. Include data indicating compliance with performance requirements.
3. Include structural data indicating compliance with requirements of authorities having jurisdiction.

D. **Samples for Initial Selection**: For each exposed product specified including sealants. Provide representative color charts of manufacturer's full range of colors.

E. **Samples for Verification**: Provide 12" (305 mm-) long section of each metal panel profile. Provide color chip verifying color selection.

1.11 INFORMATIONAL SUBMITTALS

A. Product Test Reports: Indicating compliance of products with requirements, witnessed by a professional engineer.

B. Qualification Information: For installer's firm and field supervisor.

C. IAS Accreditation Certificate: Indicating that manufacturer is accredited under provisions of IAS AC 472.

D. **Buy American Certification**: Manufacturers' letters of compliance acceptable to authorities having jurisdiction, indicating that products comply with requirements.

E. **Florida State Building Code Certificate**.

F. **Manufacturer's Warranty**: Manufacture “Weather Tightness Warranty for no less than 20 years. Sample copy of manufacturer's standard warranty.

G. **Contractors Warranty**: Contractor warranty for no less then 5-years from the date installed.

1.12 CLOSEOUT SUBMITTALS

A. **Maintenance data**: Provide all care and maintenance guidelines for installed product.

B. **Manufacturer's Warranty**: Executed copy of manufacturer's 20-Year Weather Tightness Warranty. Warranty must reference the Members name and address of the building. Warranty shall be transferable.

C. **Payment & Performance Bond**: Provide a copy of the payment and performance bond.

D. **Lien Release**: Provide a executed “Conditional” Lien release from contractor and any sub-contractors.

E. **Contractors Warranty**: Provide a fully executed Contractor’s warranty for no less than 5-Years.

1.13 DELIVERY, STORAGE, AND HANDLING

A. Protect products of metal panel system during shipping, handling, and storage to prevent staining, denting, deterioration of components or other damage. Protect panels and trim bundles during shipping.

1. Deliver, unload, store, and erect metal panel system and accessory items without misshaping panels or exposing panels to surface damage from weather or construction operations.
2. Store in accordance with manufacturer’s written instructions. Provide wood collars for stacking and handling in the field.

1.14 COORDINATION

A. Coordinate sizes, profiles, and locations of roof curbs and other roof-mounted equipment and roof penetrations, based upon sizes of actual selected equipment.

1.15 WARRANTY

A. Special Manufacturer’s Warranty: On manufacturer’s standard form, in which manufacturer agrees to repair or replace metal panel assemblies that fail in materials and workmanship within one year from date of Substantial Completion.

B. **Special Weathertightness Warranty**: Single Source "Weather Tightness" warranty; initiated on the manufacturer's standard form, in which manufacturer agrees to repair or replace metal panel assemblies that fail to remain weathertight, including leaks, without monetary limitation 20 years from date of Substantial Completion.

C. **Contractors Warranty**: Contractor to submit 5-Year contractors' warranty.

D. **Special Panel Finish Warranty:** On manufacturer's standard form, in which manufacturer agrees to repair or replace metal panels that evidence deterioration of factory-applied finish within 30 years from date of Substantial Completion, including:

1. Fluoropolymer Two-Coat System:

   a. Color fading in excess of 5 Hunter units per ASTM D 2244.
   b. Chalking in excess of No. 8 rating per ASTM D 4214.
   c. Failure of adhesion, peeling, checking, or cracking.

2. Modified Silicone-Polyester Two-Coat System:

   a. Color fading in excess of 5 units per ASTM D 2244, for vertical applications.

   b. Color fading in excess of7Hunter units per ASTM D 2244, for non-vertical applications.
   c. Chalking in excess of No. 8 rating per ASTM D 4214, for vertical applications.
   d. Chalking in excess of No. 6 rating per ASTM D 4214, for non-vertical applications.
   e. Failure of adhesion, peeling, checking, or cracking.

PART 2 - PRODUCTS

2.1 MANUFACTURER

A. Basis of Design Manufacturer: **EXCEPTIONAL Metals' Metal Roof and Wall Systems, Division of Duro-Last®, Inc. Exceptional Metals, Saginaw, (800) 248-0280**

B. Email: info@EXCEPTIONALMETALS.com; Web: www.exceptionalmetals.com.

2.2 PERFORMANCE REQUIREMENTS

A. General: Provide metal roof panel system meeting performance requirements as determined by application of specified tests by a qualified testing facility on manufacturer's standard assemblies.

B. Recycled Content: For Steel Products: Postconsumer recycled content plus one-half of pre-consumer recycled content not less than 25 percent.

C. Radiative Property Performance:

1. **Solar Reflectance Index**: Minimum 78 for roof slopes of 2:12 or less and 29 for roof slopes greater than 2:12 under medium wind conditions, per ASTM E 1980.
2. **ENERGY STAR Qualified**: Listed on USDoE ENERGY STAR Roof Products Qualified Product List.
3. **Energy Performance**: Listed in CRRC Rated Product Directory, with minimum properties as required by applicable Energy efficiency or High-Performance Green Building standard.

D. System Performance: Comply with ASTM E 1514 and requirements of this Section.

E. Structural Performance: Provide metal panel assemblies capable of withstanding the effects of indicated loads and stresses within limits and under conditions indicated:

1. Wind Loads: Determine loads based on uniform pressure, importance factor, exposure category, and basic wind speed indicated on drawings.

    a. Wind Uplift Testing: Certify capacity of metal panels by actual testing of proposed assembly per ASTM E 1592.

2. Snow Loads: 20 lbf/sq.
3. Deflection Limits: Withstand inward and outward wind-load design pressures in accordance with applicable building code with maximum deflection of 1/240 of the span with no evidence of failure.
4. Seismic Performance: Comply with ASCE 7, Section 9, "Earthquake Loads."

F. Wind Uplift Resistance: Comply with UL 580 for wind-uplift class UL-90.

G. **FM Approvals Listing**: Comply with FM Approvals 4471 as part of a panel roofing system, and that are listed in FM Approvals' "RoofNav" for Class 1 construction. Identify materials with FM Approvals markings.

1. Fire/Windstorm Classification: Class 1A-90.
2. Hail Resistance Rating: SH.

H. Air Infiltration, ASTM E 1680: Maximum 0.07 cfm/sq. ft. (0.36 L/s per sq. m) at static-air-pressure difference of 6.24 lbf/sq. ft. (300 Pa).

I. Water Penetration Static Pressure, ASTM E 1646: No uncontrolled water penetration at a static pressure of 12 lbf/sq. ft. (575 Pa).

J. Thermal Movements: Allow for thermal movements from variations in both ambient and internal temperatures. Accommodate movement of support structure caused by thermal expansion and contraction. Allow for deflection and design for thermal stresses caused by temperature differences from one side of the panel to the other.

2.3 METAL ROOF PANELS

A. Mechanically Seamed, Concealed Fastener, Trapezoidal Seam Metal Roof Panels: Structural metal roof panel consisting of formed metal sheet with raised trapezoidal ribs at panel edges, installed by lapping and mechanically interconnecting edges of adjacent panels, and attaching panels to supports using concealed clips and fasteners in a weathertight installation.

1. Basis of Design: **EM SuperLok,** www.ExceptionalMetals.com
2. **Aluminum-Zinc Alloy-Coated Steel Sheet**: ASTM A 792/A 792M, structural quality, Grade 50, Coating Class AZ50 (Grade 340, Coating Class AZM150), pre-painted by the coil-coating process per ASTM A 755/A 755M.
3. **Aluminum-Zinc Alloy-Coated Steel Sheet**: ASTM A 792/A 792M, structural quality, Grade 50, Coating Class AZ55 (Grade 340, Coating Class AZM165) unpainted Galvalume Plus coating.

    a. Nominal Thickness: 24-gauge coated thickness.
    b. Panel Surface Smooth with minor ribs in pan with striations in pan.
    c. Exterior Finish: Member to select color
    d. Color: As indicated by architect from manufacturer's standard colors

4. Panel Width: **Match existing**
5. Panel Seam Height: 3” (76 mm).
6. Joint Type: Double folded.

2.4 METAL ROOF PANEL ACCESSORIES

A. General: Provide complete metal roof panel assembly incorporating trim, copings, fasciae, gutters and downspouts, and miscellaneous flashings, in Member to select color. Provide required fasteners, closure strips, splice plates, support plates, and sealants as indicated in manufacturer's written instructions.

B. Flashing and Trim: Match material, thickness, and finish of metal panel face sheet.

C. Two Piece Floating Clips: ASTM C 645, with ASTM A 653/A 653M, G90 (Z180) hot-dip galvanized zinc coating, configured for concealment in panel joints, and identical to clips utilized in tests demonstrating compliance with performance requirements.

D. Panel Fasteners: Self-tapping screws and other acceptable corrosion-resistant fasteners recommended by roof panel manufacturer. Where exposed fasteners cannot be avoided, supply fasteners with EPDM or neoprene gaskets, and heads matching color of metal panels by means of factory-applied coating.

E. Joint Sealers: Manufacturer's standard or recommended liquid and preformed sealers and tapes, and as follows:

1. Factory-Applied Seam Sealant: Manufacturer's standard hot-melt type.
2. Tape Sealers: Manufacturer's standard non-curing butyl tape, AAMA 809.2.

F. **Steel Sheet Miscellaneous Framing Components**: ASTM C 645, with ASTM A 653/A 653M, G60 (Z180) hot-dip galvanized zinc coating.

G. **Light Transmitting Panel**: Manufacturer's standard UV-resistant translucent panel, 24” (610 mm) wide, white, with haze value of not less than 90 percent when measured per ASTM D 1003.

H. **Roof Accessories**: Approved by metal roof panel manufacturer. Refer to Section 07 72 00 "Roof Accessories" for requirements for roof accessories.

I. **Ice and Snow Guards**: Contractor to submit and install over engine bays, entrance and exits.

J. **High Temp Peel N Stick**: The Peel N Stick membrane shall consist of a high temperature polymer capable of withstanding heat loads of up to 240 degree F and have a nominal 40 mil thickness. The material must meet the appropriate guidelines set forth by the metal roof manufacturers requirements for exposure, side lap overlap and end lap overlap. The surface of the membrane shall not consist of granulated material and shall be capable of walkability during construction without attaching to the roofing contractor shoe.

2.5 FABRICATION

A. General: Provide factory fabricated and finished metal panels and accessories meeting performance requirements, indicated profiles, and structural requirements.

B. Fabricate metal panel joints configured to accept factory-applied sealant providing weathertight seal and preventing metal-to-metal contact and minimizing noise resulting from thermal movement.

C. Form panels in continuous lengths for full length of detailed runs, except where otherwise indicated on approved shop drawings.

D. Sheet Metal Flashing and Trim: Fabricate flashing and trim to comply with manufacturer's written instructions, approved shop drawings, and project drawings. Form from materials matching metal panel substrate and finish.

2.6 FINISHES

A. Finishes General: Prepare, pretreat, and apply coating to exposed metal surfaces to comply with coating and resin manufacturers' written instructions.

B. Fluoropolymer Two-Coat System: 0.2 – 0.3 mil primer with 0.7 - 0.8 mil 70 percent PVDF fluoropolymer color coat, AAMA 621

C. Basis of Design: EXCEPTIONAL Metals, Signature® 300.

PART 3 - EXECUTION

3.1 EXAMINATION

A. Examine metal panel system substrate and supports with installer present. Inspect for erection tolerances and other conditions that would adversely affect installation of metal panel installation.

1. Inspect metal panel support substrate to determine if support components are installed as indicated on approved shop drawings. Confirm presence of acceptable supports at recommended spacing to match installation requirements of metal panels.
2. Panel Support Tolerances: Confirm that panel supports are within tolerances acceptable to metal panel system manufacturer but not greater than the following:

    a. ¼” (6 mm) in 20 foot (6.1 m) in any direction.
    b. 3/8” (9 mm) over any single roof plane.

B. Correct out-of-tolerance work and other deficient conditions prior to proceeding with insulated metal roof panel system installation.

3.2 PREPARATION

A. **Miscellaneous Supports**: Install sub framing, girts, furring, and other miscellaneous panel support members according to ASTM C 754 and manufacturer's written instructions.

B. Flashings: Provide flashings as required to complete metal roof panel system. Install in accordance with Section 07 62 00 "Sheet Metal Flashing and Trim" and approved shop drawings.

3.3 METAL PANEL INSTALLATION

A. Mechanically Field Seamed, Vertical leg standing seam roof system with 2” slim rib. Width to match existing width. Anchor panels and other components securely in place. Provide for thermal and structural movement.

B. Attach panels to supports using clips, screws, fasteners, and sealants recommended by manufacturer and indicated on approved shop drawings.

1. Fasten metal panels to supports with concealed clips at each location indicated on approved shop drawings, with spacing and fasteners recommended by manufacturer.
2. Seamed Joint: Crimp standing seams with manufacturer-approved, motorized seamer tool so clip, metal roof panel, and factory-applied sealant are completely engaged.
3. Provide weatherproof jacks for pipe and conduit penetrating metal panels of types recommended by manufacturer.
4. Dissimilar Materials: Where elements of metal panel system will come into contact with dissimilar materials, treat faces and edges in contact with dissimilar materials as recommended by manufacturer.

3.4 ACCESSORY INSTALLATION

A. General: Install metal panel trim, flashing, and accessories using recommended fasteners and joint sealers, with positive anchorage to building, and with weather tight mounting. Provide for thermal expansion. Coordinate installation with flashings and other components.

1. Install components required for a complete metal panel assembly, including trim, copings, flashings, sealants, closure strips, and similar items.
2. Comply with details of assemblies utilized to establish compliance with performance requirements and manufacturer's written installation instructions.
3. Provide concealed fasteners.
4. Set units true to line and level as indicated. Install work with laps, joints, and seams that will be permanently weather resistant.

B. Joint Sealers: Install joint sealers where indicated and where required for weathertight performance of metal panel assemblies, in accordance with manufacturer's written instructions.

1. Prepare joints and apply sealants per requirements of Division 07 Section "Joint Sealants."

3.5 FIELD QUALITY CONTROL

A. Testing Agency: Owner may engage an independent testing and inspecting agency acceptable to architect to perform field tests and inspections and to prepare test reports.

3.6 CLEANING AND PROTECTION

A. Remove temporary protective films immediately in accordance with metal roof panel manufacturer's instructions. Clean finished surfaces as recommended by metal roof panel manufacturer.

B. Replace damaged panels and accessories that cannot be repaired to the satisfaction of the architect.

END OF SECTION

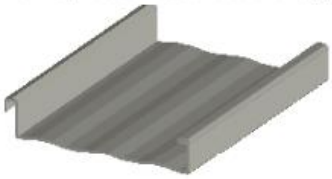
EXCEPTIONAL Metals — PRODUCT DATA SHEET

EM SuperLok®



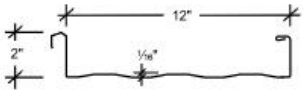
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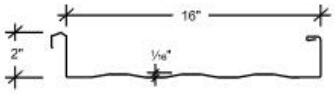
The EM SuperLok® is a mechanically field-seamed, vertical leg standing seam roof system that combines a 2" tall slim rib with exceptional uplift resistance. It is available in both 12-inch and 16-inch widths. EM SuperLok® has been designed to withstand the most rigorous weather conditions. EM SuperLok® can be installed directly over purlins or bar joists. EM SuperLok® does not require a solid substructure for support.



FEATURES AND BENEFITS

- EM SuperLok® panels are standard with striations to minimize oil canning.
- Low and high clips are available to allow for various thicknesses of insulation to be installed between the panels and purlins.
- Numerous UL 580 Construction ratings are available, as well as UL 790, Class A for external fire, numerous roof assemblies for UL 263 for internal fire and the UL 2218 Class 4 impact rating.
- EM SuperLok® carries FM, Florida, and Dade County ratings.





PRODUCT SPECIFICATIONS

- Applications: Roof
- Coverage Widths: 12" and 16"
- Minimum Slope: ½:12
- Panel Attachment: Concealed Fastening System, Low, High (fixed or floating), Utility (no insulation clearance)
- Gauges: 24 (standard); 22 and 26 (optional)
- Finishes: Smooth Striated (standard); Embossed Striated (optional)
- Coatings: Galvalume® Plus, Signature® 200, Signature® 300, Signature® 300 Metallic

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PRODUCT DATA-EM SUPERLOL

EM SUPERLOK®

CATEGORY	CHARACTERISTIC	TEST METHOD	PURPOSE	RESULT
ENVIRONMENTAL	Air Leakage Through Roof Panel Joints	ASTM E1680	Determines the air leakage characteristics of metal roof panels under specified air pressure differences at ambient conditions	0.0035 cfm/ft² at 1.57 psf static pressure 0.007 cfm/ft² at 6.24 psf static pressure
	Water Penetration Through Roof Panel Joints	ASTM E1646	Determines the resistance to water penetration of metal roof panels under uniform static air pressure difference	No uncontrolled water penetration through the panel joints at a static pressure of 12.00 psf
	Impact Resistance	UL2218	Determines impact resistance of prepared roof covering materials	Class 4 Rating
FIRE RESISTANCE	Room Fire Performance	UL790	Standard for standard test methods for fire tests of roof coverings	See Class A Fire Rating Data Sheet*
	Room Fire Performance	UL 263	Standard for fire tests of building construction and materials	For use in Design Nos. P225, P227, P230, P237, P265, P268, P508, P510, P512, P701, P711, P720, P722, P726, P731, P734, P801, P815, P819
STRUCTURAL	Uplift Resistance	ASTM E 1592	Provides a standard procedure to evaluate or confirm structural performance under uniform static air pressure difference	See Load Chart Section*
	Gravity Loads	AISI S100	North American Specification for the Design of Cold-Formed Steel Structural Members	See Section Properties and Allowable Load Table Section*
ROOF LISTINGS	Roof Performance FM Global	FM4471	Sets performance standards for panel roofs including uplift resistance	See FM Engineering Tech Bulletin*
	Roof Performance Underwriters Laboratories	UL 580	Determines the uplift resistance of roof assemblies consisting of the roof and roof covering materials	Class 90 Rating-Construction Number 90, 176, 180, 238B, 437, 449, 451, 452, and 487
	Roof Performance Miami-Dade County	TAS 125 TAS 201 TAS 100 FM 4471 App. G	The Product Control Approval System establishes a protocol to evaluate the standards of products used in construction in Miami-Dade County. Miami-Dade County, with its inclusion in the High Velocity Hurricane Zone (HVHZ) has the most stringent code requirements of the Florida Building Code. Therefore, all products that comprise the structure's building envelope-doors, shutters, windows, prefabricated buildings, and truss plates-require the issuance of an approval in order to be used for construction in Miami-Dade County	See NOA #12-0123.07 24 ga. Material See NOA #12-0911.02 22 ga. Material
	Roof Performance Florida Approval	ASTM E 1592 FM 4471 UL 790	Florida product approval is the approval of products and systems, which comprise the building envelope and structural frame, for compliance with the structural requirements of the Florida Building Code	See FL #11819.4
	Roof Performance Texas Department of Insurance	ASTM E 1592	TWIA provides windstorm and hail insurance in area exposed to hurricanes and currently provides windstorm and hail coverage in the following 14 "first tier" Texas coastal counties: Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio, and Willacy	See RC-392

*Additional data sheets and load charts available at www.exceptionalmetals.com.

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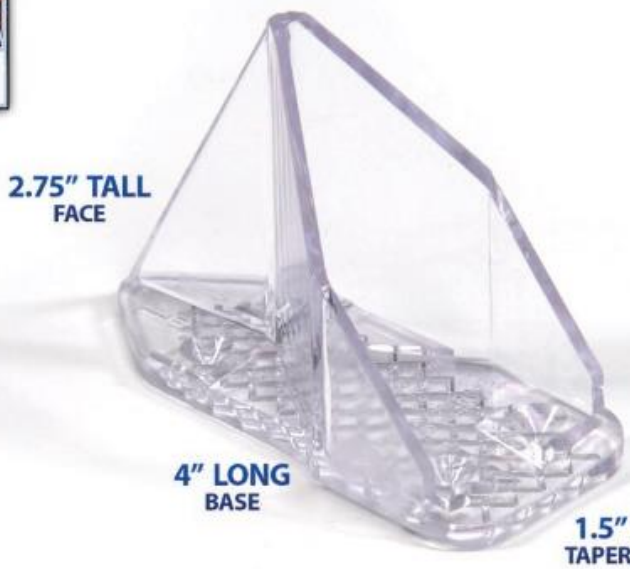
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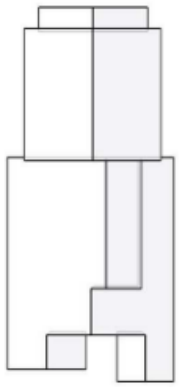
Visit www.SNOWBREAKER.com for spacing and isolated placement recommendations.

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Premium Report

5/15/2021

301 Tradewinds Blvd, Midland, TX 79706-2228 Report: 40285852



In this 3D model, facets appear as semi-transparent to reveal overhangs.

PREPARED FOR

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Phone:	972-742-3940

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MEASUREMENTS

Total Roof Area =14,260 sq ft
Total Roof Facets =9
Predominant Pitch =3/12
Number of Stories <=1
Total Ridges/Hips =206 ft
Total Valleys =0 ft
Total Rakes =359 ft
Total Eaves =480 ft
Total Penetrations =28
Total Penetrations Perimeter = 199 ft
Total Penetrations Area = 106 sq ft

Measurements provided by www.eagleview.com

Certified Accurate

www.eagleview.com/Guarantee.aspx

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Premium Report
5/15/2021

301 Tradewinds Blvd, Midland, TX 79706-2228 Report: 40285852

IMAGES

The following aerial images show different angles of this structure for your reference.

Top View



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IMAGES

North Side



South Side



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IMAGES

East Side



West Side



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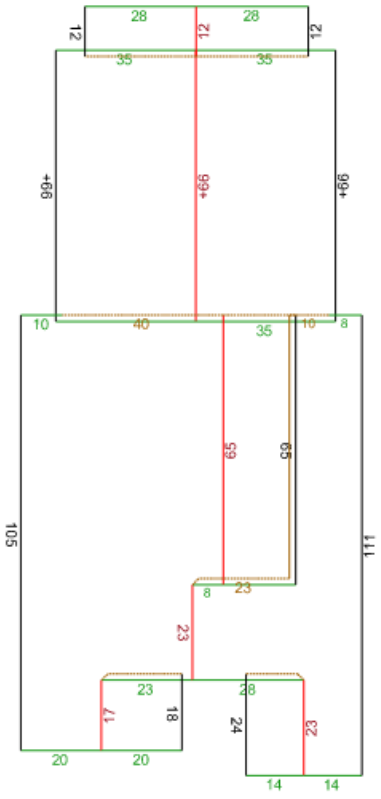
301 Tradewinds Blvd, Midland, TX 79706-2228 Report: 40285852

LENGTH DIAGRAM

Total Line Lengths:
Ridges = 206 ft
Hips = 0 ft

Valleys = 0 ft
Rakes = 359 ft
Eaves = 480 ft

Flashing = 64 ft
Step flashing = 185 ft
Parapets = 0 ft





Note: This diagram contains segment lengths (rounded to the nearest whole number) over 5.0 Feet. In some cases, segment labels have been removed for readability. Plus signs preface some numbers to avoid confusion when rotated (e.g. +6 and +9).

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PAGE 4

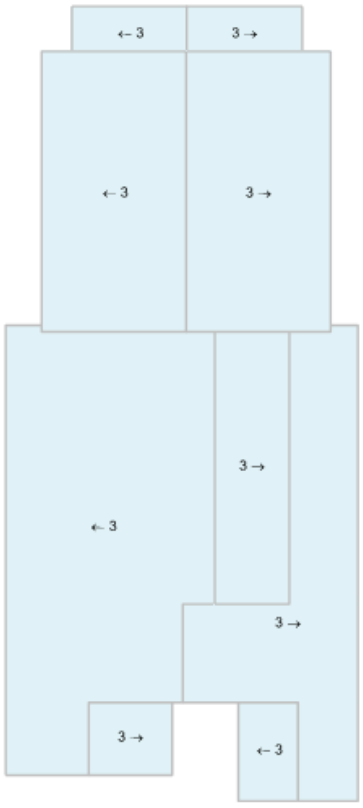
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PITCH DIAGRAM

Pitch values are shown in inches per foot, and arrows indicate slope direction. The predominant pitch on this roof is 3/12





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Note: This diagram contains labeled pitches for facet areas larger than 20.0 square feet. In some cases, pitch labels have been removed for readability. Blue shading indicates a pitch of 3/12 and greater.

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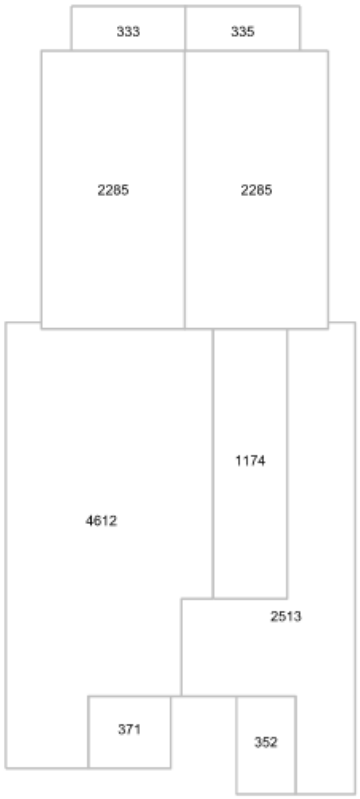
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AREA DIAGRAM

Total Area = 14,260 sq ft, with 9 facets.





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Note: This diagram shows the square feet of each roof facet (rounded to the nearest Foot). The total area in square feet, at the top of this page, is based on the non-rounded values of each roof facet (rounded to the nearest square foot after being totaled).

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PAGE 6

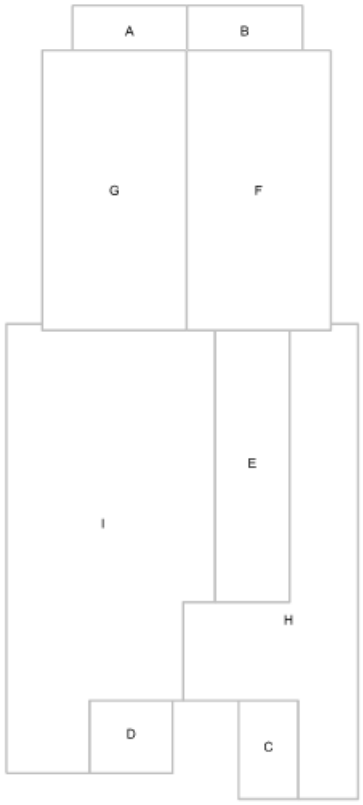
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NOTES DIAGRAM

Roof facets are labeled from smallest to largest (A to Z) for easy reference.





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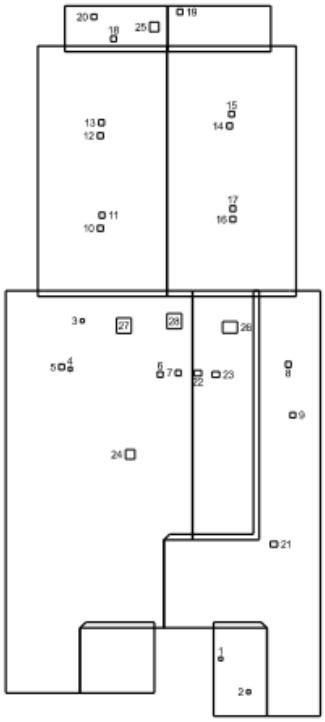
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PENETRATIONS NOTES DIAGRAM

Penetrations are labeled from smallest to largest for easy reference.

Total Penetrations = 28
Total Penetrations Perimeter = 199 ft

Total Penetrations Area = 106 sq ft
Total Roof Area Less Penetrations = 14,154 sq ft





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Premium Report
5/15/2021

301 Tradewinds Blvd, Midland, TX 79706-2228 Report: 40285852

REPORT SUMMARY

All Structures

Areas per Pitch	
Roof Pitches	3/12
Area (sq ft)	14259.9
% of Roof	100%

The table above lists each pitch on this roof and the total area and percent (both rounded) of the roof with that pitch.

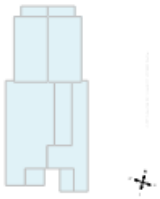
Waste Calculation Table							
Waste %	**0%**	**10%**	**12%**	**15%**	**17%**	**20%**	**22%**
Area (sq ft)	14,260	15,686	15,971	16,399	16,684	17,112	17,397
Squares	142.6	156.9	159.7	164.0	166.8	171.1	174.0

This table shows the total roof area and squares (rounded up to the nearest decimal) based upon different waste percentages. The waste factor is subject to the complexity of the roof, individual roofing techniques and your experience. Please consider this when calculating appropriate waste percentages. Note that only roof area is included in these waste calculations. Additional materials needed for ridge, hip, valley, and starter lengths are not included.

Penetrations	1-4	5-10	11-20	21-23	24-25	26	27-28			
Area (sq ft)	1	2.2	2.3	3	6.2	12	16			
Perimeter (ft)	4	6	6	7	10	14	16			

Any measured penetration smaller than 3.0x3.0 Feet may need field verification. Accuracy is not guaranteed. The total penetration area is not subtracted from the total roof area.

All Structures Totals



Total Roof Facets = 9
Total Penetrations =28

Lengths, Areas and Pitches
Ridges = 206 ft (6 Ridges)
Hips = 0 ft (0 Hips).
Valleys = 0 ft (0 Valleys)
Rakes† = 359 ft (16 Rakes)
Eaves/Starter‡ = 480 ft (9 Eaves)
Drip Edge (Eaves + Rakes) = 839 ft (25 Lengths)
Parapet Walls = 0 (0 Lengths).
Flashing = 64 ft (1 Lengths)
Step flashing = 185 ft (11 Lengths)
Total Penetrations Area = 106 sq ft
Total Roof Area Less Penetrations = 14,154 sq ft
Total Penetrations Perimeter = 199 ft
Predominant Pitch = 3/12
Total Area (All Pitches) = 14,260 sq ft

Property Location
Longitude = -102.1546298
Latitude = 31.9831693

Notes
This was ordered as a commercial property. There were no changes to the structure in the past four years.

† Rakes are defined as roof edges that are sloped (not level).
‡ Eaves are defined as roof edges that are not sloped and level.

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EXHIBIT C

Bonding Requirements

The successful bidder shall be required to furnish a Performance & Payment Bond* for bids in excess of $50,000.00, in an amount equal to one hundred percent (100%) of the total contract price, such bond to be executed in five (5) original counterparts by a Corporate Surety authorized to do business in the State of Texas and acceptable to the City of Midland. All bonds must be executed on forms contained in these contract documents. The form of agreement which the successful bidder, as contractor, will be required to execute is also included herewith. The form of agreement and the form of the bonds should be carefully examined by the bidder.

A certified check, cashier's check, bank money order, or irrevocable letter of credit issued by a bank satisfactory to the City, or a bidder's bond on the form provided, in the amount of five percent (5%) of the largest possible lump sum bid submitted, payable without recourse to the City, must accompany the bidder's proposal, as a guaranty that the bidder will enter a contract and execute the required payment bond and guaranty in the forms provided within fifteen (15) days after notice of award of contract to him. Bids or proposals without the required bid guaranty will not be considered. All bid sureties and payment bonds shall name the City of Midland as Obligee.

*A cash security such as a cashier's check or irrevocable letter of credit issued by a bank satisfactory to the City for 100 % of the contract amount may be supplied in lieu of the Performance and Payment Bonds. The check will be returned un-cashed upon satisfactory completion of the work and evidence of payment of all obligations due for the contract.

PAYMENT BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____ of the City of _____ of the County of _____ and State of Texas as Principal, and _____, as Surety, are held and firmly bound unto the City of Midland, Texas, as Obligee, in the amount of _____ DOLLARS ($ _____) for the payment whereof the said Principal and Surety bind themselves, their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____ day of _____, 20__, for the furnishing of materials, equipment to perform all labor and work necessary for _____, hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the condition of the obligation is that if the said Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then this obligation shall be null and void; otherwise, it is to remain in full force and effect.

Surety, for value received, stipulates and agrees that no change, extension of time alteration or addition to the terms of the contract, or to the work performed there under, or the plans, specifications of drawings accompanying the same, or any assignment of the contract as may be provided for in the instructions to bidders, shall in anywise affect its obligation on this Bond, and it does waive notice of any such change, extension of

time, alteration or addition to the terms of the contract, assignment thereof, or to the work to be performed there under.

IN WITNESS WHEREOF the said Principal and Surety have signed and sealed this instrument, this _____ day of _____ , 20__ .

_____	_____
Principal	Surety
By _____	By _____
Address _____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

Form Revised August 2012

PERFORMANCE BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____ (Hereinafter called the Principal[s]), as Principal(s), and _____ (Hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Midland, Texas a home rule municipal corporation of Midland County, Texas, (hereinafter called the Obligee), in the amount of _____ DOLLARS ($ _____) for the payment whereof the said Principal and surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____day of _____ , 20___ , for the furnishing of materials and equipment to perform all labor and work necessary for the construction of _____ , specifically including in the scope of this work and bond, the additional maintenance guaranty provisions set forth in the contract conditions, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein, as well as the Principal's primary obligation to perform according to plans and specifications.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform the work in accordance with the plans, specifications, instructions to bidder, general and special conditions and other contract documents, including any addendum thereto, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED further that if any legal action be filed upon this Bond venue shall lie in Midland County, State of Texas.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications or drawings accompanying the same, or any assignment of the contract as may be provided for in the instructions to bidders, shall in anywise affect its obligation on this Bond, and it does waive notice of any such change, extension of time, alteration or addition to the terms of the contract, assignment thereof, or the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and surety do sign and seal this instrument, this _____ day of _____ , 20___.

_____	_____
Principal	Surety
By _____	By _____
Address _____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

EXHIBIT D – BUILDING WAGE RATES rev 01-01-21

General Decision Number: TX20210261 01/01/2021

Superseded General Decision Number: TX20200261

State: Texas

Construction Type: Building

County: Midland County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/01/2021

BOIL0074-003 01/01/2017

	Rates	Fringes
BOILERMAKER	$ 28.00	22.35

ENGI0178-005 06/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
(1) Tower Crane	$ 32.85	13.10
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 tons and above	$ 28.75	10.60
(3) Hydraulic cranes 59 Tons and under	$ 32.35	13.10

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* IRON0084-011 06/01/2020

	Rates	Fringes
IRONWORKER, ORNAMENTAL	$ 25.26	7.13

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* PLUM0404-001 09/01/2020

	Rates	Fringes
PLUMBER	$ 26.05	8.81

SUTX2014-037 07/21/2014

	Rates	Fringes
BRICKLAYER	$ 20.00	0.00
CARPENTER	$ 13.82	0.00
CEMENT MASON/CONCRETE FINISHER	$ 13.76	0.00
ELECTRICIAN	$ 23.18	6.31
INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation)	$ 19.77	7.13
IRONWORKER, REINFORCING	$ 12.27	0.00

IRONWORKER, STRUCTURAL	$ 22.16	5.26
LABORER: Common or General	$ 11.80	0.00
LABORER: Mason Tender - Brick	$ 11.38	0.00
LABORER: Mason Tender - Cement/Concrete	$ 10.58	0.00
LABORER: Pipelayer	$ 12.49	2.13
LABORER: Roof Tearoff	$ 11.28	0.00
OPERATOR: Backhoe/Excavator/Trackhoe	$ 14.25	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader	$ 13.93	0.00
OPERATOR: Bulldozer	$ 18.29	1.31
OPERATOR: Drill	$ 16.22	0.34
OPERATOR: Forklift	$ 14.83	0.00
OPERATOR: Grader/Blade	$ 13.37	0.00
OPERATOR: Loader	$ 13.55	0.94
OPERATOR: Mechanic	$ 17.52	3.33
OPERATOR: Paver (Asphalt, Aggregate, and Concrete)	$ 16.03	0.00
OPERATOR: Roller	$ 12.70	0.00
PAINTER (Brush, Roller, and Spray)	$ 15.00	0.73
PIPEFITTER	$ 25.80	8.55
ROOFER	$ 14.75	0.00
SHEET METAL WORKER (HVAC Duct Installation Only)	$ 22.73	7.52
SHEET METAL WORKER, Excludes HVAC Duct Installation	$ 19.50	0.00

TILE FINISHER.....$ 11.22 0.00

TILE SETTER.....$ 14.74 0.00

TRUCK DRIVER: Dump Truck.....$ 12.39 1.18

TRUCK DRIVER: Flatbed Truck.....$ 19.65 8.57

TRUCK DRIVER: Semi-Trailer Truck.....$ 12.50 0.00

TRUCK DRIVER: Water Truck.....$ 12.00 4.11

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

==========

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts. Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses

(29CFR 5.5 (a) (1) (ii)).

THE CITY OF MIDLAND

CONTRACT

Contract No. 22000031

THIS CONTRACT, effective the 29th day of September, 2021 by and between the City of Midland, hereinafter referred to as "CITY", and Paragon Roofing, Inc., hereinafter referred to as "COMPANY", is made for the following considerations:

1. **Cost:** Total Proposal: $ 195,049.25 DOLLARS

2. **Scope of Work:** COMPANY shall perform all work described for roof replacement for Fire Station 6 located at 301 Tradewinds Blvd, Midland, Texas in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

EXHIBIT A..... Specifications and Proposal
EXHIBIT B.....Intentionally Omitted
EXHIBIT C..... Bonding instructions for Public Works Contract of $50,000 and more
EXHIBIT D..... Wage Scale

3. **City:** The words "CITY's Representative" or "representative" shall mean Regina Stephenson or the designee under whose supervision these contract documents, including the plans and specifications, were prepared, or who may inspect work performed under this Contract; or such other representative, supervisor, or inspector as may be authorized by CITY to act in any particular capacity under this Contract.

4. **City's Representative:** CITY's Representative may make periodic visits to the site to observe the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract documents. CITY's representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, nor will such representative be responsible for the construction means, methods, techniques, sequences or procedures, or the safety precautions incident thereto. CITY's representative will not be responsible for COMPANY's failure to perform the work in accordance with the contract.

5. **Company:** Unless otherwise stipulated, COMPANY shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and all water, light, power, fuel,

transportation and all other facilities necessary for the execution and completion of the work covered by the contract documents. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of a good quality. COMPANY shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

5.1. COMPANY shall, at its expense, obtain all permits and licenses necessary for the performance of this contract and pay all fees and taxes required by law, and comply with all laws, ordinances, rules and regulations governing COMPANY's performance of the contract, including all environmental laws and regulations, whether state or federal.

5.2. All work shall be done and all materials furnished in strict conformity with the contract and specifications.

6. **Minor Work Not Mentioned:** All minor detail of the work not specifically mentioned in the Specifications but obviously necessary for the proper completion of the work, such as the proper connection of new work to old, shall be considered as incidental to and a part of the work for which the prices are named in the contract. COMPANY will not be entitled to any additional compensation therefor unless specifically stated otherwise. Otherwise the term "extra work" as used in this contract shall mean and include all work that may be required by CITY to be done by COMPANY to accomplish any alteration or addition to the work as shown on the Specifications.

6.1. COMPANY shall perform all extra work under the direction of CITY's Representative when presented with a written work order signed by CITY's Representative, subject, however, to the right of the COMPANY to require written confirmation of such extra work order by CITY. Payment for extra work shall be as agreed in the work order.

7. **Safety:** COMPANY shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws. All machinery and equipment and other physical hazards shall be guarded in accordance with federal, state or municipal laws or regulations.

8. **INDEMNITY: COMPANY 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, 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, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY 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. THE OBLIGATIONS CONTAINED IN THIS SECTION 8 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

8.1. **COMPANY 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, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, 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, 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 COMPANY OR COMPANY'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 CONTRACT, AND COMPANY 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. THE OBLIGATIONS CONTAINED IN THIS SECTION 8.1 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.**

8.2. **COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE CITY 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 AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND**

ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND 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. THE OBLIGATIONS CONTAINED IN THIS SECTION 8.2 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

9. **Start of Work:** COMPANY shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 90 calendar days after release to proceed.

10. **Clean Up:** COMPANY shall promptly remove from CITY's premises all materials condemned by CITY's Representative on account of failure to conform to the contract, whether actually incorporated in the work or not, and COMPANY shall at its own expense promptly replace such condemned materials with other materials conforming to the requirements of the contract. COMPANY shall also bear the expense of restoring all work of other contractors damaged by any such removal or replacement. If COMPANY does not remove and replace any such condemned materials within a reasonable time after a written notice by CITY, CITY may remove and replace such at COMPANY's expense.

11. **Warranty:** Neither the final payment nor any provision in this contract shall relieve COMPANY of responsibility for faulty materials or workmanship, and he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of substantial completion. CITY shall give notice of observed defects with reasonable promptness.

12. **Remedy:** CITY may, on account of subsequently discovered evidence, withhold whole or part of any payment to such extent as may be necessary to protect itself from loss on account of:

12.1. Defective work not remedied; or

12.2. Claims filed or reasonable evidence indicating possible filing of claims; or

12.3. Failure of COMPANY to make payments promptly to subcontractors or for material or labor which CITY may pay as an agent for the COMPANY; or

12.4. Damages to another contractor or subcontractor.

When the above grounds to withhold payment are removed, or COMPANY provides a surety bond satisfactory to CITY, which will protect CITY in the amount withheld, payment may be released.

13. **Funding Out:** In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable in any fiscal period for contract payments due under the contract, then this contract shall terminate on the last day of the fiscal period for which full appropriations were made, without penalty or expense to CITY of any kind whatsoever.

14. **Wage Scale:** COMPANY agrees to pay all workmen in his employ no less than the generally prevailing wage rate for employees of similar category in the Permian Basin Area, as is depicted in the wage rate scale attached hereto as EXHIBIT D, and incorporated herein by reference for all legal purposes.

14.1. 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 Contract, and all terms and requirements under said laws, by such incorporation, are made terms and requirements of this Contract, to which the parties to this Contract have agreed to be bound.

15. **Prompt Pay Act:** CITY and COMPANY agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

16. **Payment:** After all work is completed by COMPANY, including all Change Orders altering the original scope and amount of said contract are completed, and CITY has inspected and approved that the work is completed and in compliance with the contract and all subsequent Change Orders, CITY shall thereafter issue payment to COMPANY in the amount of the contract and all Change Orders. CITY shall be the final judge of when the work is completed by COMPANY. CITY, in its sole discretion, shall determine if the work under the contract and under any Change Orders has been done to CITY's requirements. CITY may make periodic payments to COMPANY, however such periodic payments may only be made pursuant to this paragraph, and only after all work and all Change Orders are completed by COMPANY and approved by CITY. For contracts exceeding $25,000 and construction time exceeds ninety days, requests for progress payments may be made to the extent of the materials and labor completed at the end of each month. Upon approval by the Owner's Representative the request and invoice shall be forwarded for payment less 5% retainage. The total of these payments shall not exceed 95% of the total contract amount.

17. **No Third Party Beneficiary:** CITY's approval of this contract does not create a third party beneficiary. There is no third party beneficiary to this contract. No person or entity who is not a party to

this contract shall have any third party beneficiary or other rights hereunder.

18. WAIVER OF ATTORNEY FEES: BY EXECUTING THIS CONTRACT, COMPANY 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 OR ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THIS CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS CONTRACT. COMPANY SPECIFICALLY AGREES THAT IF COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS CONTRACT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS CONTRACT, 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, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

COMPANY AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY-EXISTING KNOWN RIGHT. COMPANY ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS CONTRACT. COMPANY FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND COMPANY. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OR GOVERNMENTAL IMMUNITY AND SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

COMPANY IS RELYING ON ITS OWN JUDGMENT. COMPANY HAD THE OPPORTUNITY TO DISCUSS THIS CONTRACT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION. THE OBLIGATIONS CONTAINED IN THIS SECTION 18 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

19. **Governmental Immunity:** By executing this contract 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.

20. **Insurance:**

COMPANY shall at all times during the term of this Contract 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 CITY as an additional insured and waive subrogation in favor of CITY.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city 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 Contract. This insurance shall name CITY as an additional insured and waive subrogation in favor of CITY.

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 Contract. The Workers' Compensation shall waive all rights of subrogation in favor of CITY.

All insurance required pursuant to this Contract shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Contract, except for Workers' Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY 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 Contract 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 the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers' compensation).

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

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.

21. **Assignment**: COMPANY shall not, either directly or indirectly, assign all or any part of this Contract or any interest, right or privilege herein, without the prior written consent of CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

22. **RELEASE: NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY 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. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS CONTRACT**.

23. **Governing Law and Venue:** This contract shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this contract 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 contract or the performance of this contract shall be in Midland County, Texas.

24. **Independent Contractor:** COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine

of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Contract shall be construed as creating a partnership or joint enterprise between CITY 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 CITY. Further, it is specifically understood and agreed that nothing in this contract is intended or 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 Contract 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 COMPANY's work. COMPANY shall assume exclusive responsibility for the work. COMPANY is entirely free to do the work in its own way.

25. **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 Contract, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Contract) 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 COMPANY shall 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 (6) 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 provide such written notification 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 COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request 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 to the contrary, COMPANY's failure to comply with the requirements of this Section 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

CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Contract are reasonable. The provisions and obligations of this Section shall survive the termination of this Contract.

26. **Consideration:** The terms of this Contract are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

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

28. **Compliance:** COMPANY agrees that it shall comply with Texas Government Code Section 2252.908, *et seq.*, as amended. COMPANY agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

29. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Contract, Company hereby verifies:

- that Company does not boycott Israel and will not boycott Israel during the term of this Contract;
- that Company does not boycott energy companies and will not boycott energy companies during the term of this Contract; and
- that Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Contract against a firearm entity or firearm trade association.

To the extent that the Anti-Boycott Statutes do not apply to this Contract, such verification is not required, and Company shall be deemed to have not made such verification.

30. **Records Retention and Production of Information.** To the extent that this Contract constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Contract as provided by the records retention requirements applicable to CITY for the duration of this Contract; (ii) promptly provide to CITY any contracting information related to the Contract that is in the custody or possession of COMPANY on request of CITY;

and (iii) on completion of the Contract, either: (a) provide at no cost to CITY all contracting information related to the Contract that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to CITY.

31. **Public Information.** To the extent that this Contract is a contract described by Section 552.371 of the Texas Government Code, COMPANY agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

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

33. Company agrees that all iron or steel products produced through a manufacturing process and used in the project that is the subject of this Contract shall be produced in the United States in accordance with Government Code § 2252.202, et seq., as amended.

EXECUTED IN DUPLICATE 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

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF _____ §
§
COUNTY OF_____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer of Paragon Roofing, Inc. , 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 ____day of _____, 20____.

_____
Notary Public, State of_____

PARAGON ROOFING INC.

"Pattern of Excellence" since 1989

EXHIBIT "A"

September 14th, 2021

City of Midland
Fire Station #6
301 Tradewinds Blvd
Midland, Texas

THE INTERLOCAL PURCHASING SYSTEM

ROOFING PROPOSAL

We are pleased to submit this proposal for the roofing at the Fire Station #6 for the City of Midland through Paragon Roofing Inc. TIPS contract number 200201. This proposal includes both labor and materials for the installation of 14,260 square feet of mechanically seamed standing seam replacement as outline in the attached vetting sheet

WORK INCLUDES

1. See attached specifications labeled ***"Exhibit A" – 4T Specifications for roof replacement.***
2. See attached TIPS vetting sheet labeled ***"Exhibit B"*** for specific quantities, building locations and pricing
3. Includes performance payment bond

PROJECT TERMS AND CONDITIONS

1. Contractor shall carry Worker's Compensation and General Liability Insurance.
2. Contractor shall coordinate all schedules and work hours with the Owner or the designated representative. Standard work hours shall apply to this project. Only one mobilizations is included to complete the entire scope of work
3. Once work commences, Contractor shall proceed diligently to final completion.
4. Payment Schedule shall be as follows with all invoices due upon receipt:

   A. Contractor to submit invoices for those units/TMLIRP ID# as completed and audited on or before the 25th of each month. Payment less 10% retainage by the 10th of the following month

COMMERCIAL
MULTI-FAMILY
RESIDENTIAL

1601 N. Walton Walker Blvd.
Dallas, TX 75211
o. 214.630.6377 | f. 214.630.6677

paragonroofinginc.com

City of Midland
Page Two
September 14th, 2021

5. Price is good for delivery of materials for 45 days from the date of this proposal.

TOTAL VALUE OF ROOFING WORK AS OUTLINED ABOVE:

	$ 195,049.25
Tax 8.25%	$ N/A
Total:	**$ 195,049.25**

***NOTE:**

1. Deteriorated/damaged metal framing to be replaced at $6.00 per LF
2. Deteriorated/damaged metal trusses to be replaced at $15.00 per LF

ACCEPTANCE

If accepted the city will need to simply issue a Purchase Order to Paragon Roofing, Inc. by email Quentan@paragonroofinginc.com using the city's normal procedure.

Should you have any questions or concerns please contact our office at the number listed below.

Mr. Quentan Tobolka
VP of Steep Slope & Multi Family Sales
m. 214.336.0316

ACCEPTED:

Company: _____

Printed Name: _____

Authorized Signature: _____

Title: _____

Date: _____

COMMERCIAL
MULTI-FAMILY
RESIDENTIAL

1601 N. Walton Walker Blvd.
Dallas, TX 75211
o. 214.630.6[illegible] | f. 214.630.6677

paragonroofinginc.com

TMLIRP	TIPS VETTING SHEET-ROOFING	Paragon Roofing, Inc	Claim Manager: Patti Tabor	9.14.21

City of Midland
Fire Station #6

VETTING SHEET

TML ID	BLDG/UNIT #	Physical Address Adjuster Scope of Work	TMLIRP BEST Program 4T PARTNERSHIP LLC Scope of Work	UNITS S.F./L.F./EACH	UNIT QTY TOTAL	ADJUSTMENT vs TIPS DELTA
	Fire Station #6	301 Tradewinds Blvd Midland, TX 79706				
		Project Mgmt.	**Full time PM**			**included**
		R&R Metal Standing Seam		s.f.	14260	$ 176,500.00
		R&R Underlayment/Peel-n-stick		s.f.	14260	included
		R&R Ridge Cap		l.f.	206	included
		R&R Plumbing stack flashings		each	10	included
		R&R "GreenHeck" Vent/Replace with New		each	2	$ 900.00
		Remove Gooseneck / Replace with new		each	1	$ 550.00
		R&R Rake Metal (8" face)		l.f.	359	$ 1,400.00
		R&R Fascia Metal (8" face)		l.f.	480	$ 2,000.00
		Remove and dispose of debris		each	4	included
		Weather Tightness Warranty 20 years				included
		5 Year Contractor Guaranty				included
		Paint all flashings				included
						included
		R&R Gutters and downspouts				$ 2,900.00
	Member option	Snow Ice Guards				$ 2,400.00
	Building Total					**$ 186,650.00**

EXECUTIVE SUMMARY:				TIPS 9.13.21 BASE PROPOSAL
BASE PROPOSAL	Upgrade from 26-gauge to 24 gauge	TOTAL		$ 186,650.00
TIPS FEE	TIPS FEE			$ 3,733.00
BOND FEE	P&P BOND			$ 4,666.25
TAX	EXCLUDE			
TOTAL PROPOSAL+BOND+TIPS				$ 195,049.25
WARRANTY / GUARANTY:				
Manufacture Warranty		Weather Tightness		20-year
Contractor Warranty		Contractor		5-Year
UNIT PRICES:				UNIT COST
R&R PLYWOOD		S.F.		$ 7.00
R&R FASCIA-wood		L.F.		$ 10.00
ALTERNATE / UPGRADES:				

CONTRACTOR NOTES:

Cost to include all material, lobor,bond,warranties to perform work

Proposal to be good for 90 days

EXCLUSIONS / COMMENTS: Pricing does not include replacement or detach and rest of windows and sill and jam metal repair. Due to volatility in metal prices this pricing is only valid until May 15th. Purchase order needs to be placed by May 15th to lock pric

CITY OF MIDLAND
FIRE STATION #6

Site Guidelines / Scope of Work / Specifications
Prepared for: Jamee Higgins-Risk management

TMLIRP CLAIM: PR99503

SCOTT FRANKLIN

SITE GUIDELINES / SCOPE OF WORK:

1. **Contractor Proposal Form**: Contractor to submit response on Proposal response form. No other forms will be accepted.

2. **Pre-Construction Meeting**: Prior to the execution contractor will attend a Pre-Construction meeting (Contractor Project Manager, Superintendent, Manufacture Representative, Owner and Consultant) to review execution, scheduling, and general guidelines for the project. Contractor will submit submittals (PDF, Application Guidelines, Field Drawings, Warranties, Guaranties) prior to the Pre-Construction meeting for all required products and MSDS sheets. Contractor to provide a Project Contact Sheet with names, cell phones and email for all personnel to be involved with scope of work. (Project Manager, Site Project Manager, Crew Superintendent and Office Contact) Contractor should submit a soft copy of these documents no later than 10 days prior to this meeting.

3. **Site/ Project Manager:** Contractor to provide and maintain a minimum of one (1) non-working Project Manager to oversee operations, safety compliance and coordination with site personnel. Project Manager will report to Owner/Site Representative a minimum of once each morning and once each afternoon to assure site personnel are advised on all areas that construction activity will be taking place, coordination of any lifting activities and verify any areas of possible moisture entry from prior night or day.

4. **First Responder Facility:** Contractor to include all required / necessary accommodations to assure that facility remains operational, no debris left on or near emergency vehicles and all other accommodations to assure emergency vehicles and personnel have clear entry and exit of the facility.

5. **Project Team Contact Sheet**: Contractor to provide an emergency contact sheet with email and cell phone contact numbers for all key personnel. Contractor to bring to Pre-Construction meeting.

6. **Staging area:** Contractor will maintain a single designated staging area. Based on city approval. All material storage, equipment storage is required to be kept at staging unless in use. All breaks, Lunches, and safety meetings to be held in staging area at all times. Unless authorized and identified with the Pre-Construction minutes. Contractor will stage equipment, material, and Company/ Crew vehicles in the assigned staging area location. Contractor will conduct safety meetings, lunch and breaks in the staging area. Contractor will maintain a Porta John and wash area within the area. Staging area should be marked with safety cones and caution tape to help prevent accidental access by the public.

7. **Demolition and debris:** Contractor will include all required debris control and removal of all demolition, wrappers and other. If required Contractor will

utilize waste removal company currently under contract with the city. Any and all receptacle bins must remain covered at all times when not being loaded to protect from any wind-blown debris.

8. **Storage:** Contractor is responsible for assuring that all material is secure on the roof and ground. All trash and debris should be bagged on a regular basis. Site should be free of wind-blown wrappers, trash, or debris. Contractor will maintain surrounding grounds with no debris, wrappers, water bottles etc. Contractor will bag all debris unless using a Skytrac and box for debris. At no time may contractor throw or discharge any materials or debris from roof.

9. **Signage**: Contractor will post one sign at the **staging area** identifying the site is an active construction site. Signage should include Company name, Office contact (Phone and Email) Site Project Manager name and phone number.

10. **Ground Protection**: Contractor will mark with cones on the ground whenever working within 10' of the perimeter over doors, exits and vehicle garage doors.

11. **Rain & Weather**: Contractor will have personnel on site or within 15-30 min. from the job site 7 days a week and including Holidays until substantially complete. At any time that the building is exposed to weather (Rain, Wind or Other) Contractor will meet Owner representative to assure all water tie offs are in place and to assure there is no moisture entry into the building. Contractor is responsible for keeping the building in a watertight condition from start of construction until complete. If crew or personnel dispatch for holidays or weekends contractor is required to maintain a minimum of two personnel 15-mile radius to respond, should it rain and to daily inspect of staging area, inspection of roof loaded material and to inspect all water tie offs a minimum of twice daily on non-workdays. Contractor to provide on his proposal the maximum number of crew days expected. (excludes rain / wind days)

12. **Site Safety**: Contractor will adhere to all safety requirements while performing work on the site. This will include but not limited to the following:

    a) Compliance with all OSHA requirements -See attached OSHA Bulletin-Roofing

    b) Compliance with all City requirements

    c) **Staging Area:** Contractor will maintain a clean and orderly staging area throughout execution. Staging area will include a porta john and be clearly marked with cones and caution tape. The area is to be clearly marked to avoid any accidental entry by the public. Contractor will maintain all crew trucks, lifting equipment, ext. in this area.

d) **Lifting Equipment**: Lifting Equipment will always be stored in staging if not being used. Contractor will protect all parking lot surfaces with plywood to prevent any dripping of hydraulic oil or other. Contractor will chain the wheel to the axle when not in use. Contractor will provide a copy of the key or passcode to equipment. Contractor will avoid creating ruts or damage to the surrounding areas, buildings and/or land scape. Any signs of leaking or significant issues with Hydraulic equipment contractor will immediately switch out equipment and do so without interruption to the work. Contractor to flag all below grade sprinklers and other before traversing over sidewalks and/ or landscape.

e) **Fire Extinguisher**: Contractor will always maintain a fire Extinguisher in the staging area and at the roof where any gas filled generators are in use.

f) **Fall Protection**: Contractor will install all required warning lines and fall protection as required throughout the execution of the work to protect the public and city personnel while on site performing repairs.

g) **Building Access:** Contractor will provide their own access to and from the roof. Contractor crew is to refrain from entry, interior roof hatch or exit of the building. Only the Project Manager and Crew Superintendent shall access or traffic the building but only with an approved City escort. Contractor to provide proper notice and schedule thru facility contact.

h) Contractor will install safety cones along sidewalk leading up to all primary entrances and exits that are to remain open during repairs / construction.

i) Contractor will comply with all required work hours and special designated days by the city. Contractor should include and anticipate any costs associated with overtime and night or weekend work to complete this project. No change orders for overtime, weekend or night work will be permitted.

j) Contractor and crew will comply with all Covid-19 rules and procedures while on site performing work.

k) Contractor and crew will refrain from any smoking on site. Contractor, Crew and Contractor vehicles will refrain from any drug or illegal substances on person or use while performing work. No alcohol or other on site whether containers are empty or full. This includes person and/or vehicles.

13. **Crew Safety Vests:** All Contractor personnel on site will wear safety vest to allow ease of identification for building personnel and public. Contractor Crew Superintendent and Project Manager will wear a different colored safety vest for ease of identification of Owner Personnel and the Public.

6. **Permit Fee(s):** Contractor will include any Permit costs and will include any administration cost for submitting and/for filing for a permit. Should a permit be required the contractor will include all costs for submitting for permit and any cost to collect the permit and post the permit at the appropriate locations.

7. **Safety Spotter:** Contractor will provide spotter personnel at the front and rear of any lifting equipment when equipment is be moved outside of staging area to assure that no public property or personnel can be damaged or hurt during operation. Contractor will also utilize a spotter any time the crew may be working within 10'-15' of the perimeter of the roof. Should the contractor be required to expose the roof to below to occupant or public. (i.e., Skylights) Contractor will coordinate with City with City contact for coordination of the Area being exposed. Any such type of area should also be marked with cones to prevent the public from accidently walking into this area.

8. **Access:** Contractor will provide their own exterior access to the building. All access points are to be removed when contractor is not on site or construction activity is not in process. Anyone accessing thru the building must comply with all COVID-19 and CDC Guidelines. Contractor personnel will perform temperature checks each day and document each crew member result.

9. **Electrical Power:** Contractor will supply all the contractor required power for operation of equipment. Contractor is not allowed at any time to use Owner's water, electrical receptacle or other in execution of this scope of work. Operation of generators will be kept away from any air intake or other type that would draw exhaust into the building. Contractor will keep all generators in a place to minimize noise to the occupants.

10. **Reconnect/ Disconnect:** Contractor is not authorized or allowed to disconnect any Mechanical units on the building. If for any reason the contractor feels it is necessary to disconnect a mechanical unit this must be approved in advance and scheduled with the Owner. It is expected that there will be some units which require disconnect / reconnect. All mechanical penetrations are to be flashed with ATR hub or Curbed type flashing. No pitch pans.

11. **Background Information**: Contractor will supply all required background information required to comply with Brazos City requirements and the Brazos City Sheriff's office.

12. **Insurance**: Contractor will submit proof of insurance (Certificate of Insurance) showing coverage that meets or exceeds all city requirements. All Insurance will be kept in good standing throughout execution of work. Any deviation could be reason for the City to terminate the contract.

13. **Exterior ladder / Stairs**: Contractor will include in their proposal and provide their own exterior access to the building. All exterior ladder access is to be properly secured when in use and removed during any times the crew is not on scene.

14. **Warranty Signage**: Contractor will post a fixed steel embossed sign at the Hatch access or wall or in location of the City choosing to notify anyone who access the roof the Date Installed, Manufacture, Contractor name and phone number, Manufacture warranty period (start and expiration), Warranty number and the assembly that was installed.

15. **Occupant Notification**: Contractor to post 8 ½ x 11" Notification at access / entry doors and exits notifying public and occupant of work currently active on at this site.

16. **Treated Wood**: Any and all wood installation or replacement shall be "Treated" to prevent moisture and decay and be compatible will roof membrane and accessories.

CLOSEOUT DOCUMENTS & PAYMENT PROCESSING

Contractor will submit a single and final invoice upon completion of the repairs for the **City of Midland Fire Station #6** to include the following:

1. **Contractor Warranty:** Contractor will provide the **Contractor 5-year workmanship warranty** for all work performed.
2. **Final Inspection** 4T Partnership will schedule an inspection with the Contractor and the Owner/City to perform a walk through and inspection of the completed Roof assembly and all areas included in the contractor's scope of work. 4T Partnership will forward minutes and documentation of any items in need of correction or repair. Any punch items will be corrected during inspection or can be performed, and contractor can submit photos showing corrective action.
3. **Contractor Invoice** – Contractor will submit a Final invoice with confirmation of completion of all punch list items and reference RFP II and building name with address.
4. **Manufacture "Weather Tightness Guaranty"** – Contractor will submit a copy and provide the Owner with an original of the required 20-year NDL Guaranty. The Guaranty should reference the Correct Owner / Member Name, Building Address and include execution by the Manufacture appropriate representative.
5. **"Conditional" Lien Release**- Contractor will submit a "Conditional Lien: Release with closeout documents including separate releases for any listed sub-contractors.
6. **Performance & Payment Bond**- Contractor will submit a copy of the Payment & Performance bond.

7. **Punch List Items Documentation**- Contractor will provide any necessary punch list / corrective action list and documentation showing each correction if required after the final inspection.

DELIVERY, STORAGE, AND HANDLING

- Store all materials in compliance with Manufacture requirements to avoid water damage and store rolled goods on end. Comply with manufacturer's recommendations for job-site storage and protection. If necessary, cover with lose tap or plastic and allow to breath.
- Contractor will adhere to all requirements regarding stagging location, site management and occupant safety to assure that both Contractor(s) crew and public / City personnel and the public are protected at all times.
- Contractor will supply a duplicate key or Code to operate all equipment being stored on site to facilitate (if necessary) moving this equipment if required by first responders.
- Contractor / Crew will prevent any blowing debris throughout the execution of the work. All material will be properly secured. Any material roof loaded must be tied or secured when not performing repairs on site. All debris will be bagged and placed in a receptacle or dump trailer.
- Contractor will at no time while positioned on the roof load material or equipment from ridge to eave over entrance and exits of the buildings.
- Contractor will not overload or otherwise damage the integrity of the building. Any damage to the building will be the responsibility of the contractor.

JOB CONDITIONS

- The Contractor preparing a proposal in response to this acknowledges that all work is to be performed while current activities within these buildings continue or proceed. Contractor will take and include all associated costs for signage, caution tape and safety cones to assure the tenant and public are protected from harm. **This is a first responder building.**
- Proceed with installation work only after substrate is prepared, clean, smooth, and dry.
- Proceed with installation work only when weather conditions allow. Follow primary manufacturer's recommendations during application throughout.
- Contractor agrees to schedule work on individual building / Roof area only after verification that the City does not have any pre-schedule events and/or conflicts without penalty or cost to the City. All stage moves *(to alternate deck areas are to be communicated and coordinated with the City)*
- **Scheduling Updates/City communication**: Contractor Project Manager will advise the Member each day on the prior days weather forecast. Each day that the forecast includes a greater than 30% (for that window of time) chance of rain and/or

Winds forecast to be in excess of 15-20 mph the contractor will have the option to schedule a “no-work” weather delay day. Contractor shall keep a daily record of all work and rain days throughout until completion.

- Contractor is at all times required to maintain a watertight condition on all buildings being repair / under construction. Contractor and his Insurance Company will be responsible for any damage to the interior and/or exterior) caused due to negligence on the contractor’s part. The contractor agrees to keep all buildings in a watertight condition until such time that the Building / Scope of work has been substantially completed and closeout documents submitted.
- COVID-19 / Pandemic: Contractor will adhere to all guidelines, procedures and policies regarding the City’s official and published requirements concerning Covid-19 and PPE and include in his/her proposal all necessary costs to comply.

End of Site Guidelines / Scope of Work

SECTION 07 41 13 - METAL ROOF PANELS Midland Fire Station #6

PART 1 - GENERAL

1.1 SCOPE: The Midland Fire Station #6, located at 301 Tradewinds, Midland, Texas 79701 request contractors provide a new standing seam metal roof for their fire station. The scope of work will include the installation of a Standing Seam Metal roof assembly, including the accessories, Flashings, and the installation of a High Temp Peel N Stick membrane under the standing seam metal roof assembly. Contractor to install Snowbreaker Ice and Snow guards.

1.2 **Gutters & Downspouts**: Contractor to include removal and replacement of all gutters and downspouts.

1.3 During the installation the contractor shall take the necessary step to maintain the landscape, the debris and removal at the end of each day fasteners, nails, and scrap materials to be placed in the dumpsters or hauled from the project, daily.

1.4 **Contact:** Communication will be between the designated contact person and the roofing contractor. The Midland Fire Department.

Jamee Higgins-Risk management Division

Phone: (432) 685-7246 Email: JHiggins@MidlandTexas.gov

1.5 **Lightning Protection**: Contractor to provide separate cost to install and certify Lightning Protection system

1.5 SECTION INCLUDES

A. Trapezoidal rib, seamed joint, standing seam metal roof panels, with related metal trim and accessories and provide for a High Temp Peel N Stick membrane below the standing seam metal roof assembly.

1.6 RELATED REQUIREMENTS

A. Division 01 Section "Sustainable Design Requirements" for related LEED® general requirements.

B. Division 05 Section "Steel Decking" for continuous metal decking supporting metal panels.

C. Division 05 Section "Cold-Formed Metal Trusses" for cold-formed metal trusses supporting metal panels.

D. Division 06 Section "Sheathing" for sheathing substrate for metal roof panels.

E. Division 07 Section Thermal Insulation for thermal insulation installed under metal panels.

F. Division 07 Section "Air Barriers" for air barriers within roof assembly and adjacent to roof assembly.

G. Division 07 Section "Metal Wall Panels" for factory-formed metal wall [and soffit] panels.

H. Division 07 Section "Sheet Metal Flashing and Trim" for formed sheet metal copings, flashings, reglet, and roof drainage items in addition to items specified in this Section.

I. Division 07 Section "Manufactured Roof Specialties" for manufactured copings, reglet, and roof drainage items in addition to items specified in this Section.

J. Division 07 Section "Joint Sealants" for field-applied Joint Sealants.

1.7 REFERENCES

A. American Architectural Manufacturer's Association (AAMA): www.aamanet.org:

1. AAMA 621 - Voluntary Specifications for High Performance Organic Coatings on Coil Coated Architectural Hot Dipped Galvanized (HDG) & Zinc-Aluminum Coated Steel Substrates.
2. AAMA 809.2 - Voluntary Specification Non-Drying Sealants.

B. American Society of Civil Engineers (ASCE): www.asce.org/codes-standards:

1. ASCE 7 - Minimum Design Loads for Buildings and Other Structures.

C. ASTM International (ASTM): www.astm.org:

1. ASTM A 653 - Specification for Steel Sheet, Zinc-Coated (Galvanized) or Zinc-Iron Alloy-Coated (Galvannealed) by the Hot-Dip Process.
2. ASTM A 755 - Specification for Steel Sheet, Metallic Coated by the Hot-Dip Process and Pre-painted by the Coil-Coating Process for Exterior Exposed Building Products.
3. ASTM A 792/A 792M - Standard Specification for Steel Sheet, 55 % Aluminum-Zinc Alloy-Coated by the Hot-Dip Process.
4. ASTM A 980 - Standard Specification for Steel, Sheet, Carbon, Ultra High Strength Cold Rolled.
5. ASTM C 645 - Specification for Nonstructural Steel Framing Members.
6. ASTM C 920 - Specification for Elastomeric Joint Sealants.
7. ASTM D 1003 - Standard Test Method for Haze and Luminous Transmittance of Transparent Plastics.
8. ASTM D 2244 - Test Method for Calculation of Color Differences from Instrumentally Measured Color Coordinates.

9. ASTM D 4214 - Test Methods for Evaluating Degree of Chalking of Exterior Paint Films.
10. ASTM E 1514 - Standard Specification for Structural Standing Seam Steel Roof Panel Systems.
11. ASTM E 1592 - Standard Test Method for Structural Performance of Sheet Metal Roof and Siding Systems by Uniform Static Air Pressure Difference.
12. ASTM E 1646 - Standard Test Method for Water Penetration of Exterior Metal Roof Panel Systems by Uniform Static Air Pressure Difference.
13. ASTM E 1680 - Standard Test Method for Rate of Air Leakage Through Exterior Metal Roof Panel Systems.
14. ASTM E 1980 - Practice for Calculating Solar Reflectance Index of Horizontal and Low-Sloped Opaque Surfaces.

D. Cool Roof Rating Council (CRRC®): www.coolroofs.org/productratingprogram.html:

1. CRRC-1-2008 - CRRC Product Rating Program.

E. FM Global (FM): www.fmglobal.com:

1. ANSI/FM 4471 - Approval Standard for Class 1 Panel Roofs.

F. International Accreditation Service (IAS):

1. **IAS AC 472** - Accreditation Criteria for Inspection Programs for Manufacturers of Metal Building Systems, Part B.

G. Underwriters Laboratories, Inc. (UL): www.ul.com:

1. UL 580 - Tests for Uplift Resistance of Roof Assemblies

H. US Environmental Protection Agency: www.energystar.gov/index.cfm:

1. ENERGY STAR® Reflective Roof Products.

I. US Green Building Council (USGBC): www.usgbc.org:

1. LEED - Leadership in Energy and Environmental Design (LEED) Green Building Rating Systems.

1.8 ADMINISTRATIVE REQUIREMENTS

A. Preinstallation Meeting: Prior to erection of framing, conduct preinstallation meeting at site attended by owner, architect, manufacturer's technical representative, inspection agency and related trade contractors.

1. Coordinate building framing in relation to metal panel system.
2. Coordinate openings and penetrations of metal panel system.

3. Coordinate work of Division 07 Sections "Roof Specialties" and "Roof Accessories" and openings and penetrations and manufacturer's accessories with installation of metal panels.

1.9 QUALITY ASSURANCE

A. Manufacturer/Source: Provide metal roof panel assembly and accessories from a single manufacturer providing fixed-base roll forming, and accredited under IAS AC 472 Part B.

B. Manufacturer Qualifications: Approved manufacturer listed in this Section with minimum five years' experience in manufacture of similar products in successful use in similar applications.

1. Approval of Comparable Products: Submit the following in accordance with project substitution requirements, within time allowed for substitution review:

a. Product data, including certified independent test data indicating compliance with requirements.
b. Samples of each component.
c. Sample submittal from similar project.
d. Project references: Minimum of five installations not less than five years old, with owner and architect contact information.
e. Sample warranty.
f. IAS AC 472 certificate.

2. Substitutions following award of contract are not allowed except as stipulated in Division 01 General Requirements.
3. Approved manufacturers must meet separate requirements of Submittals Article.

C. Installer Qualifications: Experienced installer certified by metal panel manufacturer with minimum of five years' experience with successfully completed projects of a similar nature and scope.

1. Installer's Field Supervisor: Experienced mechanic certified by metal panel manufacturer supervising work on site whenever work is underway.

D. **Buy American Compliance**: Materials provided under work of this Section shall comply with the following requirements:

1. Buy American Act of 1933 BAA-41 U.S.C §§ 10a – 10d.
2. Buy American provisions of Section 1605 of the American Recovery and Reinvestment Act of 2009 (ARRA).

1.10 ACTION SUBMITTALS

A. Product Data: Manufacturer's data sheets for specified products.

B. LEED Submittals:

1. Credit SS 7.2 Heat Island Effect - Roof: Product data indicating compliance with solar reflectance index requirement.
2. Credit MR 4 Recycled Content: Product data indicating the following:

a. Material costs for each product having recycled content.
b. Percentages by weight of post-consumer and pre-consumer recycled content for each item.
c. Total weight of products provided.

C. Shop Drawings: Show layouts of metal panels. Include details of each condition of installation, panel profiles, and attachment to building. Provide details at a minimum scale 1 ½" per foot of edge conditions, joints, fastener and sealant placement, flashings, openings, penetrations, roof accessories, lightning arresting equipment, and special details. Make distinctions between factory and field assembled work.

1. Indicate points of supporting structure that must coordinate with metal panel system installation.
2. Include data indicating compliance with performance requirements.
3. Include structural data indicating compliance with requirements of authorities having jurisdiction.

D. **Samples for Initial Selection**: For each exposed product specified including sealants. Provide representative color charts of manufacturer's full range of colors.

E. **Samples for Verification**: Provide 12" (305 mm-) long section of each metal panel profile. Provide color chip verifying color selection.

1.11 INFORMATIONAL SUBMITTALS

A. Product Test Reports: Indicating compliance of products with requirements, witnessed by a professional engineer.

B. Qualification Information: For installer's firm and field supervisor.

C. IAS Accreditation Certificate: Indicating that manufacturer is accredited under provisions of IAS AC 472.

D. **Buy American Certification**: Manufacturers' letters of compliance acceptable to authorities having jurisdiction, indicating that products comply with requirements.

E. **Florida State Building Code Certificate**.

F. **Manufacturer's Warranty**: Manufacture “Weather Tightness Warranty for no less than 20 years. Sample copy of manufacturer's standard warranty.

G. **Contractors Warranty**: Contractor warranty for no less then 5-years from the date installed.

1.12 CLOSEOUT SUBMITTALS

A. **Maintenance data**: Provide all care and maintenance guidelines for installed product.

B. **Manufacturer's Warranty**: Executed copy of manufacturer's 20-Year Weather Tightness Warranty. Warranty must reference the Members name and address of the building. Warranty shall be transferable.

C. **Payment & Performance Bond**: Provide a copy of the payment and performance bond.

D. **Lien Release**: Provide a executed “Conditional” Lien release from contractor and any sub-contractors.

E. **Contractors Warranty**: Provide a fully executed Contractor’s warranty for no less than 5-Years.

1.13 DELIVERY, STORAGE, AND HANDLING

A. Protect products of metal panel system during shipping, handling, and storage to prevent staining, denting, deterioration of components or other damage. Protect panels and trim bundles during shipping.

1. Deliver, unload, store, and erect metal panel system and accessory items without misshaping panels or exposing panels to surface damage from weather or construction operations.
2. Store in accordance with manufacturer’s written instructions. Provide wood collars for stacking and handling in the field.

1.14 COORDINATION

A. Coordinate sizes, profiles, and locations of roof curbs and other roof-mounted equipment and roof penetrations, based upon sizes of actual selected equipment.

1.15 WARRANTY

A. Special Manufacturer’s Warranty: On manufacturer’s standard form, in which manufacturer agrees to repair or replace metal panel assemblies that fail in materials and workmanship within one year from date of Substantial Completion.

B. **Special Weathertightness Warranty**: Single Source "Weather Tightness" warranty; initiated on the manufacturer's standard form, in which manufacturer agrees to repair or replace metal panel assemblies that fail to remain weathertight, including leaks, without monetary limitation 20 years from date of Substantial Completion.

C. **Contractors Warranty**: Contractor to submit 5-Year contractors' warranty.

D. **Special Panel Finish Warranty:** On manufacturer's standard form, in which manufacturer agrees to repair or replace metal panels that evidence deterioration of factory-applied finish within 30 years from date of Substantial Completion, including:

1. Fluoropolymer Two-Coat System:

   a. Color fading in excess of 5 Hunter units per ASTM D 2244.
   b. Chalking in excess of No. 8 rating per ASTM D 4214.
   c. Failure of adhesion, peeling, checking, or cracking.

2. Modified Silicone-Polyester Two-Coat System:

   a. Color fading in excess of 5 units per ASTM D 2244, for vertical applications.

   b. Color fading in excess of7Hunter units per ASTM D 2244, for non-vertical applications.
   c. Chalking in excess of No. 8 rating per ASTM D 4214, for vertical applications.
   d. Chalking in excess of No. 6 rating per ASTM D 4214, for non-vertical applications.
   e. Failure of adhesion, peeling, checking, or cracking.

PART 2 - PRODUCTS

2.1 MANUFACTURER

A. Basis of Design Manufacturer: **EXCEPTIONAL Metals' Metal Roof and Wall Systems, Division of Duro-Last®, Inc. Exceptional Metals, Saginaw, (800) 248-0280**

B. Email: info@EXCEPTIONALMETALS.com; Web: www.exceptionalmetals.com.

2.2 PERFORMANCE REQUIREMENTS

A. General: Provide metal roof panel system meeting performance requirements as determined by application of specified tests by a qualified testing facility on manufacturer's standard assemblies.

B. Recycled Content: For Steel Products: Postconsumer recycled content plus one-half of pre-consumer recycled content not less than 25 percent.

C. Radiative Property Performance:

1. **Solar Reflectance Index**: Minimum 78 for roof slopes of 2:12 or less and 29 for roof slopes greater than 2:12 under medium wind conditions, per ASTM E 1980.
2. **ENERGY STAR Qualified**: Listed on USDoE ENERGY STAR Roof Products Qualified Product List.
3. **Energy Performance**: Listed in CRRC Rated Product Directory, with minimum properties as required by applicable Energy efficiency or High-Performance Green Building standard.

D. System Performance: Comply with ASTM E 1514 and requirements of this Section.

E. Structural Performance: Provide metal panel assemblies capable of withstanding the effects of indicated loads and stresses within limits and under conditions indicated:

1. Wind Loads: Determine loads based on uniform pressure, importance factor, exposure category, and basic wind speed indicated on drawings.

    a. Wind Uplift Testing: Certify capacity of metal panels by actual testing of proposed assembly per ASTM E 1592.

2. Snow Loads: 20 lbf/sq.
3. Deflection Limits: Withstand inward and outward wind-load design pressures in accordance with applicable building code with maximum deflection of 1/240 of the span with no evidence of failure.
4. Seismic Performance: Comply with ASCE 7, Section 9, "Earthquake Loads."

F. Wind Uplift Resistance: Comply with UL 580 for wind-uplift class UL-90.

G. **FM Approvals Listing**: Comply with FM Approvals 4471 as part of a panel roofing system, and that are listed in FM Approvals' "RoofNav" for Class 1 construction. Identify materials with FM Approvals markings.

1. Fire/Windstorm Classification: Class 1A-90.
2. Hail Resistance Rating: SH.

H. Air Infiltration, ASTM E 1680: Maximum 0.07 cfm/sq. ft. (0.36 L/s per sq. m) at static-air-pressure difference of 6.24 lbf/sq. ft. (300 Pa).

I. Water Penetration Static Pressure, ASTM E 1646: No uncontrolled water penetration at a static pressure of 12 lbf/sq. ft. (575 Pa).

J. Thermal Movements: Allow for thermal movements from variations in both ambient and internal temperatures. Accommodate movement of support structure caused by thermal expansion and contraction. Allow for deflection and design for thermal stresses caused by temperature differences from one side of the panel to the other.

2.3 METAL ROOF PANELS

A. Mechanically Seamed, Concealed Fastener, Trapezoidal Seam Metal Roof Panels: Structural metal roof panel consisting of formed metal sheet with raised trapezoidal ribs at panel edges, installed by lapping and mechanically interconnecting edges of adjacent panels, and attaching panels to supports using concealed clips and fasteners in a weathertight installation.

1. Basis of Design: **EM SuperLok,** www.ExceptionalMetals.com
2. **Aluminum-Zinc Alloy-Coated Steel Sheet**: ASTM A 792/A 792M, structural quality, Grade 50, Coating Class AZ50 (Grade 340, Coating Class AZM150), pre-painted by the coil-coating process per ASTM A 755/A 755M.
3. **Aluminum-Zinc Alloy-Coated Steel Sheet**: ASTM A 792/A 792M, structural quality, Grade 50, Coating Class AZ55 (Grade 340, Coating Class AZM165) unpainted Galvalume Plus coating.

    a. Nominal Thickness: 24-gauge coated thickness.
    b. Panel Surface Smooth with minor ribs in pan with striations in pan.
    c. Exterior Finish: Member to select color
    d. Color: As indicated by architect from manufacturer's standard colors

4. Panel Width: **Match existing**
5. Panel Seam Height: 3” (76 mm).
6. Joint Type: Double folded.

2.4 METAL ROOF PANEL ACCESSORIES

A. General: Provide complete metal roof panel assembly incorporating trim, copings, fasciae, gutters and downspouts, and miscellaneous flashings, in Member to select color. Provide required fasteners, closure strips, splice plates, support plates, and sealants as indicated in manufacturer's written instructions.

B. Flashing and Trim: Match material, thickness, and finish of metal panel face sheet.

C. Two Piece Floating Clips: ASTM C 645, with ASTM A 653/A 653M, G90 (Z180) hot-dip galvanized zinc coating, configured for concealment in panel joints, and identical to clips utilized in tests demonstrating compliance with performance requirements.

D. Panel Fasteners: Self-tapping screws and other acceptable corrosion-resistant fasteners recommended by roof panel manufacturer. Where exposed fasteners cannot be avoided, supply fasteners with EPDM or neoprene gaskets, and heads matching color of metal panels by means of factory-applied coating.

E. Joint Sealers: Manufacturer's standard or recommended liquid and preformed sealers and tapes, and as follows:

1. Factory-Applied Seam Sealant: Manufacturer's standard hot-melt type.
2. Tape Sealers: Manufacturer's standard non-curing butyl tape, AAMA 809.2.

F. **Steel Sheet Miscellaneous Framing Components**: ASTM C 645, with ASTM A 653/A 653M, G60 (Z180) hot-dip galvanized zinc coating.

G. **Light Transmitting Panel**: Manufacturer's standard UV-resistant translucent panel, 24” (610 mm) wide, white, with haze value of not less than 90 percent when measured per ASTM D 1003.

H. **Roof Accessories**: Approved by metal roof panel manufacturer. Refer to Section 07 72 00 "Roof Accessories" for requirements for roof accessories.

I. **Ice and Snow Guards**: Contractor to submit and install over engine bays, entrance and exits.

J. **High Temp Peel N Stick**: The Peel N Stick membrane shall consist of a high temperature polymer capable of withstanding heat loads of up to 240 degree F and have a nominal 40 mil thickness. The material must meet the appropriate guidelines set forth by the metal roof manufacturers requirements for exposure, side lap overlap and end lap overlap. The surface of the membrane shall not consist of granulated material and shall be capable of walkability during construction without attaching to the roofing contractor shoe.

2.5 FABRICATION

A. General: Provide factory fabricated and finished metal panels and accessories meeting performance requirements, indicated profiles, and structural requirements.

B. Fabricate metal panel joints configured to accept factory-applied sealant providing weathertight seal and preventing metal-to-metal contact and minimizing noise resulting from thermal movement.

C. Form panels in continuous lengths for full length of detailed runs, except where otherwise indicated on approved shop drawings.

D. Sheet Metal Flashing and Trim: Fabricate flashing and trim to comply with manufacturer's written instructions, approved shop drawings, and project drawings. Form from materials matching metal panel substrate and finish.

2.6 FINISHES

A. Finishes General: Prepare, pretreat, and apply coating to exposed metal surfaces to comply with coating and resin manufacturers' written instructions.

B. Fluoropolymer Two-Coat System: 0.2 – 0.3 mil primer with 0.7 - 0.8 mil 70 percent PVDF fluoropolymer color coat, AAMA 621

C. Basis of Design: EXCEPTIONAL Metals, Signature® 300.

PART 3 - EXECUTION

3.1 EXAMINATION

A. Examine metal panel system substrate and supports with installer present. Inspect for erection tolerances and other conditions that would adversely affect installation of metal panel installation.

1. Inspect metal panel support substrate to determine if support components are installed as indicated on approved shop drawings. Confirm presence of acceptable supports at recommended spacing to match installation requirements of metal panels.
2. Panel Support Tolerances: Confirm that panel supports are within tolerances acceptable to metal panel system manufacturer but not greater than the following:

    a. ¼” (6 mm) in 20 foot (6.1 m) in any direction.
    b. 3/8” (9 mm) over any single roof plane.

B. Correct out-of-tolerance work and other deficient conditions prior to proceeding with insulated metal roof panel system installation.

3.2 PREPARATION

A. **Miscellaneous Supports**: Install sub framing, girts, furring, and other miscellaneous panel support members according to ASTM C 754 and manufacturer's written instructions.

B. Flashings: Provide flashings as required to complete metal roof panel system. Install in accordance with Section 07 62 00 "Sheet Metal Flashing and Trim" and approved shop drawings.

3.3 METAL PANEL INSTALLATION

A. Mechanically Field Seamed, Vertical leg standing seam roof system with 2” slim rib. Width to match existing width. Anchor panels and other components securely in place. Provide for thermal and structural movement.

B. Attach panels to supports using clips, screws, fasteners, and sealants recommended by manufacturer and indicated on approved shop drawings.

1. Fasten metal panels to supports with concealed clips at each location indicated on approved shop drawings, with spacing and fasteners recommended by manufacturer.
2. Seamed Joint: Crimp standing seams with manufacturer-approved, motorized seamer tool so clip, metal roof panel, and factory-applied sealant are completely engaged.
3. Provide weatherproof jacks for pipe and conduit penetrating metal panels of types recommended by manufacturer.
4. Dissimilar Materials: Where elements of metal panel system will come into contact with dissimilar materials, treat faces and edges in contact with dissimilar materials as recommended by manufacturer.

3.4 ACCESSORY INSTALLATION

A. General: Install metal panel trim, flashing, and accessories using recommended fasteners and joint sealers, with positive anchorage to building, and with weather tight mounting. Provide for thermal expansion. Coordinate installation with flashings and other components.

1. Install components required for a complete metal panel assembly, including trim, copings, flashings, sealants, closure strips, and similar items.
2. Comply with details of assemblies utilized to establish compliance with performance requirements and manufacturer's written installation instructions.
3. Provide concealed fasteners.
4. Set units true to line and level as indicated. Install work with laps, joints, and seams that will be permanently weather resistant.

B. Joint Sealers: Install joint sealers where indicated and where required for weathertight performance of metal panel assemblies, in accordance with manufacturer's written instructions.

1. Prepare joints and apply sealants per requirements of Division 07 Section "Joint Sealants."

3.5 FIELD QUALITY CONTROL

A. Testing Agency: Owner may engage an independent testing and inspecting agency acceptable to architect to perform field tests and inspections and to prepare test reports.

3.6 CLEANING AND PROTECTION

A. Remove temporary protective films immediately in accordance with metal roof panel manufacturer's instructions. Clean finished surfaces as recommended by metal roof panel manufacturer.

B. Replace damaged panels and accessories that cannot be repaired to the satisfaction of the architect.

END OF SECTION

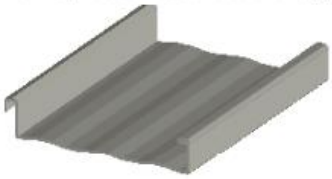
EXCEPTIONAL Metals — PRODUCT DATA SHEET

EM SuperLok®



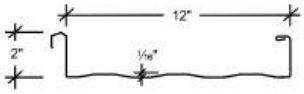
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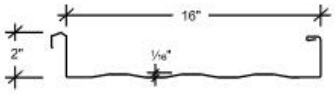
The EM SuperLok® is a mechanically field-seamed, vertical leg standing seam roof system that combines a 2" tall slim rib with exceptional uplift resistance. It is available in both 12-inch and 16-inch widths. EM SuperLok® has been designed to withstand the most rigorous weather conditions. EM SuperLok® can be installed directly over purlins or bar joists. EM SuperLok® does not require a solid substructure for support.



FEATURES AND BENEFITS

- EM SuperLok® panels are standard with striations to minimize oil canning.
- Low and high clips are available to allow for various thicknesses of insulation to be installed between the panels and purlins.
- Numerous UL 580 Construction ratings are available, as well as UL 790, Class A for external fire, numerous roof assemblies for UL 263 for internal fire and the UL 2218 Class 4 impact rating.
- EM SuperLok® carries FM, Florida, and Dade County ratings.





PRODUCT SPECIFICATIONS

- Applications: Roof
- Coverage Widths: 12" and 16"
- Minimum Slope: ½:12
- Panel Attachment: Concealed Fastening System, Low, High (fixed or floating), Utility (no insulation clearance)
- Gauges: 24 (standard); 22 and 26 (optional)
- Finishes: Smooth Striated (standard); Embossed Striated (optional)
- Coatings: Galvalume® Plus, Signature® 200, Signature® 300, Signature® 300 Metallic

www.exceptionalmetals.com 1 of 2 800-248-0280

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"SuperLok" and "Signature" are registered marks of NCI Group, Inc. "Galvalume" is a registered mark of BIEC International, Inc. Updated: 9/7/2016

PRODUCT DATA-EM SUPERLOL

EM SUPERLOK®

CATEGORY	CHARACTERISTIC	TEST METHOD	PURPOSE	RESULT
ENVIRONMENTAL	Air Leakage Through Roof Panel Joints	ASTM E1680	Determines the air leakage characteristics of metal roof panels under specified air pressure differences at ambient conditions	0.0035 cfm/ft² at 1.57 psf static pressure 0.007 cfm/ft² at 6.24 psf static pressure
	Water Penetration Through Roof Panel Joints	ASTM E1646	Determines the resistance to water penetration of metal roof panels under uniform static air pressure difference	No uncontrolled water penetration through the panel joints at a static pressure of 12.00 psf
	Impact Resistance	UL2218	Determines impact resistance of prepared roof covering materials	Class 4 Rating
FIRE RESISTANCE	Room Fire Performance	UL790	Standard for standard test methods for fire tests of roof coverings	See Class A Fire Rating Data Sheet*
	Room Fire Performance	UL 263	Standard for fire tests of building construction and materials	For use in Design Nos. P225, P227, P230, P237, P265, P268, P508, P510, P512, P701, P711, P720, P722, P726, P731, P734, P801, P815, P819
STRUCTURAL	Uplift Resistance	ASTM E 1592	Provides a standard procedure to evaluate or confirm structural performance under uniform static air pressure difference	See Load Chart Section*
	Gravity Loads	AISI S100	North American Specification for the Design of Cold-Formed Steel Structural Members	See Section Properties and Allowable Load Table Section*
ROOF LISTINGS	Roof Performance FM Global	FM4471	Sets performance standards for panel roofs including uplift resistance	See FM Engineering Tech Bulletin*
	Roof Performance Underwriters Laboratories	UL 580	Determines the uplift resistance of roof assemblies consisting of the roof and roof covering materials	Class 90 Rating-Construction Number 90, 176, 180, 238B, 437, 449, 451, 452, and 487
	Roof Performance Miami-Dade County	TAS 125 TAS 201 TAS 100 FM 4471 App. G	The Product Control Approval System establishes a protocol to evaluate the standards of products used in construction in Miami-Dade County. Miami-Dade County, with its inclusion in the High Velocity Hurricane Zone (HVHZ) has the most stringent code requirements of the Florida Building Code. Therefore, all products that comprise the structure's building envelope-doors, shutters, windows, prefabricated buildings, and truss plates-require the issuance of an approval in order to be used for construction in Miami-Dade County	See NOA #12-0123.07 24 ga. Material See NOA #12-0911.02 22 ga. Material
	Roof Performance Florida Approval	ASTM E 1592 FM 4471 UL 790	Florida product approval is the approval of products and systems, which comprise the building envelope and structural frame, for compliance with the structural requirements of the Florida Building Code	See FL #11819.4
	Roof Performance Texas Department of Insurance	ASTM E 1592	TWIA provides windstorm and hail insurance in area exposed to hurricanes and currently provides windstorm and hail coverage in the following 14 "first tier" Texas coastal counties: Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio, and Willacy	See RC-392

*Additional data sheets and load charts available at www.exceptionalmetals.com.

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SnowBreaker

Breaks Up Sliding Snow and Ice. No Rib Straddling.

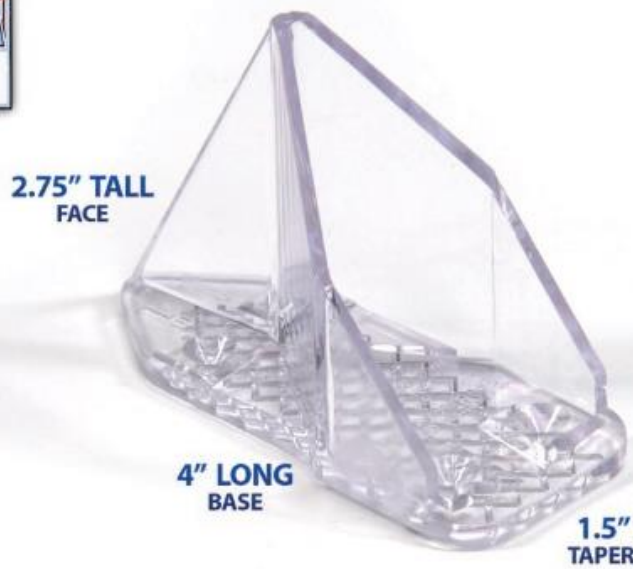
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Safely break apart sliding snow and ice! The SnowBreaker can be mechanically fastened or adhesive mounted. Because of the cutting edge design, it is not conducive to receiving a significant sheer load. The SnowBreaker is effective in preventing damage caused by the sudden release of snow and ice, all without worries of overloading your roof. As the snow and ice slides on the roof, this cost effective product minimizes the danger by slicing the frozen precipitation into small pieces so it can safely come off the roof. The forward cutting edge and the tucked back rear support form a triangular shape that acts like a fin to split up the frozen precipitation. Fits most popular 36" panels with four 9" flats.

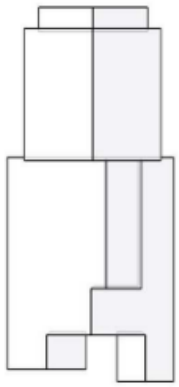
Visit www.SNOWBREAKER.com for spacing and isolated placement recommendations.

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In this 3D model, facets appear as semi-transparent to reveal overhangs.

PREPARED FOR

Contact:	Jon Davis
Company:	Paragon Roofing Inc.
Address:	2419 Ellis St Dallas, TX 75204-2498
Phone:	972-742-3940

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MEASUREMENTS

Total Roof Area =14,260 sq ft
Total Roof Facets =9
Predominant Pitch =3/12
Number of Stories <=1
Total Ridges/Hips =206 ft
Total Valleys =0 ft
Total Rakes =359 ft
Total Eaves =480 ft
Total Penetrations =28
Total Penetrations Perimeter = 199 ft
Total Penetrations Area = 106 sq ft

Measurements provided by www.eagleview.com

Certified Accurate

www.eagleview.com/Guarantee.aspx

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IMAGES

The following aerial images show different angles of this structure for your reference.

Top View



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IMAGES

North Side



South Side



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IMAGES

East Side



West Side



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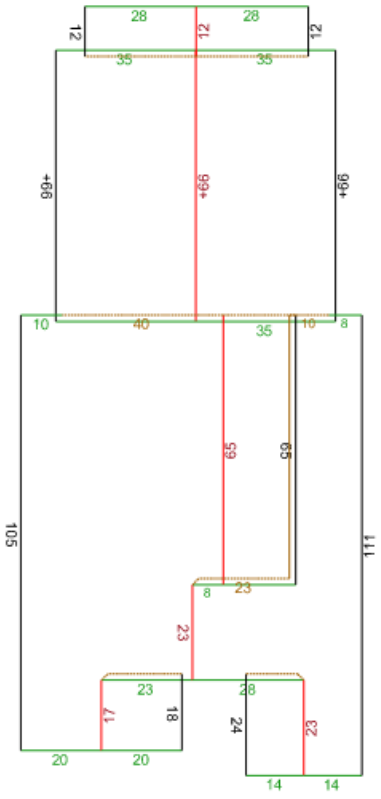
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LENGTH DIAGRAM

Total Line Lengths:
Ridges = 206 ft
Hips = 0 ft

Valleys = 0 ft
Rakes = 359 ft
Eaves = 480 ft

Flashing = 64 ft
Step flashing = 185 ft
Parapets = 0 ft





Note: This diagram contains segment lengths (rounded to the nearest whole number) over 5.0 Feet. In some cases, segment labels have been removed for readability. Plus signs preface some numbers to avoid confusion when rotated (e.g. +6 and +9).

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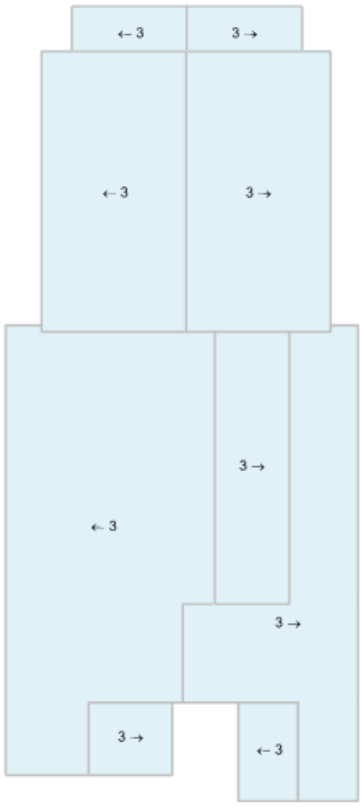
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PITCH DIAGRAM

Pitch values are shown in inches per foot, and arrows indicate slope direction. The predominant pitch on this roof is 3/12





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Note: This diagram contains labeled pitches for facet areas larger than 20.0 square feet. In some cases, pitch labels have been removed for readability. Blue shading indicates a pitch of 3/12 and greater.

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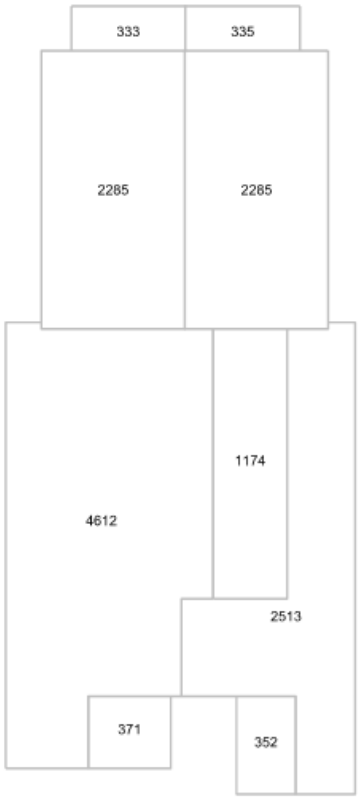
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AREA DIAGRAM

Total Area = 14,260 sq ft, with 9 facets.





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Note: This diagram shows the square feet of each roof facet (rounded to the nearest Foot). The total area in square feet, at the top of this page, is based on the non-rounded values of each roof facet (rounded to the nearest square foot after being totaled).

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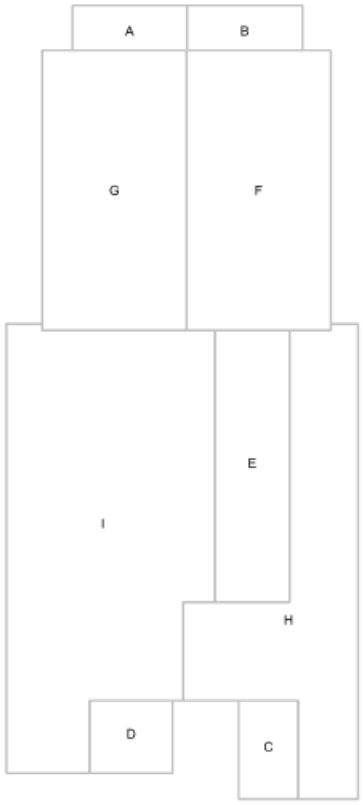
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NOTES DIAGRAM

Roof facets are labeled from smallest to largest (A to Z) for easy reference.





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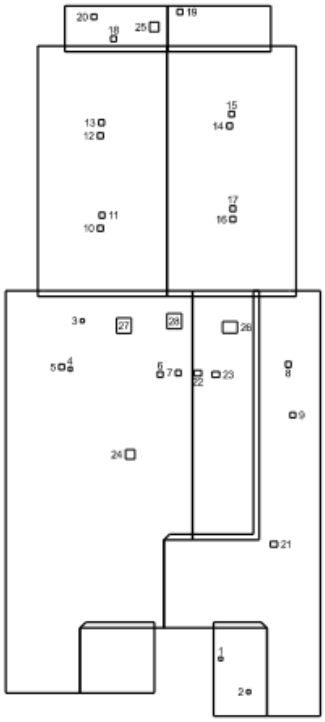
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PENETRATIONS NOTES DIAGRAM

Penetrations are labeled from smallest to largest for easy reference.

Total Penetrations = 28
Total Penetrations Perimeter = 199 ft

Total Penetrations Area = 106 sq ft
Total Roof Area Less Penetrations = 14,154 sq ft





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REPORT SUMMARY

All Structures

Areas per Pitch	
Roof Pitches	3/12
Area (sq ft)	14259.9
% of Roof	100%

The table above lists each pitch on this roof and the total area and percent (both rounded) of the roof with that pitch.

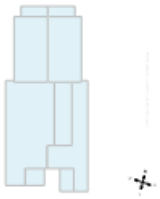
Waste Calculation Table							
Waste %	**0%**	**10%**	**12%**	**15%**	**17%**	**20%**	**22%**
Area (sq ft)	14,260	15,686	15,971	16,399	16,684	17,112	17,397
Squares	142.6	156.9	159.7	164.0	166.8	171.1	174.0

This table shows the total roof area and squares (rounded up to the nearest decimal) based upon different waste percentages. The waste factor is subject to the complexity of the roof, individual roofing techniques and your experience. Please consider this when calculating appropriate waste percentages. Note that only roof area is included in these waste calculations. Additional materials needed for ridge, hip, valley, and starter lengths are not included.

Penetrations	1-4	5-10	11-20	21-23	24-25	26	27-28			
Area (sq ft)	1	2.2	2.3	3	6.2	12	16			
Perimeter (ft)	4	6	6	7	10	14	16			

Any measured penetration smaller than 3.0x3.0 Feet may need field verification. Accuracy is not guaranteed. The total penetration area is not subtracted from the total roof area.

All Structures Totals



Total Roof Facets = 9
Total Penetrations =28

Lengths, Areas and Pitches
Ridges = 206 ft (6 Ridges)
Hips = 0 ft (0 Hips).
Valleys = 0 ft (0 Valleys)
Rakes† = 359 ft (16 Rakes)
Eaves/Starter‡ = 480 ft (9 Eaves)
Drip Edge (Eaves + Rakes) = 839 ft (25 Lengths)
Parapet Walls = 0 (0 Lengths).
Flashing = 64 ft (1 Lengths)
Step flashing = 185 ft (11 Lengths)
Total Penetrations Area = 106 sq ft
Total Roof Area Less Penetrations = 14,154 sq ft
Total Penetrations Perimeter = 199 ft
Predominant Pitch = 3/12
Total Area (All Pitches) = 14,260 sq ft

Property Location
Longitude = -102.1546298
Latitude = 31.9831693

Notes
This was ordered as a commercial property. There were no changes to the structure in the past four years.

† Rakes are defined as roof edges that are sloped (not level).
‡ Eaves are defined as roof edges that are not sloped and level.

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EXHIBIT C

Bonding Requirements

The successful bidder shall be required to furnish a Performance & Payment Bond* for bids in excess of $50,000.00, in an amount equal to one hundred percent (100%) of the total contract price, such bond to be executed in five (5) original counterparts by a Corporate Surety authorized to do business in the State of Texas and acceptable to the City of Midland. All bonds must be executed on forms contained in these contract documents. The form of agreement which the successful bidder, as contractor, will be required to execute is also included herewith. The form of agreement and the form of the bonds should be carefully examined by the bidder.

A certified check, cashier's check, bank money order, or irrevocable letter of credit issued by a bank satisfactory to the City, or a bidder's bond on the form provided, in the amount of five percent (5%) of the largest possible lump sum bid submitted, payable without recourse to the City, must accompany the bidder's proposal, as a guaranty that the bidder will enter a contract and execute the required payment bond and guaranty in the forms provided within fifteen (15) days after notice of award of contract to him. Bids or proposals without the required bid guaranty will not be considered. All bid sureties and payment bonds shall name the City of Midland as Obligee.

*A cash security such as a cashier's check or irrevocable letter of credit issued by a bank satisfactory to the City for 100 % of the contract amount may be supplied in lieu of the Performance and Payment Bonds. The check will be returned un-cashed upon satisfactory completion of the work and evidence of payment of all obligations due for the contract.

PAYMENT BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____ of the City of _____ of the County of _____ and State of Texas as Principal, and _____, as Surety, are held and firmly bound unto the City of Midland, Texas, as Obligee, in the amount of _____ DOLLARS ($ _____) for the payment whereof the said Principal and Surety bind themselves, their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____ day of _____, 20__, for the furnishing of materials, equipment to perform all labor and work necessary for _____, hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the condition of the obligation is that if the said Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then this obligation shall be null and void; otherwise, it is to remain in full force and effect.

Surety, for value received, stipulates and agrees that no change, extension of time alteration or addition to the terms of the contract, or to the work performed there under, or the plans, specifications of drawings accompanying the same, or any assignment of the contract as may be provided for in the instructions to bidders, shall in anywise affect its obligation on this Bond, and it does waive notice of any such change, extension of

time, alteration or addition to the terms of the contract, assignment thereof, or to the work to be performed there under.

IN WITNESS WHEREOF the said Principal and Surety have signed and sealed this instrument, this _____ day of _____ , 20__ .

_____	_____
Principal	Surety
By _____	By _____
Address _____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

PERFORMANCE BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____ (Hereinafter called the Principal[s]), as Principal(s), and _____ (Hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Midland, Texas a home rule municipal corporation of Midland County, Texas, (hereinafter called the Obligee), in the amount of _____ DOLLARS ($ _____) for the payment whereof the said Principal and surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the _____day of _____ , 20___ , for the furnishing of materials and equipment to perform all labor and work necessary for the construction of _____ , specifically including in the scope of this work and bond, the additional maintenance guaranty provisions set forth in the contract conditions, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein, as well as the Principal's primary obligation to perform according to plans and specifications.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform the work in accordance with the plans, specifications, instructions to bidder, general and special conditions and other contract documents, including any addendum thereto, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED further that if any legal action be filed upon this Bond venue shall lie in Midland County, State of Texas.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications or drawings accompanying the same, or any assignment of the contract as may be provided for in the instructions to bidders, shall in anywise affect its obligation on this Bond, and it does waive notice of any such change, extension of time, alteration or addition to the terms of the contract, assignment thereof, or the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and surety do sign and seal this instrument, this _____ day of _____ , 20___.

_____	_____
Principal	Surety
By _____	By _____
Address _____	Address _____
_____	_____
_____	_____

APPROVED AS TO FORM:

_____

City Attorney

NOTE: Attach Power of Attorney

EXHIBIT D – BUILDING WAGE RATES rev 01-01-21

General Decision Number: TX20210261 01/01/2021

Superseded General Decision Number: TX20200261

State: Texas

Construction Type: Building

County: Midland County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/01/2021

BOIL0074-003 01/01/2017

	Rates	Fringes
BOILERMAKER	$ 28.00	22.35

ENGI0178-005 06/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
(1) Tower Crane	$ 32.85	13.10
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 tons and above	$ 28.75	10.60
(3) Hydraulic cranes 59 Tons and under	$ 32.35	13.10

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* IRON0084-011 06/01/2020

	Rates	Fringes
IRONWORKER, ORNAMENTAL	$ 25.26	7.13

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* PLUM0404-001 09/01/2020

	Rates	Fringes
PLUMBER	$ 26.05	8.81

SUTX2014-037 07/21/2014

	Rates	Fringes
BRICKLAYER	$ 20.00	0.00
CARPENTER	$ 13.82	0.00
CEMENT MASON/CONCRETE FINISHER	$ 13.76	0.00
ELECTRICIAN	$ 23.18	6.31
INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation)	$ 19.77	7.13
IRONWORKER, REINFORCING	$ 12.27	0.00

IRONWORKER, STRUCTURAL	$ 22.16	5.26
LABORER: Common or General	$ 11.80	0.00
LABORER: Mason Tender - Brick	$ 11.38	0.00
LABORER: Mason Tender - Cement/Concrete	$ 10.58	0.00
LABORER: Pipelayer	$ 12.49	2.13
LABORER: Roof Tearoff	$ 11.28	0.00
OPERATOR: Backhoe/Excavator/Trackhoe	$ 14.25	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader	$ 13.93	0.00
OPERATOR: Bulldozer	$ 18.29	1.31
OPERATOR: Drill	$ 16.22	0.34
OPERATOR: Forklift	$ 14.83	0.00
OPERATOR: Grader/Blade	$ 13.37	0.00
OPERATOR: Loader	$ 13.55	0.94
OPERATOR: Mechanic	$ 17.52	3.33
OPERATOR: Paver (Asphalt, Aggregate, and Concrete)	$ 16.03	0.00
OPERATOR: Roller	$ 12.70	0.00
PAINTER (Brush, Roller, and Spray)	$ 15.00	0.73
PIPEFITTER	$ 25.80	8.55
ROOFER	$ 14.75	0.00
SHEET METAL WORKER (HVAC Duct Installation Only)	$ 22.73	7.52
SHEET METAL WORKER, Excludes HVAC Duct Installation	$ 19.50	0.00

TILE FINISHER.....$ 11.22 0.00

TILE SETTER.....$ 14.74 0.00

TRUCK DRIVER: Dump Truck.....$ 12.39 1.18

TRUCK DRIVER: Flatbed Truck.....$ 19.65 8.57

TRUCK DRIVER: Semi-Trailer Truck.....$ 12.50 0.00

TRUCK DRIVER: Water Truck.....$ 12.00 4.11

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts. Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses

(29CFR 5.5 (a) (1) (ii)).

City Council Meeting

Item Number: 12

Meeting Date: September 28, 2021

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: MOTION AUTHORIZING THE EXECUTION OF A SECOND AMENDMENT TO THAT CERTAIN TURF AND LANDSCAPE MAINTENANCE SERVICES CONTRACT FOR CITY PARKS AND OTHER MUNICIPAL SITES WITH ALLDREDGE GARDENS, LP; SAID AMENDMENT PROVIDING FOR THE EXTENSION OF THE CONTRACT TERM THROUGH OCTOBER 31, 2021 **(DISTRICT: ALL) (GENERAL SERVICES)**

Purpose:

Approval of a motion authorizing the execution of a second amendment to that certain Turf and Landscape Maintenance Services Contract for City Parks and Other Municipal Sites with Alldredge Gardens, LP; said amendment providing for the extension of the contract term through October 31, 2021.

Recommended City Council Action:

Approve

Fiscal Impact:

Funds are available in the FY2022 General Fund operating budget.

Discussion:

Resolution 2014-141 approved the execution of a contract for turf and landscape maintenance services for the City Midland Parks, Athletic Fields, and other City Properties maintained within the Parks and Recreation Division on an annual basis with Alldredge Gardens, LP. Staff recommends amending the original agreement by extending the term through October 31, 2021. Please see the attached memo from Cristina Burns, Community Services Director, for further information.

Therefore, please consider a motion authorizing the execution of a second amendment to that certain Turf and Landscape Maintenance Services Contract for City Parks and Other Municipal Sites with Alldredge Gardens, LP of Midland, Texas; said amendment providing for the extension of the contract term through October 31, 2021.

Tina Daugherty

City Manager's Office

CITY OF MIDLAND

Community Services Department
Interoffice Memorandum

Date: September 15, 2021
To: Robert Patrick, City Manager
From: Cristina Burns, Community Services Director
Subject: Amendment to extend contract 7719-14 with Alldredge Gardens for Parks and Scharbauer Sports Complex landscape maintenance

Contract 7719-14 with Alldredge Gardens is currently in place for the regular maintenance of all City of Midland Parks and the Scharbauer Sports Complex. The original contract expired on May 6, 2021. An extension of Contract 7719-14 until the end of the current fiscal year was approved by City Council. This allowed the preparation of new specifications that incorporated some of the consultant's (Dunaway) recommendations for fertilizer and maintenance procedures. The new contract for FY 2022 was put out for bids, but only one bid was received. Changes have been made to extend the term of the contract to three years instead of one, in order to encourage additional bidders.

Alldredge Gardens has committed to continuing the contract at the current rate until the new contract is in place. The funds to continue the contract are available in the Parks and Scharbauer Sports Complex operating budgets.

Staff recommends an amendment to Contract 7719-14 with Alldredge Gardens extending the contract until October 31, 2021. This is when mowing operations cease for the season.

Funds are available in the FY2022 General Fund operating budget.

SECOND AMENDMENT TO THE TURF AND LANDSCAPE MAINTENANCE SERVICES CONTRACT FOR CITY PARKS AND OTHER MUNICIPAL SITES BETWEEN THE CITY OF MIDLAND, TEXAS AND ALLDREDGE GARDENS, LP

THIS SECOND AMENDMENT is made and effective as of September 29, 2021, by and between the City of Midland, Texas ("*City*"), a home-rule municipal corporation, and Alldredge Gardens, LP ("*Contractor*").

WHEREAS, City and Contractor entered into that certain Turf and Landscape Maintenance Services Contract for City Parks and Other Municipal Sites (the "*Contract*"), effective May 7, 2014, which was approved by Midland City Council Resolution No. 2014-141; and

WHEREAS, City and Contractor executed an amendment to the Contract on March 24, 2021 (the "*First Amendment*"), which was approved by Midland City Council Motion No. 025-2021; and

WHEREAS, the Contract, 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, City and Contractor desire to make certain amendments to the Contract 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 10 of the Contract is hereby amended in its entirety to read as follows:

> **Duration.** The term of this Contract shall be for a period of two (2) years, commencing on the effective date and terminating on October 31, 2016. Thereafter, this Contract may be extended upon the agreement of the parties for an additional five (5) one-year terms. However, if a documented increase in the minimum wage established by the United States Government or the increase or decrease of the rack price of fuel occurs and results in an increase or decrease of Contractor's costs in the services required by this Contract during the initial two-year term, the parties shall agree to an equitable adjustment in the Contract price prior to the parties agreeing to extend the Contract beyond the initial two-year term. A documented increase in the minimum wage or the increase/decrease of the rack price of fuel are the only increases/decreases in Contractor's costs that the City shall pay for during any term extension. Contractor shall provide rack prices of fuel to the Parks Operations Manager every three (3) months during the term of this Contract. However, if City

deems Contractor's performance under this Contract to be unsatisfactory, City may cancel this Contract upon thirty (30) days' notice to Contractor. Likewise, Contractor may terminate this Contract upon thirty (30) days' written notice to City upon City's breach of any material terms of this Contract. Should City fail to appropriate money for this Contract in any fiscal year, this Contract shall be cancelled as of the beginning of such fiscal year and City shall owe no damages to Contractor for such cancellation.

2. The Contract, inclusive of this Second Amendment and the First Amendment, is hereby ratified and affirmed by City and Contractor, and the Contract shall in all respects remain in full force and effect in accordance with its provisions and as amended above.

EXECUTED by the duly authorized officials as of the day and year first above written.

CITY OF MIDLAND, TEXAS

_____
Robert Patrick, City Manager

ATTEST:

_____
Amy M. Turner, Secretary

ALLDREDGE GARDENS, LP

By: _____

Name: _____

Title: _____

City Council Meeting

Item Number: 13

Meeting Date: September 28, 2021

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: MOTION REJECTING THE SOLE BID FOR TURF AND LANDSCAPE MAINTENANCE SERVICES; AND AUTHORIZING THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE TO: (I) REISSUE OF A REQUEST FOR PROPOSALS FOR TURF AND LANDSCAPE MAINTENANCE SERVICES PURSUANT TO THE STATUTES OF THE STATE OF TEXAS FOR ACCOMPLISHING THE WORK SET FORTH IN THE REQUEST FOR PROPOSALS, AND (II) NEGOTIATE A CONTRACT FOR SAID SERVICES; PROVIDED, HOWEVER, THAT SAID CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Approval of a motion rejecting the sole bid for turf and landscape maintenance services; and authorizing the City Manager or the City Manager's designee to: (i) reissue of a request for proposals for turf and landscape maintenance services pursuant to the statutes of the State of Texas for accomplishing the work set forth in the request for proposals, and (ii) negotiate a contract for said services; provided, however, that said contract shall not become effective until approved by the City Council.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is not required at this time.

Discussion:

The City Manager approved plans and specifications and authorized advertisement for bids for the turf and landscape maintenance services. Bid requests were issued to sixteen (16) vendors. We received one (1) proposal. Staff recommends rejecting the sole bid received for turf and landscape maintenance services. Please see the attached memo from Cristina Burns, Community Services Director, for more information.

Therefore, please consider a motion rejecting the sole bid for turf and landscape maintenance services; and authorizing the City Manager or the City Manager's designee to: (i) reissue of a request for proposals for turf and landscape maintenance services pursuant to the statutes of the State of Texas for accomplishing the work set forth in the request for proposals, and (ii) negotiate a contract for said services; provided, however, that said contract shall not become effective until approved by the City Council.

Tina Dauz

City Manager's Office

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: September 16, 2021
To: Regina Stephenson, Purchasing Manager
From: Cristina Burns, Community Services Director
Subject: Reject sole bid for Request for Turf and Landscape Maintenance Services and Reissue Request for Proposal for Turf and Landscape Maintenance Services with changes to the term of the contract

The Request for Proposals for Professional Turf and Landscape Maintenance Services to engage a Landscape Maintenance Company to provide complete maintenance for the City of Midland Parks, athletic fields, and other city properties maintained within the Parks and Recreation Divisions was issued on August 11, 2021. The sole proposal received was opened on August 27, 2021. The amount of the proposal was $3.6 million, an increase of $1.5 million above the previous proposal that was accepted in 2014. Efforts to negotiate a lower cost for the proposal resulted in a best and final offer of $3.2 million per year. Staff recommends rejecting this proposal and reissuing the Request for Proposals. Changes will be made to the term of the contract in an effort to attract additional proposals. The previous term was one year. The new term will be three years.

The current contract has been in place for seven years. The new contract is structured to allow parks that are slated for improvements to be removed from the contract to allow a warrantee period after new construction. Other changes include the removal of drainage basins that are now maintained by the Transportation Division.

The new specifications incorporate requirements for better quality herbicides to help control unwanted species within the landscaped areas. An increased fertilization schedule with higher quality fertilizers, as well as an increase in mowing frequency, should improve the quality of existing turf areas. These additions are in response to the level of services being cut in the specifications in the past contract.

While these changes to the contract will certainly increase the anticipated cost, staff will continue efforts to negotiate a proposal with the provider with the capability to provide the equipment and staff that can best provide the required services to the City of Midland at the best value.

Request for Proposals

RFP #22000143

for

Professional Turf and Landscape Maintenance Services for Parks & Recreation

Proposals for this requirement will be accepted until 11:00 A.M. on November 5, 2021

Proposals May be Mailed or Delivered to:

City Secretary
City of Midland
Suite 340
P.O. BOX 1152
Midland, Texas 79702-1153
(300 N. Loraine, Suite 340 Midland, TX 79701)

No Late Proposals Will Be Accepted

NOTICE TO PROPOSERS:

1. THE ATTACHED CONTRACT AND INSURANCE REQUIREMENTS ARE **NON-NEGOTIABLE**. MODIFICATIONS BY PROPOSER/CONTRACTOR OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE PROPOSAL. NON-RESPONSIVE PROPOSALS WILL BE REJECTED. PROPOSER/CONTRACTOR MUST BE WILLING TO SIGN THE CONTRACT AS IS AND WITHOUT MODIFICATIONS, PROVIDE PROPERLY EXECUTED BONDS (IF APPLICABLE) AND PROVIDE INSURANCE SPECIFICALLY AS REQUIRED WITHIN THE CONTRACT DOCUMENTS **WITHIN 21 DAYS** OF THE DATE OF THE TRANSMITTAL LETTER.

2. IF THE SELECTED PROPOSER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF PARAGRAPH 1, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER PROPOSER.

3. **IMPORTANT NOTICE** – IF THE CONTRACT DOCUMENTS REQUIRE WORKER'S COMPENSATION INSURANCE, PROPOSER/CONTRACTOR MUST CARRY WORKER'S COMPENSATION INSURANCE TO BE ELIGIBLE FOR THIS CONTRACT. IF YOU CANNOT PROVIDE WORKER'S COMPENSATION INSURANCE AS REQUIRED BY STATE OF TEXAS STATUTE WE RESPECTFULLY REQUEST THAT YOU "NO BID" THIS WORK

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10. Texas Public Information Act
EXECUTION OF OFFER

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SCHEDULE OF EVENTS

RFP XXXX-21

For

Professional Turf And Landscape Maintenance Services For Parks & Recreation

Event	Date*
RFP Released	September 29, 2021
Cutoff Date for inquiries and clarification	November 3, 2021
Proposal Due Date	November 5, 2021
Notification of Vendor Interviews / Product Demonstrations	To be determined
Present Recommendation to Council for Consideration	December 14, 2021
Intended date for Contract Award	December 15, 2021
Intended date to begin Contract Services	February 1, 2022

*These dates are our intended schedule; however, they may be changed as necessary without further notice.

NOTE:

From the issuance date of this RFP until a Contractor(s) is selected, all verbal communication is not binding. The City will only be bound by written comments submitted by the Purchasing Office.

SPECIAL TERMS AND CONDITIONS

Proposal Requirements /Terms

1. Unless otherwise called for, the number of copies specified in the RFP, shall be submitted typewritten or printed in ink. Many Requests for Proposals are in a word format that can be completed on your computer and will be noted on the cover page if available.

2. Each proposal should be placed in a separate envelope completely and properly identified with the RFP number, due time and date. Proposal must be time stamped at the appointed receipt location before the hour and date specified for the proposal receipt. Responsibility for having the proposal properly marked and to the opening location by the specified date and time is solely the offerors. All copies of the proposal may be delivered in the same box/package.

3. Any Proposal may be withdrawn in writing prior to the date and time set for receipt of proposals. Any proposals not so withdrawn shall constitute an irrevocable offer, for a minimum period as stated in the RFP following the final acceptance date, to provide the commodity or service set forth in the attached specifications, or until a selection has been made by the City.

4. Late proposals will not be accepted under any circumstances.

5. Proposal should give full firm name and address of Offeror. Failure to manually sign the proposal will disqualify it. The person signing the proposal should show title or authority to bind his/her firm in contract. Insert your Federal Employer's Identification Number _____ or Sole owner should enter SSN _____-____-_____.

6. Purchases made for City use are exempt from State Sales Tax and Federal Excise Tax. Do not include tax in your proposal. Tax exemption certificates will be furnished by the City upon request.

7. Telephone proposals are not acceptable when in response to an RFP.

Conditions

The City of Midland is requesting proposals with the intent of awarding a contract for the requirement contained in this RFP. However, the City is not obligated to award a contract on this solicitation and reserves the right to reject any and all proposals and award the proposal to best serve the interests of the City.

1. Offerors electing to respond to this RFP are responsible for all costs of proposal preparation. The City is not liable for any costs incurred by an offeror in response to this RFP.

2. No public disclosures or news releases pertaining to this RFP shall be made without prior written approval from Purchasing.

3. In case of a tie between two or more offerors, the award will be made in accordance with preferences as outlined by statute.

4. The Offeror agrees to protect the City from claims involving infringement of patents or copyrights.

5. The Offeror hereby assigns to Purchaser, any and all claims for overcharges associated with any contract resulting from this RFP which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. 1973 and which arise under the antitrust laws of the State of Texas, Texas Business and Commercial Code Ann. Sec. 15.01, et seq. (1967).

6. No substitutions or cancellation permitted without the written approval of the City Purchasing Agent. Deliveries made pursuant to a resulting contract shall be made during normal working hours only, unless approval for late delivery has been obtained.

7. Contractor shall submit two copies of an itemized invoice to Accounts Payable, The City of Midland, Texas, P.O. Box 1152, Midland Texas 79702. Each copy of the invoice shall reference the P.O. and the RFP numbers.

8. In the event of a conflict between the standard proposal requirements and conditions and the attached detail specification, the detail specifications shall govern.

9. Governing Law & Venue: This agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes or lawsuits arising from the performance of this contract shall be exclusively in Midland County, Texas. The parties agree that all performance under this contract shall take place in Midland, County, Texas. The Contractor and City agree that all payments made under this contract shall take place in Midland County, Texas.

10. This obligation and undertakings of each of the parties to this contract shall be deemed to have been performed in Midland County, Texas.

1. GENERAL INFORMATION

1.1. INTRODUCTION

The City of Midland Parks and Recreation Division (hereinafter referred to as "the City") is pleased to invite you to submit a proposal for Professional Turf and Landscape Maintenance Services for Parks & Recreation as specified herein. Proposals submitted in response to the specifications contained herein shall comply with the following instructions and procedures.

Request for Proposal Standard Information

This Request for Proposal (RFP) is issued in accordance with City of Midland Policy, the RFP Manual and the statutes of the State of Texas. The RFP process is a procurement option allowing the award to be evaluated based on stated criteria. The RFP states the relative importance of all criteria. No other criteria, other than as outlined in the Request for Proposal, will be used.

1.2. INITIAL EVALUATION

Upon receipt, the proposal information will be disclosed only to persons participating in the evaluation or contracting process until the proposal has been reviewed and all marked trade secrets have been removed (see "Trade Secrets and Other Withheld Information" statement below). After this review, all remaining proposal materials will be available under the open records act. The proposals will be initially evaluated by the committee as being "responsive" or "non-responsive".

1.3. DISCUSSION/NEGOTIATION

Although proposals may be accepted and a contract awarded without discussion, the City may initiate discussions should clarification or negotiation be necessary. Offerors should be prepared to send qualified personnel to Midland, Texas to discuss technical and contractual aspects of the proposal.

1.4. BEST AND FINAL OFFER

The "Best and Final Offer" is an option available to the City under the RFP process allowing one or more offerors to submit a best and final offer. Offerors may be contacted, asking that they submit their best and final offer, which must include the discussed and/or negotiated changes.

1.5. AWARD

1.5.1. If the Contract is awarded, it will be awarded to either the lowest responsible bidder, or to the bidder who provides goods or services at the best value for the City of Midland. In determining the best value for the City of Midland, the City of Midland may consider the criteria enumerated in Section 252.043 of the Texas Local Government Code.

1.6. LATE PROPOSALS

Proposals received after the time specified for receipt of proposals will be destroyed or returned at the offeror's expense after consultation with the offeror. There are no exceptions to this deadline.

1.7. PREPARING A RESPONSE

This RFP contains the instructions governing the proposals to be submitted and a description of the mandatory requirements. To be eligible for consideration, an offeror must meet the intent of all mandatory requirements. Compliance with the intent of a mandatory requirement will be

determined by the Purchasing Office. When imperative language (shall, will, must) appears in any section of the RFP, it is considered to be mandatory.

1.7.1. Offerors shall promptly notify the City of any ambiguity, inconsistency or error, which they may discover upon examination of this RFP.

1.8. CLARIFICATION/ INTERPRETATION

Offerors requiring clarification or interpretation of any section or sections contained in this RFP shall make a written request to the City Purchasing Agent by the deadline described in the Schedule of Events. All written correspondence must be addressed to:

The City of Midland
Office of the Purchasing Agent OR
P.O. Box 115
Midland, TX 79702

FAX: (432) 685-0523

e-mail: purchasing@midlandtexas.gov

1.9. FORMAT FOR INQUIRIES:

Each offeror submitting written questions must clearly address each question by reference to a specific section, page and item of this RFP. An official written answer will be provided to all questions received. Verbal responses shall not be considered binding.

1.10. INTERPRETATION:

Any interpretation, correction or change of this RFP will be made by written Addendum. Interpretations, corrections or changes of this RFP made in any other manner will not be binding and offerors shall not rely upon such interpretations, corrections or changes.

The City of Midland Purchasing Office will issue any necessary Addenda.

A point-by-point response to all numbered sections, subsections, paragraphs, subparagraphs and appendices must be submitted by each offeror in order to be considered for selection.

1.11. PROPOSAL ORGANIZATION AND SUBMISSION

Offerors must organize proposals into sections following the format of this RFP, with tabs separating each section. If no exception, explanation, or clarification is required in the offeror's response to a specific subsection, the offeror shall indicate so in the point-by-point response with the following:

"(Offeror's Name)", understands and will comply.

1.12. OFFER PRICING

Offerors must respond to this RFP by utilizing the RFP Cost Summary. The cost summary will be used as the primary representation of each offeror's cost, and will be used extensively during proposal evaluations. Additional information should be included as necessary to explain in detail the offeror's cost.

Proposals should be complete to the degree that all of the information sought by this RFP is supplied in the order requested.

1.13. SUBMITTING A SEALED PROPOSAL

1.13.1. Number of copies and Location:

1.13.1.1. Offerors must submit one original, and one (1) soft copy (PDF or Word) to the City Secretary. Sealed Proposals must be received by the date before the time stated on the

face of the Request for Proposal Cover Page, local time. Sealed Proposals received after this time will not be accepted for consideration. Facsimile copies are not acceptable.

1.13.1.2. Please be sure to label the outermost package of the RFP whether it is an envelope, box or overnight package with the RFP number, RFP description and closing date so that it is visible when received by the City.

1.13.2. Each Offeror who submits a proposal represents that:

1.13.2.1. The proposal is based upon an understanding of the specifications and requirements described in this RFP.

1.13.2.2. Costs for developing and delivering responses to this RFP and any subsequent presentations of the proposal as requested by the City are entirely the responsibility of the offeror. The City is not liable for any expense incurred by the offerors in the preparation and presentation of their proposals.

1.13.2.3. All materials submitted in response to this RFP become the property of the City and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the City and offeror resulting from this RFP process.

1.13.3. The proposals must be signed in ink by an individual authorized to legally bind the business submitting the proposal.

1.13.4. A proposal may not be modified, withdrawn or canceled by the offeror for a 120-day period following the deadline for proposal submission, or receipt of best and final offer, if required, as defined in the Schedule of Events, and offeror so agrees in submitting the proposal.

1.14. RIGHTS RESERVED

While the City has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the City of Midland to award a contract. Upon a determination, such actions would be in its best interests, the City in its sole discretion reserves the right to:

a) waive any formality;

b) cancel or terminate this RFP;

c) reject any or all proposals received in response to this document;

d) waive any undesirable, inconsequential, or inconsistent provisions of this document, which would not have significant impact on any proposal; not award, or if awarded, terminate any contract if the City determines adequate City funds are not available.

1.15. BONDING REQUIREMENTS

Intentionally Omitted

1.16. OFFEROR INTERVIEW / PRODUCT DEMONSTRATION

After receipt of all proposals and before the determination of the award, respondents may be required to make an oral presentation and product demonstration in Midland, Texas to clarify their response or to further define their offer. Oral presentations and product demonstrations, if requested, shall be at the offeror's expense.

1.17. SUBCONTRACTING

1.17.1. The successful offeror will be the Prime Contractor and shall be responsible, in total, for all work of subcontractors. All subcontractors must be listed in the proposal. The City reserves the right to approve all subcontractors.

1.17.2. The contractor shall be responsible to the City for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the

contractor. Further, nothing contained within this document or any contract documents created as a result of any contract awards derived from this RFP shall create any contractual relationships between any subcontractor and the City.

1.18. INSURANCE REQUIREMENTS

See Contract or Agreement

1.19. CONTRACTOR'S RESPONSIBILITIES

The successful offeror shall keep informed of, and shall comply with all applicable laws, ordinances, rules, regulations and orders of the City, County, State, Federal or public bodies having jurisdiction affecting any work to be done to provide the services required. The offeror shall provide all necessary safeguards for safety and protection, as set forth by the United States Department of Labor, Occupational Safety and Health Administration.

1.20. OFFEROR COMPETITION

The City encourages free and open competition among offerors. Whenever possible, specifications, proposal requests and conditions are designed to accomplish this objective, consistent with the necessity to satisfy the City's need to procure technically sound, cost-effective services.

The offeror's signature on a proposal in response to this RFP guarantees that the prices quoted have been established without collusion of other eligible offerors and without effort to preclude the City of Midland from obtaining the best possible price.

1.21. CONTRACT PROVISIONS AND TERMS

1.21.1. Contract Execution

The City will execute a contract with the successful offeror(s). The City requires that the RFP and the terms and conditions attached to it, the offeror's response, the best and final offer (if required), and any formal addenda to the RFP be included as part of any contract documents.

1.21.2. Terms and Conditions

Contract that will be executed by the successful offeror and the City is in Appendix A.

1.21.3. Exceptions to Contract Terms & Conditions

Offerors should notify the City of any terms within the sample contract that either precludes them from responding to the RFP or adds unnecessary cost.

1.21.4. The initial contract(s) term is for a period of three years. Renewals of the contract may be made at one-year intervals, not to exceed a total of (4) four one-year renewals, at the City's option.

1.21.5. Contract Extension

The offeror agrees that, through the term of the initial contract and any agreed-upon extension, the City will be entitled to any price reductions at least equal to any lower prices made available to any other customer of comparable volume.

1.21.6. Escalation

Annual pricing adjustments to contract extensions following the initial contract term, if applicable, shall not exceed seventy-five percent (75%) of the rate of increase in the cost of living as reflected in the Federal Bureau of Labor Statistics, Consumer Price Index (CPI) for all

Urban Consumers (1982-84=100; through November 1991 = 137.8) or any other index which may be substituted in the future. The CPI for the latest twelve (12) month period of the contract will be the CPI base on which later adjustments are computed. Each time an adjustment is made, the earlier CPI base will be replaced by the adjusted CPI base. The percentage of adjustment to contract prices shall in no event exceed the percentage change in the index.

2. PROPOSAL WAIVERS:

2.1. WAIVER OF ATTORNEY FEES: BY SUBMITTING THIS PROPOSAL, OFFEROR AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE PROPOSAL, THE CONSTRUCTION, VALIDITY OR INTERPRETATION OF THE PROPOSAL DOCUMENTS, OR THE CONSTRUCTION, VALIDITY, INTERPRETATION, AWARD, OR BREACH OF THE CONTRACT. THE OFFEROR SPECIFICALLY AGREES THAT IF THE OFFEROR BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS PROPOSAL, THE CONSTRUCTION, VALIDITY OR INTERPRETATION OF THE PROPOSAL DOCUMENTS, OR THE CONSTRUCTION, VALIDITY, INTERPRETATION, AWARD, OR BREACH OF THE CONTRACT, 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 OFFEROR AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH OFFEROR MIGHT OTHERWISE BE ENTITLED.

2.2. OFFEROR AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. THE OFFEROR ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE PROPOSAL DOCUMENTS INCLUDING BUT NOT LIMITED TO THE CONTRACT. THE OFFEROR FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE OFFEROR. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

2.3. THE OFFEROR AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THESE PROPOSAL DOCUMENTS, INCLUDING THE CONTRACT, WITH COMPETENT LEGAL COUNSEL PRIOR TO SUBMISSION OF THE PROPOSAL OR EXECUTION OF THE CONTRACT.

2.4. <u>WAIVER:</u>

2.5. BY SUBMITTING A PROPOSAL, THE OFFEROR AGREES TO WAIVE AND DOES HEREBY VOLUNTARILY AND INTENTIONALLY WAIVE, ABANDON AND RELINQUISH ANY CLAIM THE OFFEROR HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY OF MIDLAND, TEXAS, AND THE CITY'S EMPLOYEES, AGENTS AND OFFICERS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE FOLLOWING:

2.5.1. THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY PROPOSAL;

2.5.2. WAIVER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE

PROPOSAL DOCUMENTS OR THE CONTRACT DOCUMENTS;

2.5.3. ACCEPTANCE OR REJECTION OF ANY PROPOSALS; OR

2.5.4. AWARD OF THE CONTRACT.

2.6. BY SUBMITTING A PROPOSAL, THE OFFEROR ACKNOWLEDGES THAT THE OFFEROR UNDERSTANDS ALL OF THE TERMS OF THE PROPOSAL DOCUMENTS AND CONSENTS TO THE PROPOSAL PROCESS AND THE POSSIBILITY OF A NEGATIVE ASSESSMENT. BY SUBMITTING A PROPOSAL, THE OFFEROR ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE OFFEROR AND THE CITY OF MIDLAND, TEXAS. THE OFFEROR AGREES THAT THIS IS THE INTENTIONAL RELINQUISHMENT OF A PRESENTLY EXISTING KNOWN RIGHT. BY SIGNING THE PROPOSAL AND/OR BELOW, YOUR COMPANY AGREES TO THE ABOVE WAIVER(S).

2.7. BY SIGNING THE EXECUTION OF OFFER, YOUR COMPANY AGREES TO THE ABOVE WAIVER(S). IF THIS FORM IS NOT SIGNED AND INCLUDED WITH YOUR PROPOSAL DOCUMENTS YOUR PROPOSAL WILL BE CONSIDERED NON-RESPONSIVE AND WILL BE REJECTED.

3. SCOPE OF PROJECT

The City of Midland is requesting sealed proposals from qualified vendors for the purpose of establishing a contract to provide grounds maintenance, pest and weed control services, tree removal, and tree and shrub planting as specified herein and including all provisions set forth in the accompanying documentation. The contractor will provide professional turf and landscaping services necessary to complete the scope of work indicated as set forth in the following Schedules A through I.

4. GENERAL MAINTENANCE REQUIREMENTS

THE FOLLOWING MINIMUM STANDARDS WILL BE REQUIRED FROM SUCCESSFUL BIDDERS WITH RESPECT TO THE CARE AND MAINTENANCE OF TURF AND LANDSCAPE AREAS. ITEMS OF WORK WILL BE LISTED IN SCHEDULES A-I:

4.1. LITTER AND TRASH PICK-UP

4.1.2. All trash debris shall be picked up and disposed of by the Contractor prior to performing each cycle of work.

4.1.3. Failure to pick up litter and trash prior to mowing will result in a deduction of 25% of the cycle payment for each location.

4.2. MOWING

4.2.1. Mowing shall commence upon written notice by the Assistant Director of the Community Services Department for the City of Midland, Midland, Texas. Contractor will have ten (10) days from receipt of certified letter to commence mowing.

4.2.2. Mowing decks must be in good repair, with leveling wheel in place.

4.2.3. Fenced fields should be mowed with a mower with a 52" deck. Requests to utilize other deck mowers may be approved by the Assistant Community Services Director, pending written request. Mowing height of fields should be 2" after mowing. **DO NOT SCALP FIELDS**! This will result in payment deduction.

4.2.4 Schedule D areas that are mowed 3 cycles per year are to be mowed with a brush hog type mower.

4.2.5. Grass clippings shall not be caught. No grass "ridges" should be left after mowing.

4.2.6. Mowing operations shall not be performed in common areas if grass height does not exceed 3 ¾" (minimum grass height requirement to mow).

4.2.7. **GRASS HEIGHT SHALL BE 3" AFTER MOWING IN COMMON AREAS.** "Mowing Dirt" and/or "scalping" will not be tolerated. Cycle will not be paid if grass does not meet grass height requirement. Unpaid cycles will result in additional funds for tree or shrub planting or other maintenance as required.

4.2.8. All walks shall be swept or blown clear of grass clippings after each mowing. Do not blow clippings into the street unless they are subsequently picked up and properly disposed of by the contractor.

4.2.9. Contractor is responsible for notifying City of Midland Park Superintendent of any damages to structures, fences, gates, trees, or equipment including irrigation that occurs while mowing. Notification shall occur within 48 hours of damage.

4.2.10. Contractor is responsible for replacing or repairing all structures, fences, gates, trees, or equipment (excluding irrigation) that is damaged while mowing. Repair or replacement must occur within 2 weeks of damage. Failure by the contractor to make repairs or rectify damages will result in a deduction from the following month's payment to recover the cost for the city to make repairs or replacement.

4.3. EDGING

All walks shall be edged to a depth of 1 1/2" and to a width of ½" in conjunction with every mowing cycle. This shall be performed by a blade edger in locations of high public traffic. Debris must be swept clear and disposed of by the Contractor. Blowing debris into the street is not acceptable.

4.4. TRIMMING

4.4.1. All trimming will be done in conjunction with every mowing cycle to achieve a uniform height in accordance with the mowing height around trees, signs, park structures and any other obstacles.

4.4.2. Contractor is responsible for repairing or replacing trees, signs, park structures and any other obstacles that are damaged while trimming. DO NOT allow trimmers to come in contact with trees.

4.4.3. Trees damaged by trimmers will be replaced. Tree guards may be placed around trees to prevent damage by mowers. These must be furnished at the contractor's expense. They must be maintained by the contractor. Replacement trees must be equal in size and variety, unless otherwise approved by the Assistant Director of Community Services.

4.4.5. Use of Glyphosate herbicide may be used to "chemically trim" areas around fences, structures, mature trees, sign posts, light posts, and buildings. Herbicide applicators must hold a TDA pesticide applicator license, or be under the direct supervision of a licensed applicator. If damages to surrounding turf or other plant materials is observed, this practice may be discontinued at the discretion of the Assistant Community Services Director.

4.5. FERTILIZATION

4.5.1. Park Common Areas designated to receive fertilization will be fertilized two times a year; once in the spring (April) and once in the fall (September). Sports Fields will be fertilized three times per year in April, June and August.

4.5.2. Fertilizer shall be a 4 to 1 to 2 ratio of nitrogen, phosphorus and potassium (20-5-10 or approved equal). Nitrogen source to be a minimum 50% slow release organic Nitrogen (SCU or UF) plus minimum 8% Sulphur and 4 % iron plus micronutrients. Apply at a rate of 1 pound of nitrogen per 1000 square feet per application.

4.5.3. Fertilizer must be approved by the Assistant Community Services Director prior to application.

4.6. PEST CONTROL

4.6.1. Control all insects/pests that are detrimental to the maintenance of a healthy park landscape. This would include, but not be limited to, fire ants, harvester ants, tree bores and other insects or pests that are detrimental to health of turfgrass, trees and shrubs.

4.6.2. Broad spectrum pesticide for Ant Control (Talstar P or approved equal) shall be broadcast applied annually to all areas in schedules A, B, C, D Areas I and J, E Area L, .F Areas N, O and P, and G Areas V, Z, E3 and F3.

4.6.3 All other areas requiring pest control should be spot treated as needed.

4.7. WEED CONTROL

 Note: All control methods will be coordinated with the Park irrigation schedules.

4.7.1. Control all weeds, noxious plants and fungal forms that are detrimental to the maintenance of a healthy park landscape. This would include any weed, noxious plant or fungal form that inhibits the healthy growth of turfgrass, trees and/or shrubs.

4.7.2. Control all weeds and/or noxious plants in the crushed granite paths within the parks.

4.7.3. Control all weeds and/or noxious plants in the parking lots within the maintenance areas and parks as well as those in curbing /streets that directly border a park property.

4.7.4. High quality pre-emergent applications should be made starting in February and again in November for all areas where "Weed Control" is specified. Contractor must notify Park Superintendent when applications will begin. Pre-Emergent shall be Pendulum Aqua Cap or approve equal.

4.7.5. The following schedules DO NOT require pre-emergent applications:

Schedule D Area K, Schedule E Area M, and Schedule H, I and J

4.7.6. Post Emergent Herbicides should be used in all areas where weed control is specified as a work requirement. Depending on the target weed species, Speedzone EW-orange, Speed Zone- Red, Tenacity, and Image (or approved equals) should be used at appropriate times.

4.7.7 Do not use marker dye unless location is specifically approved by Assistant Community Services Director.

4.8. PLANTER BED MAINTENANCE

4.8.1 All beds to be turned and weeded once every 30 days during mowing cycles.

4.8.2 Pre-Emergent (Ronstar or approved equal) may be applied in beds.

4.9. SHRUB MAINTENANCE

All shrubs to be trimmed and pruned once every 30 days during mowing cycles, as to maintain a neat, uniform appearance.

4.10. IRRIGATION

4.10.1. Repair and operation of all irrigation systems will be the sole responsibility of the City of Midland Parks' Division.

4.10.2. Contractor must immediately report any damages to the irrigation system caused by maintenance operations to the Park Superintendent. Contractor should mark damages with a green irrigation flag.

4.10.3. Failure to report damages will result in a deduction from the following month's payment to recover the cost for the city to make repairs or replacement.

5. SCHEDULE OF WORK

The following minimum standards will be required from successful bidders with respect to the care and maintenance of Turf and Landscape Areas listed in Schedules A-I:

5.1. SCHEDULE A- HOGAN PARK

5.1.1 General Work Requirements for all Schedule A locations:
Litter and Trash Pick-up, Mowing, Edging, Trimming, Fertilization, Pest Control, Weed Control, Planter Bed Maintenance, and Shrub Maintenance.

5.1.2. MOWING FREQUENCY

March-October	1 cycle every 7 days……35 cycles
November - February	1 cycle every 30 days……4 cycles

5.1.3

SCHEDULE A – HOGAN PARK				
	AREA	**ADDRESS**	**EST. TURF**	**EST. SQ.FT.BEDS**
A	Hogan Park (Baseball) (Softball) (Soccer)	1201 E. Wadley	 8 AC. 2 AC. 22 ½ AC.	
B	Hogan Park (Dog Parks)	1201 E. Wadley	9 AC.	
C	Hogan Park Common Areas	1201 E. Wadley	65 AC	1064

5.2. SCHEDULE B - BEAL PARK

5.2.1 General Work Requirements for all Schedule B locations:

Litter and Trash Pick-up, Mowing, Edging, Trimming, Fertilization, Pest Control, Weed Control, and Shrub Maintenance.

5.2.2. MOWING FREQUENCY

March-October 1 cycle every 7 days……35 cycles

November - February 1 cycle every 30 days……4 cycles

5.2.3

SCHEDULE B – BEAL PARK				
	AREA	**ADDRESS**	**EST. TURF**	**EST. SQ.FT.BEDS**
D	Beal Park (Baseball) (Cricket) (Soccer)	5200 Wall	 8 AC. ½ AC. 4 ½ AC.	
E	Beal Dog Parks	5200 Wall	5 AC.	
F	Beal Common Areas	5200 Wall	30 AC.	

5.3. SCHEDULE C - BUTLER PARK

5.3.1 General Work Requirements for all Schedule C locations:

Litter and Trash Pick-up, Mowing, Edging, Trimming, Fertilization, Pest Control, Weed Control, Planter Bed Maintenance, and Shrub Maintenance.

5.3.2. MOWING FREQUENCY

March-October	1 cycle every 7 days……35 cycles
November - February	1 cycle every 30 days……4 cycles

5.3.3.

SCHEDULE C – BUTLER PARK				
	AREA	**ADDRESS**	**EST. TURF**	**EST. SQ.FT.BEDS**
G	Butler Park (Baseball) (Soccer)	3801 Bluebird	 7 AC. 8 AC.	
H	Butler Common Areas	3801 Bluebird	13 AC.	1358

5.4. SCHEDULE D - WINDLANDS PARK

5.4.1 General Work Requirements for all Schedule D Areas I and J locations:

Litter and Trash Pick-up, Mowing, Edging, Trimming, Fertilization, Pest Control, Weed Control, Planter Bed Maintenance, and Shrub Maintenance.

5.4.2 General Work Requirements for all Schedule D Area K only:

Litter and Trash Pick-up, Mowing (brush hog allowed), and Trimming

5.4.3. MOWING FREQUENCY – Areas I and J

March-October	1 cycle every 7 days……35 cycles
November - February	1 cycle every 30 days……4 cycles

5.4.4. MOWING FREQUENCY – Area K

February only	1 cycle …… 1 cycle

5.4.5.

SCHEDULE D – WINDLANDS PARK				
	AREA	**ADDRESS**	**EST. TURF**	**EST. SQ.FT.BEDS**
I	Windlands Park (Baseball) (Soccer)	1000 W. Dengar	 4 AC. 19 AC.	
J	Windlands Park Common Areas	1000 W. Dengar	17 AC	3100
K	Windlands Park Natural Area & Jogging Trail	1000 W. Dengar	20 AC	

5.5. SCHEDULE E – SCHARBAUER SPORTS COMPLEX

5.5.1 General Work Requirements for Schedule E location L:

Litter and Trash Pick-up, Mowing, Edging, Trimming, Fertilization, Pest Control, Weed Control, Planter Bed Maintenance, and Shrub Maintenance.

5.5.2 General Work Requirements for Schedule E location M:

Litter and Trash Pick-up, Mowing, and Trimming. Brush hog is allowed.

5.5.3. MOWING FREQUENCY – Area L

March - October 1 cycle every 7 days……35 cycles

November - February 1 cycle every 30 days……4 cycles

5.5.4. MOWING FREQUENCY – Area M

1 cycle April/ 1 cycle July/ 1 cycle October……..……..…….3 cycles

5.5.5.

SCHEDULE E – SCHARBAUER SPORTS COMPLEX				
	AREA	**ADDRESS**	**EST. TURF**	**EST. SQ.FT.BEDS**
L	Scharbauer Sports Complex Common Areas	801 N Loop 250 W	46 AC	26,114
M	Scharbauer Sports Complex Undeveloped Areas	801 N Loop 250 W	4 AC	

5.6. SCHEDULE F - PARKS WITH ATHLETIC FIELDS

5.6.1 General Work Requirements for all Schedule F locations:

Litter and Trash Pick-up, Mowing, Edging, Trimming, Fertilization, Pest Control, Weed Control.

5.6.2. MOWING FREQUENCY

March-October 1 cycle every 7 days……35 cycles

November - February 1 cycle every 30 days……4 cycles

5.6.3

SCHEDULE F – PARKS WITH ATHLETIC FIELDS				
AREA	PARK	LOCATION	EST. TURF	EST. SQ.FT.BEDS
N	CJ Kelly Park (Baseball) (Football) Common Areas	5500 League Drive	 5 AC. 2 AC. 23 AC	 1000
O	Reyes/Mashburn/Nelms (Baseball) (Soccer) Common Areas	2101 E. Cuthbert	 7 AC. 10 AC. 48 AC.	
P	MUGS/Ulmer Park (Softball) Common Areas	2700 W. Kentucky	 8 AC. 17 AC	 200
Q	Dunagan Common Areas (Soccer)	600 E. Gist	 2 AC. 6 AC.	
R	Hidalgo Common Areas (Softball)	1401 Orchard Lane	 8 AC. 1 AC.	

5.7 SCHEDULE G – GENERAL PARKS

5.7.1 General Work Requirements for all Schedule G locations:

Litter and Trash Pick-up, Mowing, Edging, Trimming, Fertilization, Pest Control, Weed Control, Planter Bed Maintenance, and Shrub Maintenance.

5.7.2. MOWING FREQUENCY

March - October 1 cycle every 7 days……35 cycles

November - February 1 cycle every 60 days……2 cycles

5.7.3.

SCHEDULE G – GENERAL PARKS				
	PARK	**LOCATION**	**EST. TURF**	**EST. SQ. FT. BEDS**
S	Bradford	801 E Pennsylvania	3.5 AC.	NA
T	Cowden	1100 Ward	8 AC	NA
U	Crier Park	"H" at Texas	½ AC	5722
V	Dennis the Menace	2201 W. Indiana	5.7 AC.	NA
W	Doug Russell Pool	900 N. Midland Dr.	5 AC	450
X	Elkin	1101 W. Washington	2 AC.	100
Y	Essex	3400 Whittle Way	4 AC.	1000
Z	Fasken	2301 Humble Ave	3 ½ AC.	NA
AA	Garrett-Brown	300 S. Holly Dr	9 AC.	NA
BB	Grafa	3201 MaMar Ave	6 AC	NA
CC	Grasslands	2501 Crowley	5 AC.	NA
DD	Greathouse	5105 Greathouse	5 AC	400
EE	Haley	1800 Holloway Ave.	3 ½ AC.	NA
FF	Halff	100 E. New Jersey	2 AC.	NA
GG	Henderson	4701 Graceland Dr.	3 ½ AC	NA
HH	Hill	1301 W. Cuthbert	5 ½ AC	400
II	House	4800 Ric Drive	6 ½ AC	NA
JJ	Ida Jo Moore	701 W. Nobles	1 ½ AC.	NA
KK	Indiana Islands (3)	At "C" and "G"	2 AC.	NA
LL	Jacotte	Golf Course intersect. With Jacotte	1 AC.	NA
MM	Lloyd	Cuthbert & Marienfeld	1/3 AC.	NA
NN	M.L. King, Jr.	1415 E Scharbauer	3 ½ AC.	NA
OO	Kiwanis	2900 Haynes Dr	4 AC.	NA
PP	Lamesa Triangle	Kentucky and Indiana	½ AC	NA
QQ	Lancaster	3501 W. Kansas	7 AC	NA
RR	Lancaster (Annex)	3400 W. Storey	2 ½ AC	NA
SS	Lancaster (Tesco)	3500 W. Kansas	4 AC.	NA
TT	Pioneer	2001 Lindora Way	5 AC	300
UU	Ratliff	2411 Edwards	5 AC.	NA
VV	Santa Rita	5200 Whitman	5 AC.	NA

SCHEDULE G – GENERAL PARKS				
	PARK	**LOCATION**	**EST. TURF**	**EST. SQ. FT. BEDS**
WW	Scharbauer Triangle	1601 W. Scharbauer	1 AC	NA
XX	Sidwell	500 Neely	5 ½ AC.	NA
YY	Sparks	1500 E. Golf Course	5 AC.	NA
ZZ	Taylor	1401 E. Carter Dr	8 AC.	NA
A3	Trinity	3900 St. Andrew	4 AC	NA
B3	Tumbleweed	1300 Ventura	8 AC	NA
C3	Unity	600 N. Mineola	1 AC	1244
D3	Vietnam Memorial	Wright Drive	2 ½ AC	25,000
E3	Wadley Barron	1001 N. A Street	5 AC	450
F3	Washington Park	1803 E. Indiana	16 AC.	1500

5.8 <u>SCHEDULE H – BI-MONTHLY MOWING</u>

5.8.1 General Work Requirements for all Schedule H locations:

Litter and Trash Pick-up, Mowing, Edging and Trimming only

5.8.2. MOWING FREQUENCY

1 cycle Every other week March-October ……18 Cycles

5.8.3.

SCHEDULE H – BI MONTHLY MOWING			
	PARK	**LOCATION**	**EST. TURF**
G3	Andrews Hwy ROW	Andrews & Godfrey	½ AC
H3	Fuhrman House	3301 Sinclair	1 ¼ AC
I3	Heritage Blvd	Behind Lowe's	½ AC
J3	HWY 191 Easement	Adj to Grasslands	3 AC
K3	Loop 250 Easement	Adj to Grasslands	4 AC
L3	Marienfeld at Rankin Hwy	Same	½ AC
M3	Orchard & Front	Same	½ AC
N3	Scharbauer ROW	"C"-"I" Pecos to Humble	5 ¼ AC
O3	Lamesa at Cuthbert	Same	¼ AC
P3	Holiday Hill Rd Extension	Holiday Hill North	18 AC

5.9. <u>SC</u>

SCHEDULE I – OCCASIONAL MOWING

5.9.1 General Work Requirements for all Schedule I locations:

Litter and Trash Pick-up and Mowing only

5.9.2 MOWING FREQUENCY

1 cycle April/ 1 cycle July/ 1 cycle October…….3 Cycles

5.9.3

SCHEDULE I – OCCASIONAL MOWING			
	AREA	LOCATION	EST. AREA
Q3	Heritage Center (back area Linebery House)	802 S. Main	3 AC
R3	Fairgrounds Road Hike/Bike Path	Fairgrounds Road	4 AC
S3	Loop 250 to Lancaster Hike/Bike Path	TXU Easement	5 AC
T3	Reyes Mashburn Nelms Undeveloped	Fairgrounds at Cuthbert	2 AC

5.10 SCHEDULE J – NO MOW AREAS (XERISCAPE AND/OR BEDS ONLY)

5.10.1. General Work Requirements for all Schedule J locations:

Litter and Trash Pick-up, Weed Control, Pest Control, Planter Bed Maintenance, and Shrub Maintenance

5.10.2. CYCLE FREQUENCY

October – March 1 cycle per month…… 6 Cycles
April – September 2 cycles per month……..12 Cycles

5.10.3.

NO MOW AREAS (XERISCAPE AND/OR BEDS ONLY)			
	AREA	LOCATION	EST. SQ. FT.
U3	Achievement Plaza	W. Wall at W. Front Ave	1000
V3	Broadway Island	At Ohio Ave	22,721
W3	Broadway Median	At Cuthbert	500
X3	Cowden Island	At Big Spring	1950
Y3	Cowden Island	At Colorado	7838
Z3	Main & Baird	Islands	5544
A4	Wall Street	Downtown beds/trees	450
B4	Front Street	Beds near RR tracks	1000
C4	Volunteer Park	Big Spring & Marienfeld	14,348

5.11 SCHEDULE K – CITY OFFICES

5.11.1. General Work Requirements for all Schedule K locations:

Litter and Trash Pick-up, Mowing, Edging, Trimming, Fertilization, Pest Control, Weed Control, Planter Bed Maintenance, and Shrub Maintenance as required at each site.

5.11.2. CYCLE FREQUENCY

November– February	1 cycle per month……	4 Cycles
March – October	1 cycle per week……..	35 Cycles

5.11.3

SCHEDULE K – CITY OFFICES				
	AREA	LOCATION	EST. TURF	EST. BED AREA
D4	City Hall	300 N. Loraine		5573
E4	Loraine Center	Loraine & Louisiana	¼ AC	951
F4	MLK Comm Center	2300 Butternut	2 AC	1000
G4	Scarborough/Linebery House	802 S. Main	1 AC	1250
H4	Old Police Station	404 E. Texas	¼ AC	NA
I4	Parks Office	2701 Elizabeth	¼ AC	800
J4	Baldwin Office	300 Baldwin	¼ AC	500
K4	Central Fire Station	1500 W. Wall Street	¼ AC	3500

6.0 ADDITIONAL MAINTENANCE SERVICES AS REQUIRED

 NOTE: All services below will be paid as "each". Estimated quantities will be shown for purposes of bidding. Work will be performed as requested in writing by the Assistant Community Services Director.

6.1. ORNAMENTAL SHRUB/SEASONAL COLOR PLANTING

6.1.1. Ornamental Shrubs such as Autumn Sage, Lantana, or similar available varieties will be planted as directed by the Assistant Community Services Director. Seasonal Color bed planting may also be requested.

6.1.2. The plants should meet all horticultural standards, be disease and insect free.

6.1.3. Ornamental shrubs should be 1 gallon, container grown specimens.

6.1.4. Shrubs should be planted according to current American Nurseryman Standards.

6.2. ORNAMENTAL SHRUB PLANTING

6.2.1. Ornamental Shrubs such as Purple Sage, Red Yucca, or similar available varieties will be planted as directed by the Assistant Community Services Director.

6.2.2. The shrubs should meet all horticultural standards, be disease and insect free.

6.2.3. Ornamental shrubs should be 5-gallon, container grown specimens.

6.2.4. Shrubs should be planted according to current American Nurseryman Standards.

6.3. ORNAMENTAL TREE PLANTING

6.3.1. Ornamental trees such as Desert Willow, Vitex, or similar available varieties will be planted as directed by the Assistant Community Services Director.

6.3.2. The trees should meet all horticultural standards, be disease and insect free.

6.3.3. Ornamental trees should be 15-gallon, container grown specimens.

6.3.4. Trees should be planted according to current American Nurseryman Standards.

6.4. TREE PLANTING

6.4.1. Trees such as Cedar Elm, Monterrey Oak, Chinese Pistache or similar available varieties will be planted as directed by the Assistant Community Services Director.

6.4.2. The trees should meet all horticultural standards, be disease and insect free.

6.4.3. Trees should be minimum 3” caliper, container grown specimens.

6.4.4. Trees should be planted according to current American Nurseryman Standards.

6.5. TREE REMOVAL

6.5.1. Trees such as Elms, Mulberry or similar varieties will be removed as directed by the Assistant Community Services Director.

6.5.2. The trees shall be tagged for removal by Parks Division personnel.

6.5.3. Trees stumps should be ground to a level below the surrounding ground and filled to maintain a level surface.

6.5.4. All branches and stumps must be completely removed from City Property and disposal is the responsibility of the contractor.

6.5.5. Tree caliper will determine the Type of tree removal. Caliper is measured 18" above the soil line.

6.5.6. Tree removal Type A – Trees under 24" caliper

6.5.7 Tree removal Type B – Trees over 24" caliper

6.6. SCHEDULE L - ESTIMATE OF ADDITIONAL MAINTENANCE SERVICES

6.6.1.

SCHEDULE L - SUMMARY OF QUANTITIES FOR ONE YEAR		
	ITEM OF WORK	ESTIMATED QUANTITY
6.1	ORNAMENTAL SHRUB (1 GAL)	200
6.2	ORNAMENTAL SHRUB (5 GAL)	100
6.3	ORNAMENTAL TREE PLANTING	25
6.4	TREE PLANTING	50
6.5.6.	TREE REMOVAL-TYPE A	20
6.5.7.	TREE REMOVAL-TYPE B	50

7. VENDOR QUALIFICATIONS

7.1 INFORMATION VERIFICATION

The City may make such investigations as deemed necessary to determine the ability of the offeror to supply the products and perform the services specified.

7.2 RIGHT TO REJECT

The City reserves the right to reject any proposal if the evidence submitted by, or investigation of, the offeror fails to satisfy the City that offeror is properly qualified to carry out the obligations of the contract.

7.3. VENDOR CAPABILITIES

In determining the capabilities of an offeror to perform the services specified herein, the following informational requirements must be met by the offeror and will be weighed by the City. (Note: Each item must be thoroughly addressed. Taking exception to any requirements listed in this Section may disqualify the proposal):

7.3.1 References

7.3.1.1 Offeror shall provide a minimum of ___3___ references that are using services of the type proposed in this RFP. The references should fall within the categories identified below. At a minimum, the offeror shall provide the company name, the location where the services were provided, contact person(s), customer telephone number, a complete description of the service type, and dates the services were provided. The City reserves the right to use any information or additional references deemed necessary to establish the ability of the offerors to perform the conditions of the contract. Negative references may be grounds for proposal disqualification.

7.3.1.2 These references should include City government and universities where the offeror, preferably within the last __2___ years, has successfully provided this service.

7.3.2 Vendor Stability

7.3.2.1 Offerors shall demonstrate their financial stability to supply, install and support the services specified.

7.3.2.2 Provide financial statements, preferably audited, for the __2____ consecutive years immediately preceding the issuance of this RFP.

7.3.2.3 Provide copies of any quarterly financial statements that have been prepared since the end of the period reported by your most recent annual report.

7.3.2.4 Offerors shall specify how long the company submitting the proposal has been in business (doing similar projects) _____.

8. EVALUATION PROCESS

8.1 EVALUATION PROCEDURE

8.1.1. Committee Actions

8.1.1.1. The evaluation committee will separate proposals into "responsive" and "non-responsive" proposals. Non-responsive proposals will be eliminated from further consideration.

8.1.1.2 The evaluation committee will evaluate the remaining proposals and determine whether to award the contract to the best proposal or to seek a best and final offer before awarding a contract. Selection and award will be based on the offeror's proposal and other items outlined in this RFP.

8.1.1.3 Responses must be complete and address all the criteria listed. Information or materials presented by offerors outside the formal response or subsequent "best and final offer," if requested, will not be considered and will have no bearing on any award.

8.2 EVALUATION CRITERIA

The evaluation committee will review and evaluate the offers according to the following criteria:

8.2.1 Company Service Qualifications

8.2.2 Three references

8.2.3 Years in business

8.2.4 Project Manager

8.2.5 Implementation Plan

8.2.6 Training Requirements

8.2.7 Organization

8.2.8 Technical Abilities

8.2.9 Cost Analysis

9. PROPOSAL CONTENTS

The following items constitute the RFP submittal in response to the request herein:

9.1 THE RFP

9.2 THE COST SUMMARY OR PROPOSAL FORM

9.3 REQUESTED ATTACHMENTS

9.3.1 References

9.3.2 Resumes

9.3.3 Business Plan

9.3.4 Financial Information

9.3.5 Signed Execution of Offer

10. TEXAS PUBLIC INFORMATION ACT

Notwithstanding any other provisions, this request for proposals, along with any associated contract, is subject to the Texas Public Information Act.

EXECUTION OF OFFER

Date:

In compliance with this RFP, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all commodities or services at the prices quoted.

By executing this offer, Offeror affirms that he/she has not given, offered to give, nor intends to give at anytime hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to sign the offer, or signing it with a false statement, shall void the submitted offer or any resulting contracts, and the Offeror shall be removed from all proposal lists.

By the signature hereon affixed, the Offeror hereby certifies that neither the Offeror or the firm, corporation, or institution represented by the Offeror or anyone acting for such firm, corporation, or institution has violate the antitrust laws of this State, codified in Section 15.01, et seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the offer being made to any competitor or any other person in such line of business. By signing this offer, Offeror certifies that if a Texas address is shown as the address of the Offeror, Offeror qualifies as a Texas Resident Offeror as defined in Rule 1 TAC 113.8.

This offer consists of pages number 1 through _____.

Offeror/ COMPANY: _____

SIGNATURE (INK): _____

NAME: (TYPED/PRINTED) _____

TITLE: _____

STREET: _____

CITY/STATE/ZIP: _____

TELEPHONE: _____ FAX: _____

E-MAIL ADDRESS: _____

City Of Midland
Turf & Landscape Services
Cost Summary

Instructions and Information

1. Insert the bid amounts on each schedule according to the requirements coinciding with the specification for that schedule.

2. The last column is to provide the total monthly cost of fuel that is already included in the monthly costs for mowing, trimming, etc. This is for City informational purposes and does not preclude including fuel cost in these costs.

3. The Rack price per gallon of gasoline used to prepare this proposal is: $ _____

3. The Rack price per gallon of diesel used to prepare this proposal is: $ _____

4. Estimated number of gallons of diesel fuel per month:……. _____

5. Estimated number of gallons of unledded gasoline…….. _____

Name of Company submitting this offer: _____

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE A - HOGAN PARK

Proposal From:					Monthly Bids For Specific Services			Composite Bids for All Services	
ID	Property Name	Location	Mowing Area	Bed Area	Litter and Trash Pick Up, Edging,Trimming, (39 cycles/year)	Fertilization (3 times / year)	Pesticide, Herbicide (as needed)	Monthly	Annually
A	Hogan Park	1201 E. Wadley							
	(Baseball)		8 AC						
	(Softball)		2 AC						
	(Soccer)		22 1/2 AC						
B	Hogan Park	1201 E. Wadley							
	(Dog Parks)		9 AC						
C	Hogan Park	1201 E. Wadley							
	(Common areas)		65 AC	1064 SQ FT					
	Totals Schedule A								

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE B - BEAL PARK

Proposal From:					Monthly Bids For Specific Services			Composite Bids for All Services	
ID	Property Name	Location	Mowing Area	Bed Area	Litter and Trash Pick Up, Edging,Trimming, (39 cycles/year)	Fertilization (3 times / year)	Pesticide, Herbicide (as needed)	Monthly	Annually
D	Beal Park	5200 Wall							
	(Baseball)		8 AC						
	(Cricket)		1/2 AC						
	(Soccer)		4 1/2 AC						
E	Beal Park	5200 Wall							
	(Dog Parks)		5 AC						
F	Beal Park	5200 Wall							
	(Common areas)		30 AC						
	Totals Schedule B								

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE C - BUTLER PARK

Proposal From:					Monthly Bids For Specific Services			Composite Bids for All Services	
ID	Property Name	Location	Mowing Area	Bed Area	Litter and Trash Pick Up, Edging,Trimming, (39 cycles/year)	Fertilization (3 times / year)	Pesticide, Herbicide (as needed)	Monthly	Annually
G	Butler Park	3801 Bluebird							
	(Baseball)		7 AC						
	(Soccer)		8 AC						
H	Butler Park	3801 Bluebird							
	(Common areas)		13 AC	1358 SQ FT					
	Totals Schedule C								

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE D - WINDLANDS PARK

Proposal From:					Monthly Bids For Specific Services			Composite Bids for All Services	
ID	Property Name	Location	Mowing Area	Bed Area	Litter and Trash Pick Up, Edging,Trimming, (39 cycles/year)	Fertilization (3 times / year)	Pesticide, Herbicide (as needed)	Monthly	Annually
I	Windlands Park	1000 W. Dengar							
	(Baseball)		4 AC						
	(Soccer)		19 AC						
J	Windlands Park	1000 W. Dengar							
	(Common areas)		17 AC	3100 SQ FT					
K	Windlands Park	1000 W. Dengar							
	(Natural areas & Trails)		20 AC						
	Totals Schedule D								

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE E - SCHARBAUER SPORTS COMPLEX

Proposal From:					Monthly Bids For Specific Services			Composite Bids for All Services	
ID	Property Name	Location	Mowing Area	Bed Area	Litter and Trash Pick Up, Edging,Trimming, (39 cycles/year)	Fertilization (2 times / year)	Pesticide, Herbicide (as needed)	Monthly	Annually
L	Scharbauer Sports Complex	801 N Loop 250 W							
	(Common Areas)		46 AC	26,114 Sq Ft					
M	Scharbauer Sports Complex	801 N Loop 250 W							
	(NE Undeveloped Area)		4 AC						
	Totals Schedule E								

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE F - PARKS WITH ATHLETIC FIELDS

Proposal From:					Monthly Bids For Specific Services			Composite Bids for All Services	
ID	Property Name	Location	Area	Bed Area	Litter and Trash Pick Up, Edging,Trimming, (39 cycles/year)	Fertilization (2 times / year)	Pesticide, Herbicide (as needed)	Monthly	Annually
N	CJ Kelly Park	5500 League Drive							
	(Baseball)		5 AC.						
	(Football)		2 AC.						
	(Common Areas)		23 AC	1000 Sq Ft					
O	Reyes/Mashburn/Nelms Park	2101 E. Cuthbert							
	(Baseball)		7 AC.						
	(Soccer)		10 AC						
	(Common Areas)		48 AC.						
P	MUGS/Ulmer Park	2700 W. Kentucky							
	(Softball)		8 AC.	200 Sq Ft					
	(Common Areas)		17 AC.						
Q	Dunagan Park	600 E. Gist							
	(Soccer)		6 AC.						
	(Common Areas)		2 AC.						
R	Hidalgo Park	1401 Orchard Lane							
	(Softball)		1 AC.						
	(Common Areas)		8 AC.						
	Totals Schedule F								

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE G – GENERAL PARKS

Proposal From:

					Monthly Bids For Specific Services				Composite Bids for All Services	
ID	Property Name	Location	Turf Area	Plant Bed Area	Litter and Trash Pick Up, Edging,Trimming (37 cycles/year)	Fertilization (2 times / year)	Pesticide, Herbicide (as needed)	Plant Bed and Shrub Maintenance	Monthly	Annually
S	Bradford	801 E Pennsylvania	3.5 AC.	NA						
T	Cowden	1100 Ward	8 AC	NA						
U	Crier Park	"H" at Texas	½ AC	5722						
V	Dennis the Menace	2201 W. Indiana	5.7 AC.	1250						
W	Doug Russell Pool	900 N. Midland Dr.	5 AC	450						
X	Elkin	1101 W. Washington	2 AC.	100						
Y	Essex	3400 Whittle Way	4 AC.	1000						
Z	Fasken	2301 Humble Ave	3 ½ AC.	NA						
AA	Garrett-Brown	300 S. Holly Dr	9 AC.	NA						
BB	Grafa	3201 MaMar Ave	6 AC	NA						
CC	Grasslands	2501 Crowley	5 AC.	NA						
DD	Greathouse	5105 Greathouse	5 AC	1500						
EE	Haley	1800 Holloway Ave.	3 ½ AC.	NA						
FF	Halff	100 E. New Jersey	2 AC.	NA						
GG	Henderson	4701 Graceland Dr.	3 ½ AC	NA						
HH	Hill	1301 W. Cuthbert	5 ½ AC	400						
II	House	4800 Ric Drive	6 ½ AC	NA						
JJ	Ida Jo Moore	701 W. Nobles	1 ½ AC.	NA						
KK	Indiana Islands (3)	At "C" and "G"	2 AC.	NA						
LL	Jacotte	Golf Course intersect.	1 AC.	NA						
		With Jacotte		NA						
MM	Lloyd	Cuthbert & Marienfeld	1/3 AC.	NA						
NN	M.L. King, Jr.	1415 E Scharbauer	3 ½ AC.	NA						
OO	Kiwanis	2900 Haynes Dr	4 AC.	NA						
PP	Lamesa Triangle	Kentucky and	½ AC	NA						
		Indiana		NA						
QQ	Lancaster	3501 W. Kansas	7 AC	NA						
RR	Lancaster (Annex)	3400 W. Storey	2 ½ AC	NA						
SS	Lancaster (Tesco)	3500 W. Kansas	4 AC.	NA						
TT	Pioneer	2001 Lindora Way	5 AC	300						

Proposal From:					Monthly Bids For Specific Services				Composite Bids for All Services	
ID	Property Name	Location	Turf Area	Plant Bed Area	Litter and Trash Pick Up, Edging,Trimming (37 cycles/year)	Fertilization (2 times / year)	Pesticide, Herbicide (as needed)	Plant Bed and Shrub Maintenance	Monthly	Annually
UU	Ratliff	2411 Edwards	5 AC.	NA						
VV	Santa Rita	5200 Whitman	5 AC.	NA						
WW	Scharbauer Triangle	1601 W. Scharbauer	1 AC	NA						
XX	Sidwell	500 Neely	5 ½ AC.	NA						
YY	Sparks	1500 E. Golf Course	5 AC.	NA						
ZZ	Taylor	1401 E. Carter Dr	8 AC.	NA						
A3	Trinity	3900 St. Andrew	4 AC	NA						
B3	Tumbleweed	1300 Ventura	8 AC	NA						
C3	Unity	600 N. Mineola	1 AC	1244						
D3	Vietnam Memorial	Wright Drive	2 ½ AC	25,000						
E3	Wadley Barron	1001 N. A Street	5 AC	450						
F3	Washington Park	1803 E. Indiana	16 AC.	1500						
	Totals Schedule G									

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE H - BI-MONTHLY MOWING

Proposal From:				Monthly Bids For Specific Services	Composite Bids for All Services	
ID	Property Name	Location	Area	Litter and Trash Pick Up, Edging,Trimming, (18 cycles/year)	Monthly	Annually
G3	Andrews Hwy ROW	Andrews & Godfrey	½ AC			
H3	Fuhrman House	3301 Sinclair	1 ¼ AC			
I3	Heritage Blvd	Behind Lowe's	½ AC			
J3	HWY 191 Easement	Adj to Grasslands	3 AC			
K3	Loop 250 Easement	Adj to Grasslands	4 AC			
L3	Marienfeld at Rankin Hwy	Same	½ AC			
M3	Orchard & Front	Same	½ AC			
N3	Scharbauer ROW	"C"-"I" Pecos to Humble	5 ¼ AC			
O3	Lamesa at Cuthbert	Same	¼ AC			
P3	Holiday Hill Rd Extension	Holiday Hill North	18 AC			
	Totals Schedule H					

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE I - OCCASIONAL MOWING

Proposal From:				Monthly Bids For Specific Services	Composite Bids for All Services	
ID	Property Name	Location	Area	Litter and Trash Pick Up and Mowing (3 cycles/year)	Monthly	Annually
Q3	Heritage Center (Lineberry House)	802 S. Main	3 AC			
R3	Fairgrounds Road Hike/Bike Wadley to Loop 250	Fairgrounds Road	4 AC			
S3	Loop 250 to Lancaster Hike/Bike Path	TXU Easement West	5 AC			
T3	RMN Undeveloped Area	Fairgrounds at Cuthbert	2 AC			
	Totals Schedule I					

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE J - NO MOW AREAS (XERISCAPE AND/OR BEDS ONLY)

Proposal From:				Monthly Bids For Specific Services	Composite Bids for All Services	
ID	Property Name	Location	Area	Litter and Trash Pick Up, Weed Control, Pest Control, Planter Bed Maintenance, and Shrub Maintenance (18 cycles/year)	Monthly	Annually
U3	Achievement Plaza	W. Wall at Front Ave	7200 SQ. FT.			
V3	Broadway Island	at Ohio Ave	22,721 SQ. FT.			
W3	Broadway Median	At Cuthbert	500 SQ. FT.			
X3	Cowden Island	At Big Spring	1950 SQ. FT.			
Y3	Cowden Island	At Colorado	7838 SQ. FT.			
Z3	Main & Baird	Islands	5544 SQ. FT.			
A4	Wall Street	Downtown beds/trees	450 SQ. FT.			
B4	Front Street	Beds near RR tracks	1000 SQ. FT.			
C4	Volunteer Park	Big Spring & Marienfeld	14348 SQ. FT.			
	Totals Schedule J					

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE K – CITY OFFICES

Proposal From:					Monthly Bids For Specific Services				Composite Bids for All Services	
ID	Property Name	Location	Turf Area	Plant Bed Area	Litter and Trash Pick Up, Mowing, Edging,Trimming (39 cycles/year)	Fertilization (2 times / year)	Pesticide, Herbicide (as needed)	Plant Bed and Shrub Maintenance	Monthly	Annually
D4	City Hall	300 N. Loraine	NA	5573		NA				
E4	Loraine Center	Loraine & Louisiana	¼ AC	951						
F4	MLK Comm Center	2300 Butternut	2 AC	1000						
G4	Scarborough/Linebery House	802 S. Main	1 AC	1250						
H4	Old Police Station	404 E. Texas	1/2 AC	NA		NA				
I4	Parks Office	2701 Elizabeth	¼ AC	800						
J4	Baldwin Office	300 Baldwin	¼ AC	500		NA				
K4	Central Fire Station	1500 W. Wall	¼ AC	3500						
	Totals Schedule K									

City of Midland

Turf and Landscape Maintenance Services

Cost Summary

SCHEDULE L - ADDITIONAL MAINTENANCE SERVICES AS REQUIRED

Proposal From:	Quantities	Composite Bids for All Services	
Items of Work	Estimated Quantity Per Year	Each	Annually
ORNAMENTAL SHRUB (1 GAL)	200		
ORNAMENTAL SHRUB (5 GAL)	100		
ORNAMENTAL TREE PLANTING	25		
TREE PLANTING	50		
TREE REMOVAL-TYPE A	20		
TREE REMOVAL-TYPE B	50		
Totals Schedule L			

CITY OF MIDLAND
SERVICE CONTRACT
#
EXAMPLE

THIS CONTRACT, effective this __ day of __, 2021 , by and between the City of Midland, hereinafter referred to as the "CITY" and ____, hereinafter referred to as the "COMPANY".

Projected Annual Cost: $____

For and in consideration of the payments and Contracts hereinafter mentioned, COMPANY and CITY hereby agree as follows:

1. COMPANY shall perform all work as set forth in the Specifications and Instructions to Bidders, which are incorporated as part of this Contract. In performing the work, COMPANY shall, at its own cost and expense furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said work, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Bidders, Instructions to Bidders, and the Specifications and addenda therefor, and the Performance Bond hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Contract.

2. COMPANY hereby agrees to commence work within fifteen (15) days after the date written notice to do so shall have been given to it by CITY.

3. CITY agrees to pay COMPANY in current funds the price or prices shown in the Proposal, which forms a part of this Contract. No payment shall be due until the monthly service report has been delivered to CITY.

4. COMPANY shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws and building codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of Associated General Contractors of America, except where incompatible with federal, state or municipal laws or regulations.

5. <u>INDEMNITY:</u> COMPANY 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, 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, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, IT'S AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY 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. THE OBLIGATIONS CONTAINED IN THIS SECTION 5 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

5.1. COMPANY 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, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, 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, 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 COMPANY OR COMPANY'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 CONTRACT, AND COMPANY 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. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.1 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

5.2. COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE CITY 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 AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN CITY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR

WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND 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. THE OBLIGATIONS CONTAINED IN THIS SECTION 5.2 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

6. COMPANY Hereby waives all rights to any attorney's fees awarded as a result of any action brought under the Texas Declaratory Judgment Act relating to this Contract.

7. CITY shall have the right to withhold payment for:

a. defective work not corrected;

b. completed service report not submitted;

c. failure of COMPANY to pay subcontractors or suppliers;

d. damage to other work or CITY's property or equipment; or

e. default of COMPANY in performance of this Contract.

The Initial term of this Contract shall be three (3) years. CITY shall have the right to extend the term of this Contract for four(4) additional one (1) year periods by providing written notice to COMPANY of CITY's desire to extend the Contract not later than sixty (60) days prior to the end of the then current term. Extensions of this Contract will be based on acceptable performance as long as the price does not exceed administrative parameters.

8. Prices for the extension of the Contract described in Paragraph 6.1 shall be adjusted by a percentage equal to the percentage increase in the Consumer Price Index All Items, Dallas-Fort Worth SMA as of the first date of the Contract to the date of request for change, but in no case shall the price for the option period increase more than fifteen percent (15%) above the amount set forth in the proposal.

9. COMPANY shall:

a. comply with all applicable laws, rules, codes and regulations of Local, State and U.S. Governments;

b. have a designated supervisor on the job site at all times work is in progress;

c. make no changes in the scheduled work without written authorization from CITY;

e. permit and facilitate inspection of the work in progress by CITY;

f. not willfully discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex or national origin;

g. be responsible for any damage caused by COMPANY to CITY property and repair such damage at his own cost;

h. remedy all defects in workmanship which develop within a period of one (l) year from the date of service report acceptance by CITY; and

i. not permit any worker to labor more than eight (8) hours during any one (l) calendar day or more than forty (40) hours during any one (l) calendar week, except as permitted by law; pay all royalties, license, and permit fees and applicable taxes required to execute this Contract.

10. In the event COMPANY is in noncompliance with any of the covenants or provisions of this Contract, and such noncompliance is not cured within thirty (30) days after receipt of written notice from CITY, CITY may terminate this Contract at the end of said thirty (30) day period, and may seek such other remedies as may be available in law or equity. Notwithstanding the above, CITY may, at its option, terminate this Contract in the event COMPANY fails on at least three (3) occasions to provide emergency services in a timely manner as required by the Specifications.

11. Failure of CITY to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive COMPANY's responsibility to rectify such default, but CITY shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, either in law or in equity.

12. Any notice which may or shall be given under the terms of this Contract shall, unless otherwise provided herein, be in writing and shall be either delivered by hand or sent by United States Registered or Certified Mail, postage prepaid:

To CITY:

(If mailed) P. O. Box 1152
Midland, Texas 79702

(If hand delivered) 300 North Loraine
Suite 220
Midland, Texas 79701

To COMPANY.

The above addresses may be changed at any time by providing written notice to the other party.

13. **GOVERNING LAW AND VENUE:** This contract shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this contract 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 contract or the performance of this contract shall be in Midland County, Texas.

14. This obligation and undertakings of each of the parties to this Contract shall be performed in Midland County, Texas.

15. This Contract may not be altered, changed or amended, except by an instrument in writing signed by all parties hereto.

16. This Contract and all incorporated Contract documents constitute the entire agreement among CITY and COMPANY; no prior written or contemporaneous oral promises or representations shall be binding.

17. **PROMPT PAY ACT** – CITY and COMPANY agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

18. RELEASE: NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY AND CITY'S COUNCIL MEMBERS, EMPLOYEES, AND OFFICERS FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER THAT COMPANY 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. THE OBLIGATIONS CONTAINED IN THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

19. WAIVER OF ATTORNEY FEES: BY EXECUTING THIS CONTRACT, COMPANY 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 OR ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THIS CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR

BREACH OF THIS CONTRACT. COMPANY SPECIFICALLY AGREES THAT IF COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS CONTRACT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS CONTRACT, 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, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

COMPANY AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY-EXISTING KNOWN RIGHT. COMPANY ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS CONTRACT. COMPANY FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND COMPANY. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OR GOVERNMENTAL IMMUNITY AND SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

COMPANY IS RELYING ON ITS OWN JUDGMENT. COMPANY HAD THE OPPORTUNITY TO DISCUSS THIS CONTRACT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION.

20. **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 Contract, COMPANY or its legal representative, shall give the City Manager, or any other reasonable official of CITY, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Contract) 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 COMPANY shall 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 (6) 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

provide such written notification 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 COMPANY that COMPANY's notice is insufficient. CITY reserves the right to request 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 to the contrary, COMPANY's failure to comply with the requirements of this Section 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 CITY has actual or constructive notice or knowledge of said claim or alleged damages. COMPANY agrees that the requirements of this entire Contract are reasonable. The provisions and obligations of this Section shall survive the termination of this Contract.

21. **GOVERNMENTAL IMMUNITY:** By executing this Contract 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.

22. **ASSIGNMENTS:** COMPANY shall not, either directly or indirectly assign all or any part of this Contract or any interest, right, or privilege herein, without the prior consent of CITY. The issue on whether or not to grant consent to an assignment is in the sole discretion of CITY.

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

24. **INDEPENDENT CONTRACTOR:** COMPANY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of CITY. COMPANY shall have exclusive control of, and the exclusive right to control the details of the services and work to be performed hereunder, and all persons performing the same. COMPANY shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondeat superior shall not apply as between CITY and COMPANY, its officers, agents, employees, contractors and subcontractors. Nothing in this Contract shall be construed as creating a partnership or joint enterprise between CITY 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 CITY. Further, it is specifically understood and agreed that nothing in this contract is intended or construed as creating a "Community of Pecuniary Interest" or an "Equal Right of Control" which would give rise to vicarious liability.

25. **CLEAN UP:** COMPANY shall promptly remove from CITY's premises all materials condemned by CITY's Representative on account of failure to conform to the Contract, whether actually incorporated in the work or not, and COMPANY shall at its own expense promptly replace such condemned materials with other materials conforming to the requirements of the Contract. COMPANY shall also bear the expense of restoring all work of other contractors damaged by any such removal or replacement. If COMPANY does not remove and replace any such condemned materials within a reasonable time after a written notice by CITY, CITY may remove and replace such at COMPANY's expense.

26. **WARRANTY:** Neither the final payment nor any provision in this Contract shall relieve COMPANY of responsibility for faulty materials or workmanship, and he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of substantial completion. CITY shall give notice of observed defects with reasonable promptness.

27. **CONIDERATION:** The terms of this Contract are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

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

29. **INSURANCE**

COMPANY shall at all times during the term of this Contract 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
Worker's 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 an occurrence basis.

The Business Automobile Liability insurance provided by COMPANY shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-city 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 Contract.

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 Contract. All insurance required pursuant to this Contract shall provide for a waiver of subrogation in favor of CITY. All insurance required pursuant to this Contract, except for Worker's Compensation Insurance, shall name CITY as an additional insured on a claims occurred basis. CITY 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 Contract 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 CITY of Midland and policies that name CITY of Midland as an additional insured on a claims occurred basis (except workers compensation).

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

COMPANY certifies that the certificate of insurance provided as required herein complies with the

requirements of Chapter 1811 of the Texas Insurance Code.

30. **COMPLIANCE:** COMPANY agrees that it shall comply with Texas Government Code Section 2252.908, *et seq.*, as amended. COMPANY agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

31. To the extent that Sections 2271.002 and 2274.002 of the Texas Government Code (collectively, the "Anti-Boycott Statutes") apply to this Contract, Company hereby verifies:

- that Company does not boycott Israel and will not boycott Israel during the term of this Contract;
- that Company does not boycott energy companies and will not boycott energy companies during the term of this Contract; and
- that Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Contract against a firearm entity or firearm trade association.

To the extent that the Anti-Boycott Statutes do not apply to this Contract, such verification is not required, and Company shall be deemed to have not made such verification.

32. **Records Retention and Production of Information.** To the extent that this Contract constitutes a contract described by Section 552.371 of the Texas Government Code, COMPANY shall: (i) preserve all contracting information related to this Contract as provided by the records retention requirements applicable to CITY for the duration of this Contract; (ii) promptly provide to CITY any contracting information related to the Contract that is in the custody or possession of COMPANY on request of CITY; and (iii) on completion of the Contract, either: (a) provide at no cost to CITY all contracting information related to the Contract that is in the custody or possession of COMPANY; or (b) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to CITY.

33. **Public Information.** To the extent that this Contract is a contract described by Section 552.371 of the Texas Government Code, COMPANY agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract, and COMPANY agrees that the contract can be terminated if COMPANY knowingly or intentionally fails to comply with a requirement of that subchapter.

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

35. Company agrees that all iron or steel products produced through a manufacturing process and used in the project that is the subject of this Contract shall be produced in the United States in accordance with Government Code § 2252.202, et seq., as amended.

EXECUTED IN DUPLICATE 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

COMPANY:

By: _____

Name:_____

Title: _____

STATE OF_____§

§

COUNTY OF_____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 20____ personally appeared, _____, an officer 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 corporation, 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 _____, 20____.

_____
Notary Public, State of _____

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

Compliance with LOCAL GOVERNMENT CODE TITLE 5. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES SUBTITLE C. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES OF MORE THAN ONE TYPE OF LOCAL GOVERNMENT CHAPTER 176. DISCLOSURE OF CERTAIN RELATIONSHIPS WITH LOCAL GOVERNMENT OFFICERS; PROVIDING PUBLIC ACCESS TO CERTAIN INFORMATION.

Form CIQ: This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire shall be filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

Bidders are responsible for filing Conflict of Interest form "CIQ" in accordance with the above referenced statute. Failure to do so is a class C Misdemeanor. Contracts or Purchase Orders awarded to a vendor that has violated this law is subject to termination at such time that the violation is discovered with no recourse to the City of Midland. The bidder will be subsequently removed from the bidders list for a minimum of one year.

When there is no known conflict of interest as defined by the statute, it is not necessary to file/submit the Form CIQ. The form must be submitted if a conflict is subsequently discovered.

By submitting a response to this request, vendor represents that it complies with the requirements of Chapter 176 of the Texas Local Government Code.

For a current list of the local government officers go to: http://www.midlandtexas.gov/

Upon completion of the form, sign and submit with bid or mail to:

City of Midland
Attn: City Secretary
PO Box 1152
Midland, Texas 79702

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 **Name of vendor who has a business relationship with local governmental entity.**

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 **Name of local government officer about whom the information is being disclosed.**

_____

Name of Officer

4 **Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

5 **Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7 _____ _____

Signature of vendor doing business with the governmental entity Date

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

***

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds $2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than $100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

Consideration of Location of Bidder's Principal Place of Business
For Bids of $50,000 up to $100,000 for Services and $500,000 for Commodities
Affidavit of Eligibility

Pursuant to Texas Local Government Code 271.9051, in purchasing real property, personal property that is not affixed to real property, or services, if the City receives one or more bids from a bidder whose principal place of business is in the City of Midland and whose bid is within five percent (5%) of the lowest bid price received by the City from a bidder who is not a resident of the City of Midland, the City may enter into a contract with:

(1) the lowest bidder; or

(2) the bidder whose principal place of business is in the City of Midland if the City Council determines, in writing, that the local bidder offers the City the best combination of contract price and additional economic development opportunities for the City of Midland created by the contract award, including the employment of residents of the City of Midland and increased tax revenues to the City of Midland.

In order to receive consideration, bidders must submit this affidavit to:

Erika Martinez
Purchasing Manager
City of Midland
300 N. Loraine St.,
PO BOX 1152
Midland, TX 79702-1152

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: _____

Local Address (must be within the City limits): _____

1. Is the above address the principal place of business for the business named above? ☐ Yes ☐ No
2. How many residents of the City of Midland are employed at the above business location? _____
3. Year your business was established in the City of Midland: _____
4. If you collect sales tax for ANY class of customer, provide the following Reseller information:

   Reseller Permit Number: _____

   Company Name and Address (as it appears on permit):

   _____

   _____

   _____

5. Does your business have more than one office in the State of Texas? ☐ Yes ☐ No
   If Yes, identify the office location considered as the point-of sale for the purpose of sales tax calculation:

   _____

   _____

6. Was the local business required to pay business and/or real property tax for the most recent tax year?

   ☐ Yes ☐ No

   If Yes, did the local business pay any of this tax to the City of Midland? ☐ Yes ☐ No

Under penalty of perjury, the undersigned states that the foregoing statements are true and correct. It is further acknowledged that any person, firm, corporation or entity intentionally submitting false information to the City in an attempt to qualify for eligibility shall be prohibited from bidding on City of Midland products and services for a period of one (1) year.

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

NOTICE TO BIDDERS

IF THIS PURCHASE REQUIRES A CONTRACT, THE ATTACHED **CONTRACT AND INSURANCE REQUIREMENTS ARE NON-NEGOTIABLE**. MODIFICATIONS BY BIDDER/COMPANY OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE BID. NON-RESPONSIVE BIDS WILL BE REJECTED. BIDDER/COMPANY MUST BE WILLING TO SIGN THE CONTRACT AS IS AND WITHOUT MODIFICATIONS, PROVIDE PROPERLY EXECUTED BONDS (IF APPLICABLE) AND PROVIDE INSURANCE SPECIFICALLY AS REQUIRED WITHIN THE CONTRACT DOCUMENTS **WITHIN 21 DAYS** OF THE DATE OF THE TRANSMITTAL LETTER.

IF THE SELECTED BIDDER/COMPANY CANNOT MEET THE ABOVE REQUIREMENTS, THEN **THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER**.

IMPORTANT NOTICE – IF THE CONTRACT DOCUMENTS REQUIRE WORKER'S COMPENSATION INSURANCE, BIDDER/COMPANY MUST CARRY WORKER'S COMPENSATION INSURANCE TO BE ELIGIBLE FOR THIS CONTRACT. IF YOU CANNOT PROVIDE WORKER'S COMPENSATION INSURANCE AS REQUIRED BY STATE OF TEXAS STATUTE, WE RESPECTFULLY REQUEST THAT YOU "NO BID" THIS WORK.

COMPLIANCE: Company agrees that it shall comply with Texas Government Code Section 2252.908, *et seq.*, as amended. Company agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended. For further instructions on how to comply with Texas Government Code Section 2252.908 and Texas Local Government Code Section 176.006,

please go to https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm and https://www.ethics.state.tx.us/filinginfo/conflict_forms.htm.

ANY VENDOR WHO FAILS TO COMPLY WITH THE TERMS OF THE AWARD **MAY BE DECLARED AN IRRESPONSIBLE VENDOR**. BIDS SUBMITTED BY SAID VENDOR SHALL NOT BE CONSIDERED AGAIN FOR A MINIMUM PERIOD OF SIX MONTHS AS DETERMINED BY THE CITY MANAGER.

IMPORTANT: READ CAREFULLY BEFORE MAKING BID
GENERAL CONDITIONS OF BIDDING

1. All bids are to be submitted as specified in the procurement document(s).

2. Each Bidder is requested to provide: Descriptive literature clearly marked to show each item on this bid. Any catalog or manufacturer's reference in this proposal is descriptive, but not restrictive, and is used only to indicate type and quality. If, however, the bidder proposes similar but not identical terms, he must furnish all particulars. If no mention is made of any exceptions, it is assumed that he is bidding on the article specified and not on an approved equal and he will be required to deliver exact article specified.

3. Prices should be itemized. (Indicate unit price and extend to show total price.) In case of discrepancy between the unit price and the extension, the unit price shall govern.

4. Unit price for each item offered shall include all discounts; e.g., trade, seasonal, etc. with net 30 days payment terms. Discounts shall not be shown as such but shall be incorporated in the base bid price. Any bid showing discounts will be considered an alternate bid. The City of Midland will not be responsible for any goods delivered without a purchase order number.

5. If the Contract is awarded, it will be awarded to either the lowest responsible bidder, or to the bidder who provides goods or services at the best value for the City of Midland. In determining the best value for the City of Midland, the City of Midland may consider the criteria enumerated in Section 252.043 of the Texas Local Government Code. The City of Midland reserves the right to award by item or by total bid, or to reject any or all bids or parts of bids. Further, the City of Midland reserves all rights granted by Section 271.027 of the Texas Local Government Code. The City of Midland reserves the right to award the bid to the lowest responsible bidder.

6. Time of proposed delivery shall be stated in number of calendar days.

7. NOTE: The City of Midland, Texas is exempt from all Federal, State and City tax. Please do not include these taxes in your bid price or invoice. Taxable items must be so designated, and the City will supply vendor with a Tax Exemption Certificate, properly executed.

8. All items are to be delivered, unloaded and stacked at the location indicated on the Bid Request and Purchase Order.

9. All items are to be delivered F.O.B. to the City of Midland, Texas with freight prepaid and included in the bid.

10. Detailed specifications rule over General specifications (headings, etc.)

11. The City of Midland reserves the right to remove a company from the bid list for (1) continued failure to respond to request for bids, (2) failure to deliver merchandise within promised time, or (3) delivery of substandard merchandise.

12. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any lands, materials, supplies or services except as allowed under chapter 176 of the Local Government Code. Form CIQ shall be submitted and placed on file with the City of Midland.

13. The City shall determine the most advantageous bid for the City and accept the proposal of the responsible party submitting the lowest and/or most advantageous bid or reject any and all bids.

14. The City of Midland, Texas may consider as informal any bid not prepared and submitted in accordance with the provisions hereof, and may waive, in its sole discretion, any informalities.

STANDARD PURCHASE TERMS AND CONDITIONS
PURCHASING DIVISION, CITY OF MIDLAND, TEXAS

"Seller", as used herein, has the same meaning as "Company". "Buyer", as used herein, has the same meaning as "City".

Seller and Buyer agree as follows:

1. SELLER TO PACKAGE GOODS - Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows; (a) Seller's name and address, (b) Consignee's name, and address, and purchase order number, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

2. SHIPMENT UNDER RESERVATION PROHIBITED - Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will serve as a tender of goods.

3. TITLE & RISK OF LOSS - The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery in Midland, Texas.

4. NO REPLACEMENT OF DEFECTIVE TENDER - Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender, provided, where the time for performance has yet expired, the Seller may reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.

5. PLACE OF DELIVERY - The place of delivery shall be that set forth in the block of the purchase order entitled "deliver to".

6. INVOICES - Seller shall submit separate ORIGINAL invoices, on each purchase order. Invoices shall indicate the purchase order number. All invoices must be mailed to City of Midland, Accounts Payable, P.O. Box 1152, Midland, TX 79702-1152. Payment will be made within 30 days from the date the invoice and properly executed receiving documents are received by City of Midland, Accounts Payable at the above address. Invoices sent to any other address will delay payment.

7. GRATUITIES - The buyer may, by written notice to the seller, cancel this contract without liability to Seller, if it is determined by Buyer that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the seller, or any agent or representative of the Seller, to any officer or employee of the City of Midland with a view toward securing a contract or securing favorable treatment with respect to performing of such a contract. In the event this contract is cancelled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.

8. WARRANTY - PRICE -

a. The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on order by others for products of the kind and specifications covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on order by others, or in the alternative, Buyer may cancel this contract without liability to Seller for breach or Seller's actual expense.

b. The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this warranty the Buyer shall have the right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

9. WARRANTY - PRODUCT - Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specification, drawings, and description listed in the bid invitation, and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern.

10. SAFETY WARRANTY - Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by buyer will be at Seller's expense.

11. RIGHT OF INSPECTION - Buyer shall have the right to inspect the goods at delivery before accepting them.

12. CANCELLATION - Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breached any of the terms hereof including warranties of Seller if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies which Buyer may have in law or equity.

13. TERMINATION - The performance of work under this order may be terminated in whole, or in part by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of the rights of Buyer set forth in Clause 13, herein.

14. FORCE MAJEURE - Neither party shall be held responsible for losses, resulting if the fulfillment of any terms or provisions of this contract is delayed or prevented by any cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence said party is unable to prevent.

15. ASSIGNMENT - DELEGATION - No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by the Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

16. MODIFICATIONS - This contract can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.

17. INTERPRETATION - PAROL EVIDENCE - This writing, plus any specifications for bids and performance provided by Buyer in its advertisement for bids, is intended by the parties as a final expression of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to control.

18. ADVERTISING - Seller shall not advertise or publish without Buyer's prior consent the fact that Buyer has entered into the contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

19. RIGHT TO ASSURANCE - Whenever one party to the contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of this intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

20. PROTECTION AGAINST ROYALTIES OR PATENT INFRINGEMENT - The Seller shall pay all royalties and license fees, and shall provide for the use of any design, device, material or process covered by letters patent or copyright by suitable legal agreement with Patentee or Owner thereof. The Seller shall defend all suits or claims for infringement of any patent or copyrights and shall indemnify and save the Buyer harmless from any loss on account thereof, except that Buyer shall defend all such suits and claims and shall be responsible for all such loss when a particular design, device, material or process is allowed to the Seller, the Seller shall indemnify and save Buyer harmless from any loss on account thereof. If the material or process specified or required by Buyer is an infringement, the Seller shall be responsible for such loss unless he promptly gives written notice to the buyer of such infringement.

21. TIME - It is hereby expressly agreed and understood that time is of the essence for the performance of this contract, and any failure by contract to meet the time specifications of this agreement will cause Seller to be in default of this agreement.

22. TAX - The City of Midland is exempt from all Federal, State and City tax. Please do not include these taxes in your bid price or invoice. Taxable items must be so designated, and the City will supply vendor with a Tax Exemption Certificate, properly executed.

23. **INSURANCE –**

The following provisions apply unless the agreement is for the supply of goods only:

Seller 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
Worker's Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

The Commercial General Liability shall be on a per project or policy aggregate, including completed operations, and shall be on an occurrence basis.

The Workers' Compensation coverage provided by Seller shall inure to the benefit of employees injured during the course and scope of their employment by Seller pursuant to this agreement.

The Business Automobile Liability insurance provided by Seller 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 $250,000.00 covering any vehicle used for the execution of the work that is the subject of this agreement.

All insurance required pursuant to this agreement, except for Worker's Compensation Insurance, shall name the Buyer as an additional insured on a claims occurred basis. All insurance required pursuant to this agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the Buyer.

The parties agree that, prior to the execution of the agreement, Seller shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, the following endorsement:

"The City of Midland is included as an additional insured, on a claims occurred basis, on all policies except for Worker's Compensation. The Seller and Insurer hereby waive all rights of subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance."
Buyer shall be provided the notice by Seller's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Buyer shall not be required to provide any insurance whatsoever pursuant to this agreement.

Seller 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 the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers compensation).

24. ASSIGNMENT - Seller 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 the Buyer. The issue on whether or not to grant consent to an assignment is in the sole discretion of the Buyer.

25. RELEASE - NOTWITHSTANDING ANY OTHER PROVISIONS, SELLER HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES BUYER, BUYER'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH SELLER 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 BUYER'S NEGLIGENCE.

26. 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 to this agreement shall be deemed to have occurred in Midland County, Texas.

27. INDEPENDENT CONTRACTOR - It is expressly understood and agreed that Seller shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the Buyer; that Seller 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 Buyer and Seller, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Buyer and Seller. No person performing any of the work and services described hereunder by Seller shall be considered an officer, agent, servant or employee of the Buyer. 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. Seller 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. The Buyer does not have the power to direct the order in which the work is done. The Buyer shall not have the right to control the means, methods or details of the Seller's work. Seller shall assume exclusive responsibility for the work. Seller is entirely free to do the work in its own way.

28. 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, Seller or his legal representative, shall give the City Manager, or any other reasonable official of the Buyer, 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-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 the Seller will settle, the physical and mailing addresses of Seller at the time and date the claim was presented and the physical and mailing addresses of Seller for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Seller 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 the Buyer from any liability whatsoever. The Buyer is under no obligation to provide notice to Seller that Seller's notice is insufficient. Buyer 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, Seller's failure to comply with the requirements herein shall perpetually bar Seller's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if Buyer has actual or constructive notice or knowledge of said claim or alleged damages. Seller agrees that the requirements of this entire agreement are reasonable.

29. INDEMNITY (NOT APPLICABLE TO PURCHASE AGREEMENTS) - SELLER WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND BUYER AND ALL OF BUYER'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'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 SELLER, its agents or employees, or any subcontractor, arising out of, or resulting from, Seller's use of, or activities on, the agreement premises, and Seller will be required to pay any judgment with costs which may be obtained against Buyer or any of its officers, agents or employees, including reasonable attorney's fees.

SELLER SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND BUYER AND ALL OF BUYER'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, ACCIDENTAL DEATH, 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 BUYER, BUYER'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 SELLER OR SELLER'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 SELLER WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST BUYER OR ANY OF BUYER'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

30. SOVEREIGN IMMUNITY - By executing this agreement the Buyer is not waiving its right of sovereign immunity. The Buyer is retaining its immunity from suit. The Buyer is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF SOVEREIGN IMMUNITY**.

31. THIRD PARTY BENEFICIARY - The Buyer'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. <u>ATTORNEY FEES</u> - BY EXECUTING THIS AGREEMENT, SELLER AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE BUYER, 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. THE SELLER SPECIFICALLY AGREES THAT IF THE SELLER 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 SELLER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH SELLER MIGHT OTHERWISE BE ENTITLED.

SELLER AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. SELLER ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE SELLER FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE BUYER AND THE SELLER. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

33. CONSIDERATION - The terms of this agreement are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

34. CERTIFICATION - In accordance with the Texas Local Government Code, the City of Midland Department of Facilities and Fleet Management does hereby certify that the City of Midland is in compliance with Sections 252, 271 and all applicable sections of the Texas Local Government Code and other state law as it applies to procurement and contracting issues.

35. 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.

36. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS - Seller shall at all times during the term of this agreement comply with applicable federal, state, and local laws regarding Seller's activities pursuant to this agreement, including but not limited to all applicable sections of the Municipal Code of Midland, Texas, as may be amended, said sections being hereby incorporated by reference and made a part of this agreement for all legal purposes. Failure to abide by any such law mentioned herein constitutes grounds for the immediate termination of this agreement.

City Council Meeting

Item Number: 14

Meeting Date: September 28, 2021

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION APPROVING THE PURCHASE OF TWO (2) AMBULANCES FROM STERLING McCALL FORD THROUGH THE HOUSTON-GALVESTON AREA COUNCIL AT A TOTAL COST OF $567,262.00 (DISTRICT: NONE) (GENERAL SERVICES)

Purpose:

Approval of a resolution for the purchase of two (2) ambulances from Sterling McCall Ford through the Houston-Galveston Area Council (H-GAC) for a total cost of $567,262.00.

Recommended City Council Action:

Approve

Fiscal Impact:

The amount of $283,631.00 is available in the FY2022 General Fund operating budget, and the remaining amount of $283,631.00 is available in the FY2022 Garage Fund capital budget.

Discussion:

Staff recommends purchasing these ambulances from Sterling McCall Ford through the Houston-Galveston Area Council (H-GAC) for a total cost of $567,262.00. We are members of the H-GAC cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases. The budget for this equipment for fiscal year 2022 is $600,000.00. Please refer to the memos from Manuel Salinas, Garage Superintendent and Fire Chief Blumenauer, for further discussion concerning this purchase.

Therefore, please consider a resolution approving the purchase of two (2) ambulances from

Sterling McCall Ford of Houston, Texas through H-GAC for a total cost of $567,262.00.

Tina Gaug

City Manager's Office

Fleet Services Division

INTEROFFICE MEMORANDUM

TO: Regina Stephenson and Erika Martinez

FROM: Manuel Eloy Salinas

SUBJECT: HGACBUY contract AM10-20 for two new Ambulances

DATE: 09/15/2021

Fleet services is requesting the purchase of (2) Ambulances, to replace (1) unit that has reached the end of its useful service life and (1) is new to the fleet. Budgeted amount for FY2022 is $600,000 for (2) two ambulances. The purchasing amount will be $567,262 for (2) two ambulances through Sterling McCall Ford HGACBUY contract number AM10-20.

Sincerely.

Manuel Eloy Salinas

City of Midland Garage Superintendent

Interoffice Memorandum

Date: **09/20/2021**

To: **Regina Stephenson**

From: **Fire Chief Charles Blumenauer**

Subject: **2022 Ambulance Purchase**

Midland Fire Department's ambulance fleet is of vital importance for the care of the Citizens of Midland. The Midland Fire Department operates seven front-line EMS units and five operational reserve units within a moment's notice when demand for service increases. With the rise in population, there has been a significant increase in run volume. The department's run volume continues to grow, which puts stress on our units. This purchase of two (2) new units will assist in lowering overall garage costs, as this will replace one (1) older unit with higher maintenance costs and add one (1) new unit to our fleet.

This purchase was budgeted for this year.

Charles Blumenauer

Fire Chief

RESOLUTION NO. _____

RESOLUTION APPROVING THE PURCHASE OF TWO (2) AMBULANCES FROM STERLING McCALL FORD THROUGH THE HOUSTON-GALVESTON AREA COUNCIL AT A TOTAL COST OF $567,262.00

WHEREAS, the Houston-Galveston Area Council ("*H-GAC*") is a cooperative purchasing agency with which the City participates with on purchases through a cooperative purchasing program in accordance with TEX. LOC. GOV'T CODE § 271.102; and

WHEREAS, Sterling McCall Ford of Houston, Texas, has submitted a total proposed cost to the City of $567,262.00 for the purchase of two (2) ambulances through H-GAC, as shown on the quote attached hereto as Exhibit A and incorporated herein for all purposes; and

WHEREAS, the Council finds the price proposed by Sterling McCall Ford through H-GAC for said ambulances to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase said ambulances from Sterling McCall Ford through H-GAC for a total cost of $567,262.00;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase two (2) ambulances from Sterling McCall Ford through H-GAC for a total cost of $567,262.00.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Sterling McCall Ford for said ambulances from funds available in the FY2022 General Fund operating budget and the FY2022 Garage Fund capital budget upon receipt of proper invoices or statements approved by the City Manager.

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:

_____
Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

HGACBuy	CONTRACT PRICING WORKSHEET For MOTOR VEHICLES Only	Contract No.:	AM10-20	Date Prepared:	9/14/2021

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents MUST be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

Buying Agency:	Midland Fire Department	Contractor:	Sterling McCall Ford Q2474-1 HGAC
Contact Person:	Charles Blumenauer	Prepared By:	Pablo Cantu
Phone:	432-685-7330	Phone:	(281) 588-5007
Fax:		Fax:	(281) 588-5150
Email:	cblumenauer@midlandtexas.gov	Email:	pcantu@sterlingmccallford.com

Product Code:	AM20HD05	Description:	Type I 12' on Ford F-350 Gas 4x2 Reg Cab

A. Product Item Base Unit Price Per Contractor's H-GAC Contract: **$162,000.00**

B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in description if applicable.
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description		Cost	Description		Cost
1171	Module // Module // 4" Taller 12' Module Upgrade	$4,000.00	1011	General // All products listed in the current Stryk	28,000.00
1090	Chassis // Tire Chains // Onspot Tire Chains	$3,500.00	1199	Module // SCBA // (2) SC-50-H-6-SF SCBA bra	1,000.00
1078	Chassis // Running Boards // ArcRite Running Board w/	$1,250.00	1012	General // All products listed in the current Techr	1,525.00
1031	Chassis // Air Horn System // Dual 10" & 12" Air Horns	$1,250.00	1114	Module // Captain's Chair // Captain's Chair with	750.00
1032	Chassis // Air Horn System // Fast RecoveryCompressor	$1,500.00	1011	General // All products listed in the current Stryk	25,129.00
1192	Module // PowerSource // Onan	$10,000.00	1011	General // All products listed in the current Stryk	4,620.00
1076	Chassis // Paint // Paint Two Tone	$6,000.00	1035	Chassis // Air Horn System // Operated with True	150.00
1185	Module // Paint // SuperTherm Coating on Roof for 12'	$1,250.00			
1128	Module // Conspicuity // Conspicuity on the Rear of the	$1,750.00			
1178	Module // Opticom // GPS Opticom	$6,000.00			
1197	Module // Safe // Medvault w/ Wifi	$3,000.00		**Subtotal From Additional Sheet(s):**	$0.00
1157	Module // Front Scene // Spectra SPA260	$2,750.00		**Subtotal B:**	$103,424.00

C. Unpublished Options - Itemize below / attach additional sheet(s) if necessary.
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
UNOC#1720- Furnish and install radio equipment	$10,500.00	UNOC- Furnish and install Havis docking station	$1,957.00
UNOC- Furnish and install Cradlepoint	$3,000.00	**Subtotal From Additional Sheet(s):**	$0.00
UNOC-Furnish and install Knox Key Secure	$2,250.00	**Subtotal C:**	$17,707.00

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).	**For this transaction the percentage is:**	7%

D. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C)

Quantity Ordered:	2	X Subtotal of A + B + C:	$283,131.00	=	Subtotal D:	$566,262.00

E. H-GAC Order Processing Charge (Amount Per Current Policy)	**Subtotal E:**	$1,000.00

F. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges

Description	Cost	Description	Cost
		Subtotal F:	$0.00

Delivery Date:		**G. Total Purchase Price (D+E+F):**	$567,262.00

HGACBuy	CONTRACT PRICING WORKSHEET For MOTOR VEHICLES Only	Contract No.:	AM10-20	Date Prepared:	9/14/2021

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents MUST be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

Buying Agency:	Midland Fire Department	Contractor:	Sterling McCall Ford Q2474-1 HGAC
Contact Person:	Charles Blumenauer	Prepared By:	Pablo Cantu
Phone:	432-685-7330	Phone:	(281) 588-5007
Fax:		Fax:	(281) 588-5150
Email:	cblumenauer@midlandtexas.gov	Email:	pcantu@sterlingmccallford.com

Product Code:	AM20HD05	Description:	Type I 12' on Ford F-350 Gas 4x2 Reg Cab

A. Product Item Base Unit Price Per Contractor's H-GAC Contract: **$162,000.00**

B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in description if applicable.
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

	Description	Cost		Description	Cost
1171	Module // Module // 4" Taller 12' Module Upgrade	$4,000.00	1011	General // All products listed in the current Stryk	28,000.00
1090	Chassis // Tire Chains // Onspot Tire Chains	$3,500.00	1199	Module // SCBA // (2) SC-50-H-6-SF SCBA bra	1,000.00
1078	Chassis // Running Boards // ArcRite Running Board w/	$1,250.00	1012	General // All products listed in the current Techı	1,525.00
1031	Chassis // Air Horn System // Dual 10" & 12" Air Horns	$1,250.00	1114	Module // Captain's Chair // Captain's Chair with	750.00
1032	Chassis // Air Horn System // Fast RecoveryCompressor	$1,500.00	1011	General // All products listed in the current Stryk	25,129.00
1192	Module // PowerSource // Onan	$10,000.00	1011	General // All products listed in the current Stryk	4,620.00
1076	Chassis // Paint // Paint Two Tone	$6,000.00	1035	Chassis // Air Horn System // Operated with Tru	150.00
1185	Module // Paint // SuperTherm Coating on Roof for 12'	$1,250.00			
1128	Module // Conspicuity // Conspicuity on the Rear of the	$1,750.00			
1178	Module // Opticom // GPS Opticom	$6,000.00			
1197	Module // Safe // Medvault w/ Wifi	$3,000.00		**Subtotal From Additional Sheet(s):**	$0.00
1157	Module // Front Scene // Spectra SPA260	$2,750.00		**Subtotal B:**	$103,424.00

C. Unpublished Options - Itemize below / attach additional sheet(s) if necessary.
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
UNOC#1720- Furnish and install radio equipment	$10,500.00	UNOC- Furnish and install Havis docking station	$1,957.00
UNOC- Furnish and install Cradlepoint	$3,000.00	**Subtotal From Additional Sheet(s):**	$0.00
UNOC-Furnish and install Knox Key Secure	$2,250.00	**Subtotal C:**	$17,707.00

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).	**For this transaction the percentage is:**	7%

D. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C)

Quantity Ordered:	2	**X Subtotal of A + B + C:**	$283,131.00	=	**Subtotal D:**	$566,262.00

E. H-GAC Order Processing Charge (Amount Per Current Policy)	**Subtotal E:**	$1,000.00

F. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges

Description	Cost	Description	Cost
		Subtotal F:	$0.00

Delivery Date:		**G. Total Purchase Price (D+E+F):**	$567,262.00

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Customer Quote

Order No.: Q2474-0001
Quote Date: 4/13/2021
Expiration Date: 6/23/2021
Salesperson: Kalyn Salsman

Invoice To:

Midland Fire Department
City of Midland
P.O. Box 1152
Midland TX 79702
US

Attention:

Chief
Charles "Chuck" Blumenauer
cblumenauer@midlandtexas.gov

No.	Item	Quantity	U/M	Unit Price	Net Amount
1	MODULE Type I 12' 4" Module	2.000	EA	$ 206,095.00	$ **412,190.00**
2	CHASSIS 2022 Ford F-350 Gasoline	2.000	EA	$ 46,977.00	$ **93,954.00**
3	DELIVERY Customer Pick Up - FOB Frazer	1.000	M	$ 0.00	$ **0.00**
4	14109 Regulator-Oxygen, Preset 50 PSI	2.000	EA	$ 310.00	$ **620.00**
5	HGAC-NEW HGAC Fee for a New Unit	1.000	EA	$ 1,000.00	$ **1,000.00**
6	STRYKER POWER-PRO XT Cot-Stryker Power-PRO XT 6506	2.000	EA	$ 25,129.00	$ **50,258.00**
7	STRYKER STAIR-PRO Stair Chair-Stryker Stair-PRO 6252	2.000	EA	$ 4,620.00	$ **9,240.00**

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Customer Quote

Order No.: Q2474-0001

Quote Date: 4/13/2021

Expiration Date: 6/23/2021

Remit To:

Per TMVCC, we are quoting this through our licensed franchise dealer, Sterling McCall Ford

Sterling McCall Ford
6445 Southwest Freeway
Houston TX 77074

Sale Amount:	567,262.00
Sales Tax:	0.00
Total Amount:	567,262.00

Payment Terms: Net 30

Special Instructions:

Email this quote along with your PO to sales@frazerbilt.com.
Graphics pricing includes two hours' design time in the base price.
More extensive graphics or multiple changes will be billed at $100/hr.

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For your convenience, all pricing has been itemized below per quote Q2474-0001 for Midland Fire Department

Base Module	$	99,900.00
Chassis Exterior	$	8,900.00
Module Exterior	$	50,750.00
Chassis Interior	$	5,135.00
Module Interior	$	41,410.00
	Total $	**206,095.00**

Items included in above totals:

1. Type I 12' 4" taller Module	$	incl
2. This is a Triple K Unit	$	incl
Chassis Exterior:		
3. Chassis Options: Order with 7.3L Gas motor -OEM in dash back-up camera	$	incl
4. Chassis : 2021 Ford F-350, Gas, 4x2, Regular Cab, 84" Cab to Axle, Ford Race Red (PQ)	$	incl
5. Tire Chains	$	3,525.00
6. Wheel type: Factory Aluminum	$	incl
7. Dual Dynamics Valve Stem Extender with Equalization and Pressure Indicator	$	275.00
8. Chassis Steps: ArcRite with Sure Grip	$	1,050.00
9. Grille Guard: Ranch Hand Grille Guard with Wraparounds	$	incl
10. Chassis Mud Flaps	$	325.00
11. 10" and 12" Air Horns	$	1,125.00
12. Compressor Type: Fast Recovery	$	1,475.00
13. Switching Options: Truck Horn/ Air Horn	$	125.00
14. Passenger's side Grille Light: Whelen M4 Red Light	$	incl
15. Driver's side Grille Light: Whelen M4 Red Light	$	incl
16. Passenger's side Intersect Light: Whelen M4 Blue Light	$	incl
17. Driver's side Intersect Light: Whelen M4 Blue Light	$	incl
18. UNOC#1136 Furnish and install MagneGrip exhaust tip, P/N 500073-02 (Clean Air Concepts, 800-875-5440); verify chassis exhaust pipe size for compatibility	$	1,000.00
Chassis Exterior Subtotal	**$**	**8,900.00**
Module Exterior:		
19. Power Source: Onan 5.5kW Generator	$	10,000.00
20. Module Paint Layout: Non-White One Tone - Ford Race Red (PQ)	$	2,100.00

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21. SuperTherm Coating on Module Roof	$	1,050.00
22. Rear Wall 3M Conspicuity Layout - Chevron : Fluorescent Yellow/Green Base Color and Red - Translucent Overlay	$	1,575.00
23. Placards x4:	$	700.00
24. Frazer Provided Graphics	$	3,500.00
25. Body Drop on the Passenger's Side Forward of Rear Wheels	$	incl
26. GPS Opticom	$	5,775.00
27. Opticom Switching: On/Off Switch and Cut-off with park	$	incl
28. Shore Power: Single 30 Amp auto eject w/ Red cover on Driver's Side Wall	$	475.00
29. Pigtail/Plug Option: Pigtail	$	incl
30. Coax 1: Run coax from location 1 to Chassis	$	incl
31. Coax 2: Run coax from location 2 to Electrical Compartment terminated to GPS Opticom	$	incl
32. Coax 3: Run coax from location 3 to Electrical Compartment	$	incl
33. Coax 4: Run coax from location 4 to Electrical Compartment	$	incl
34. UNOC #1720 -Furnish and Install radio equipment:	$	10,500.00

- Harris Unity XG100M 700/800 and VHF dual band radio base in the electrical compartment; wired battery hot
- Larson multi band antenna on module roof connected to Harris radio base in electrical compartment

- (1) radio head in console slot 2
- Speaker on the front of the console
- Mic on front D/S of console

- (1) radio head below the action wall cabinet towards the rear
- Speaker behind the radio head
- Mic to the right of the radio head

35. UNOC #??? - Furnish and Install Cradlepoint in the electrical compartment(PN IBR1100LP6), wired to ignition - Multi band antenna w/ multiple coaxes on the module roof and connected to modem in electrical compartment	$	3,000.00
36. UNOC #1722 - Furnish and install ethernet cable from modem to docking station at action wall; furnish and install ethernet cable from modem to docking station at console	$	200.00
37. UNOC#??? Install GPS antenna (PCTEL Model GLHPDLTENIMO-LTW) on module roof and connect to radio base in electrical compartment.	$	100.00
38. Front Wall Light Layout: Lower 5 Lights	$	incl

39. Front Wall Light #1: Whelen M6 Red Light	$	incl
40. Front Wall Light #2: Whelen M6 Blue Light	$	incl
41. Front Wall Light #3: Whelen M6 Clear Light	$	incl
42. Front Wall Light #4: Whelen M6 Blue Light	$	incl
43. Front Wall Light #5: Whelen M6 Red Light	$	incl
44. Front Wall Driver Side Box Light: Whelen M6 Red Light	$	incl
45. Front Wall Passenger Box Light: Whelen M6 Red Light	$	incl
46. Driver Wall Front Box Light: Whelen M6 Red Light	$	incl
47. Driver Wall Rear Box Light: Whelen M6 Red Light	$	incl
48. Driver Wheel Well Light: Whelen M6 Blue Light	$	incl
49. Scene Light Option: Spectra SPA260	$	2,750.00
50. O2 Compartment Style: Laydown O2 with Adjustable Shelf	$	incl
51. O2 Rollers for an H Cylinder	$	incl
52. O2 Cylinder Changing Wrench	$	75.00
53. Electrical Compartment Style: Standard Electrical Compartment	$	incl
54. Lower Storage Style: Standard Lower Storage	$	incl
55. Compartment Above Wheel Well Style: Standard Compartment Above Wheel Well	$	incl
56. Dometic Self-Contained A/C with Exhaust Fan	$	incl
57. Rear Storage Compartment Style: Rear Storage with Flatbars for SCBA Brackets	$	225.00
58. (2) SC-50-H-6-SF SCBA brackets raised 10" off the Floor of the Compartment	$	1,050.00
59. UNOC #587 - Furnish and install half depth shelf in D/S rear storage compartment, 6-1/2" from shelf to ceiling with 1" x 2" angle on botom of the shelf with (2) coat hooks evenly spaced; mount SCBA brackets at bottom of flat bars	$	300.00
60. UNOC #1723 - Furnish and install Knox KeySecure Series 5 with 60 degree bracket in the electrical compartment with 1 key option (no blue strobe); wired battery hot	$	2,250.00
61. UNOC #1724 - Furnish and install 30" Paratech Haligan Pro Bar 30" (P/N FHU-PB-30) w/ PAC mount (P/N K5032-Y) on the front wall of the D/S rear storage compartment near the opening	$	650.00
62. UNOC #1725 - Furnish and install (2) Streamlight Survivor orange LED flashlights centered on back wall of D/S rear storage compartment below the shelf, on charging platform	$	1,000.00
63. UNOC #??? - Install customer provided Magne Grip transmitter (PN 540557-01, Acu Tech standard transmitter) on the front wall of the electrical compartment	$	100.00
64. UNOC #1726 - Furnish and install RIDGID brand 24" Heavy Duty bolt cutters and	$	500.00

Zicomatic Quic-mount bolt cutter bracket on rear wall of D/S rear storage compartment near the opening		
65. *NOTE* Install SCBA brackets the exact same as units E-3387-E3392	$	incl
66. Module Window Option: Sliding Window	$	incl
67. Window Tint (5% VLT) on Entry Doors	$	275.00
68. Upper Rear Wall Light Layout: 3 Across	$	incl
69. Upper Light #1: Whelen M6 Load Light	$	incl
70. Upper Light #2: Whelen M6 Amber Light	$	incl
71. Upper Light #3: Whelen M6 Load Light	$	incl
72. Lower Light #1: Whelen M6 Brake/Tail/Turn Red Light	$	incl
73. Lower Light #2: Whelen M6 Brake/Tail/Turn Red Light	$	incl
74. Lower Light #3: Whelen M6 Blue Light	$	incl
75. Lower Light #4: Whelen M6 Blue Light	$	incl
76. Rear Wall Driver Box Light: Whelen M6 Red Light	$	incl
77. Rear Wall Passenger Box Light: Whelen M6 Red Light	$	incl
78. Rear Backboard: 5" Compartment Shelf	$	225.00
79. Lower BTTs: 2 Grote Lights on each side	$	incl
80. Rear Bumper	$	incl
81. Door Grabbers	$	incl
82. License Plate Light	$	incl
83. UNOC #1727 - Furnish and install brushed stainless steel panels in lieu of diamond plate at all exterior locations (like DC Fire)	$	1,500.00
84. Passenger Wall Front Box Light: Whelen M6 Red Light	$	incl
85. Passenger Wall Rear Box Light: Whelen M6 Red Light	$	incl
86. Passenger Wheel Well Light: Whelen M6 Blue Light	$	incl
87. Interior Step Option: Double Step Well	$	incl
88. Passenger Rear Compartment Style: Onan Genset Compartment	$	incl
89. Gas Hold Open on All Compartments	$	875.00
90. UNOC #500 - Custom Onan door with additional venting	$	incl
Module Exterior Subtotal	**$**	**50,750.00**

Chassis Interior:

91. Siren Speakers: Whelen SA 315 Speakers	$	incl
92. Tap-2 on Primary Siren	$	incl
93. Siren Option: Whelen C9 Siren in Console	$	incl

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94. Mic 1 shipped loose	$	incl
95. Slot 1: Extended MDT plate - swivel, no fuel gauge (swivel on passenger side)	$	475.00
96. Slot 2: Radio Plate: 7.5 L X 2.5 W opening dims	$	incl
97. Slot 3: Single Slot Switch Panel	$	incl
98. Slot 4: Siren 1	$	incl
99. Console Switch Layout : Primary - Secondary - Opticom - Air Horn - Side Scene (Driver's Side) - Side Scene (Passenger's Side) - Rear Load - Interior Lights - Start/Stop Genset -	$	incl
100. New Armrest	$	225.00
101. Console Layout: 4-Slot Console	$	incl
102. Floor in Front of Console: (2) Survivor Flashlights wired Failsafe	$	700.00
103. Rear of Console: Single Mapholder with Cup Holder	$	325.00
104. Chassis Rear Wall: 3 High Glove Box Holder	$	225.00
105. Camera System: Ford OEM Back-up Camera System	$	525.00
106. UNOC #??? - Furnish and Install Havis docking station(PN DS-GTC-311-3) for Getac laptop w/ universal adapter plate and power supply (LIND P/N GE1963-4493) mounted on console; wired battery hot	$	1,960.00
107. UNOC #1729 - Furnish and install Panorama Sharkee dual band WiFi and cellular antenna (MiMo 2G/3G/4G WiFi Black Antenna, P/N IN1960-B) on chassis roof; run coax to docking station at console	$	475.00
108. UNOC #1730 - Furnish and install Havis tilt/swivel motion device on MDT plate (P/N C-MD-202)	$	225.00
Chassis Interior Subtotal	**$**	**5,135.00**

Module Interior:

109. Protek Cushions	$	incl
110. Blue Interior	$	incl
111. Stainless Steel Countertops	$	incl
112. Front I/O with Lexan Doors	$	incl
113. Quad Outlet in the Front I/O	$	incl
114. Map Holder on Side of Front I/O	$	175.00
115. Duplex Outlet on the Front Wall	$	incl
116. Medvault w/ Wifi	$	2,850.00
117. Netting at the Front Corner Area	$	incl
118. UNOC #1731 - Furnish and install fire extinguisher with Amerex 807 bracket on the inside of the front I/O cabinet, centered on the back wall above the shelf (same	$	250.00

	position as E3387-E3392)	
119.	UNOC #598 - Furnish and install (2) SAE compliant Zico QR-D-2 "D" cylinder holders against driver's side cladding below the action wall	$ 350.00
120.	Location 1: 4 Switch w/Thermostat	$ incl
121.	Location 2: Double O2 Outlet	$ incl
122.	Location 3: Blank	$ incl
123.	Location 4: Volume Control Knob	$ incl
124.	Location 6: Suction	$ incl
125.	Location 7: Quad 120 VAC	$ incl
126.	Location 8: Blank	$ incl
127.	Location 9: Blank	$ incl
128.	Kussmaul USB at Action Wall	$ 225.00
129.	Action Wall Switch Layout : Interior Lights; Dimmer; Ventilation Fan; Kussmaul USB;	$ incl
130.	Technimount ZOLL X Monitor Mount (Heavy Duty) on the Action Wall Countertop	$ 1,525.00
131.	Sharps Container at Action Wall	$ incl
132.	Acrylic Holder at the Action Wall Cabinet	$ incl
133.	New 6pt Harness at the CPR Seat	$ 525.00
134.	Acrylic Holder Aft CPR Seat	$ incl
135.	Genset Start/Stop Switch at Rear Doors	$ incl
136.	Rear Door Switch Layout : Acknowledge; Start/Stop Genset; Blank; Rear Load;	$ incl
137.	UNOC #??? - Furnish and Install Havis docking station for Getac laptop w/ universal adapter mounted at action wall counter and power supply mounted behind action wall; wired battery hot	$ 1,960.00
138.	UNOC #1730 - Furnish and install Havis tilt/swivel motion device at action wall (P/N C-MD-202)	$ 225.00
139.	UNOC #1729 - Furnish and install Panorama Sharkee dual band WiFi and cellular antenna (MiMo 2G/3G/4G WiFi Black Antenna, P/N IN1960-B) on module roof; run coax to docking station at action wall	$ 450.00
140.	UNOC#??? Furnish and Install (2) Flow meters (PN 27611) at O2 outlets at action wall	$ 500.00
141.	*NOTE* All coaxes labeled towards connector end at docking station at action wall and console (whether wifi/celluar/etc. like E-3389/90/91/92	$ incl
142.	*NOTE* the remaining two coaxs at the action wall need to be left in electrical compartment (like E-3389-92)	$ incl
143.	*NOTE* connect 1 WIFI and 1 cellular coax from Sharkee antenna to docking station	$ incl

at action wall and console		
144. Sharps Container Low and 3 High Glove Box High on Rear Wall	$	400.00
145. Head knocker options: With Speakers only	$	700.00
146. 22 Pocket Acrylic Holder	$	650.00
147. Two Seating Positions at the Squad Bench - 1 and 3	$	incl
148. Harness Type for Seat Position 1: New 6pt Harness	$	525.00
149. Harness Type for Seat Position 3: New 6pt Harness	$	525.00
150. Double Squad Bench Cabinet	$	650.00
151. Trashcan With Lid at the Head of the Squad Bench	$	incl
152. O2 Outlet at the Squad Bench Wall	$	incl
153. Large Black Trashcan at the Side Entry Door	$	175.00
154. IV Hanger on Ceiling Raceway	$	incl
155. Overhead Grabrails on Driver Side Only	$	incl
156. IV Hanger on Squad Bench Ceiling	$	incl
157. Floor Options: Stryker Power-LOAD System	$	28,000.00
158. Stryker cot tower only (no antler and bar)	$	incl
159. Loncoin II Onyx Floor	$	incl
160. Captain's Chair Type: Captain's Chair with Child Safety Seat and 4pt. Harness	$	750.00
Module Interior Subtotal	**$**	**41,410.00**

All new Frazer EMS Vehicles come standard with the following features:

120V generator-powered electrical system independent of the chassis electrical
120V self-contained module heater & proprietary best-in-class air conditioner
Easily accessible electrical compartment located on exterior of vehicle
All aluminum module construction - No wood products!
Shear-plate method of attachment securing the module to the chassis
All aluminum powder-coated 12" deep interior cabinetry
Seamless cushions
All LED emergency warning and scene lighting
All LED interior ceiling lights
120VAC outlets conveniently located throughout unit
Three oxygen outlets
Action area with hinged service access panel to back of oxygen outlets and switches

City Council Meeting

Item Number: **15**

Meeting Date: **September 28, 2021**

To: **City Council / City Manager**

From: **Robert Patrick, City Manager**

Subject: **RESOLUTION ESTABLISHING THE DATES OF THE REGULAR CITY COUNCIL MEETINGS TO BE HELD DURING THE CALENDAR YEAR 2022 (DISTRICT: NONE) (CITY MANAGER)**

Purpose:

The attached resolution will set the 2021 City Council Meeting Dates

Recommended City Council Action:

Approve

Fiscal Impact:

None

Discussion:

None

Robert Patrick

City Manager's Office

RESOLUTION NO. _____

RESOLUTION ESTABLISHING THE DATES OF THE REGULAR CITY COUNCIL MEETINGS TO BE HELD DURING THE CALENDAR YEAR 2022

WHEREAS, the City Council finds it to be in the public interest to establish the dates on which the City Council will meet in regular session during the calendar year 2022;

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

THAT the dates of the regular City Council meetings to be held during the 2022 calendar year as shown on Exhibit A, attached hereto and made a part hereof for all purposes, are hereby adopted.

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

2022 Council Meeting Dates

January 10 (swearing-in)	July 12
January 11	July 13 (Budget Workshop)
January 25	July 26
February 8	August 2 (Budget)
February 22	August 9
March 22	August 23
April 12	September 13
April 26	September 27
May 10	October 11
May 24	October 25
June 14	November 15
June 28	December 13

300 N. Loraine, Midland Tx 79701 • 432-685-7913 • Fax 432-686-1600

2022 Council Meeting Dates

January 10 (swearing-in)	July 12
January 11	July 13 (Budget Workshop)
January 25	July 26
February 8	August 2 (Budget)
February 22	August 9
March 22	August 23
April 12	September 13
April 26	September 27
May 10	October 11
May 24	October 25
June 14	November 15
June 28	December 13

300 N. Loraine, Midland Tx 79701 • 432-685-7913 • Fax 432-686-1600

City Council Meeting

Item Number: 16

Meeting Date: September 28, 2021

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: Motion authorizing and executing a Right-of-Way License (21-329-036) between the City of Midland and DCP Operating Company, LP., regarding city-owned property described as Section 9, Block 38, Township 2 South, T&P RR Co. Survey, Midland County, Texas (DISTRICT: NONE) (UTILITIES)

Purpose:

Resolution 2011-161 effective July 13, 2011, granted a 30' wide right of way to DCP Operating Company L.P. This Right of Way License updates and replaces the previously granted license and terms for the continued operation of said pipeline.

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 (123.10 rods x $20/rod): $2,462.00 per year / $12,310.00 paid first 5 years in advance

Surface Damages: none / existing pipeline

Total Collected: $13,310.00

Discussion:

This private use, gas line is buried thirty-six inches (36) deep. Attached plat is the “As Built” survey of the existing pipeline. All payments have been collected and currently up to date.

Certificates of Insurance (COI) with City of Midland named as additional insured and a waiver of subrogation in favor of the City of Midland has been collected and on file.

City Secretary to record completed License Agreement



City Manager’s Office

RIGHT OF WAY LICENSE

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

Date:	September 29, 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:	DCP Operating Company, LP
Licensee's Representative:	**Kendon Roberts**
Licensee's Mailing Address:	10 Desta Drive, Suite 500-W Midland, Texas 79705
Property:	See **Exhibit A** attached hereto and incorporated herein for all purposes.
License Number:	21-329-036

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") 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 TWELVE THOUSAND THREE HUNDRED TEN and No/100 Dollars ($12,310.00) 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. Purposefully omitted.

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 thirty (30) 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 private use pipeline, not to exceed four and one half (4.5) inches in diameter, for the transportation of natural gas and 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 thirty-six (36) 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:
DCP Operating Company, LP

By: Kendon Roberts
Printed Name: Kendon Roberts
Title: Attorney-in-Fact

THE STATE OF TEXAS §
§
COUNTY OF Midland §

BEFORE ME, the undersigned authority, on this 13th day of September, 2021 personally appeared Kedon Roberts an officer of DCP Operating Company, LP 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 13th day of September, 2021.

Notary Public, State of Texas

TOMMY JOE BLEEKER
Notary Public, State of Texas
Comm. Expires 04-19-2023
Notary ID 126046394

dcp Midstream

DCP Midstream

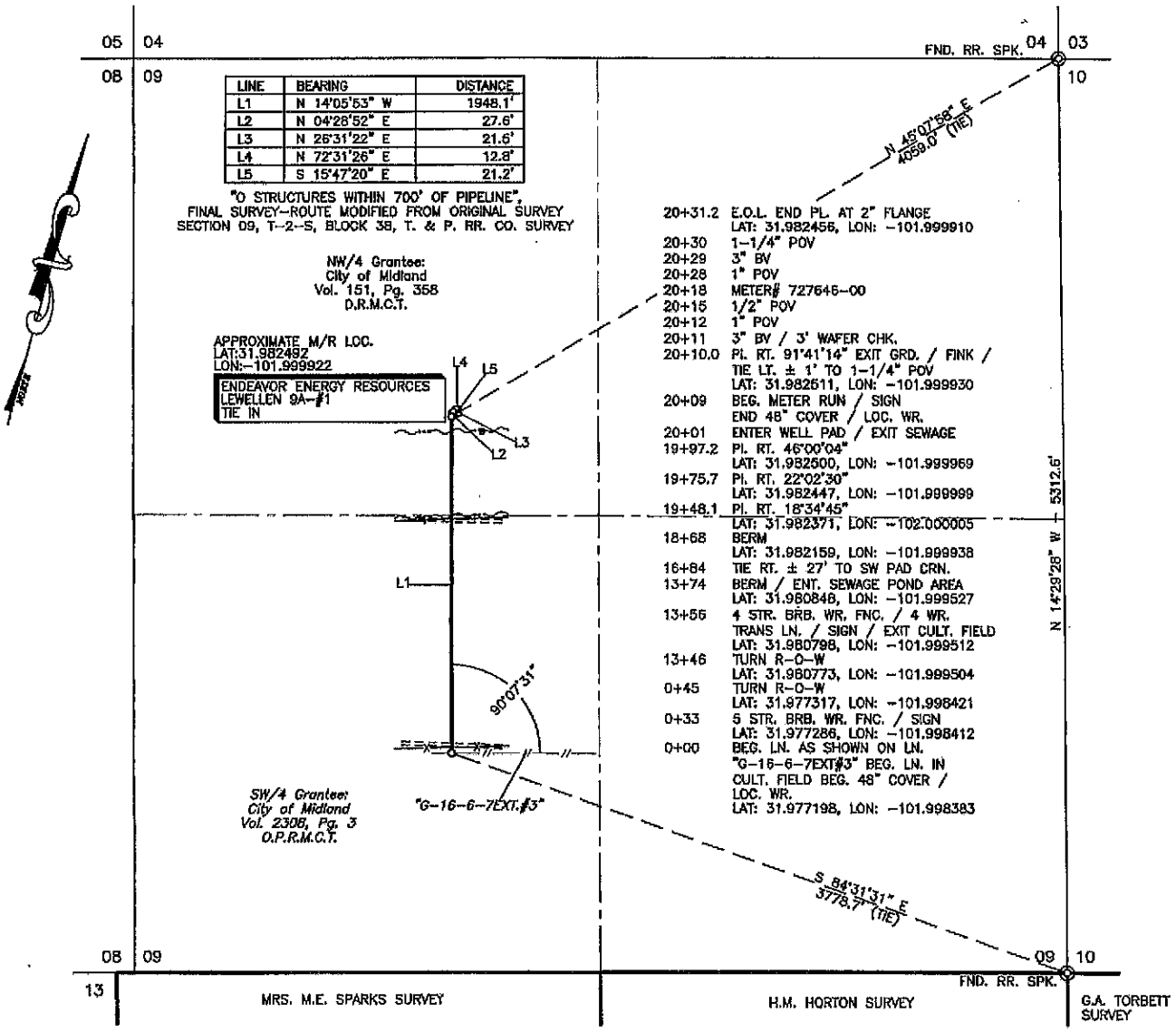
SHEET NO. 1 OF 1

NATURE OF WORK RESURVEY GAS PIPELINE DATE 8/12/11 LINE NO. G-16-6-7-10

DISTRICT PERMIAN BASIN PLANT OR STATION SPRABERRY JOB OR AFE NO. 121123204

SEC. 09 TWP. T-2-S BLOCK 38 SURVEY T. & P. RR. CO. SURVEY CO. MIDLAND STATE TX.

STUDY NO: 2011SPR121 Abst.# A-158



Date Surveyed: 8/10/11

1. Coordinates and Bearings and Distances are based on Lambert Conical Projection of the State Plane Coordinate System NAD 83, Texas Central Zone. To obtain surface values multiply distances by a factor of 1.0001448.
2. This survey was performed without the benefit of a title report. There may be easements and/or covenants affecting this property not shown hereon. Location of improvements and, or easements were beyond commissioned scope of this project and have been specifically omitted.
3. See documents and electronic data in the office of West Co. of Midland for complete reconstruction of these sections and blocks in dwg. T:\Jennifer\DCP\Upton Co.\Upton (NAD83).dwg

PTRE&C NO: MIDLAND 1208

CC: PLANT: SPRABERRY

SCALE: 1"= 1000'

REMARKS LINE REQUIRES 2031.2 FEET OR 123.10 RODS IN SECTION 09

GROUP OR CORP. STAFF

TO: CHRIS MERTZ
FROM: M. D. SMITH
CP-SEEREY/SUBIA

RE: ☒ RESURVEY ☐ STAKING

FOR CHANGES & RESURVEYS, THIS PLAT TO BE ACCOMPANIED BY PIPE LINE REPORT, FORM NO. 3997.
RC – CE SURVEYING MAPPING & PIPELINE RECORD SECTION

LEGEND

◎– DENOTES FOUND MONUMENT AS NOTED
○– DENOTES CALCULATED CORNER
—//—//— DENOTES BURIED LINE
—//—//— DENOTES EXISTING LINE/ROW

I HEREBY CERTIFY THAT THIS PLAT WAS MADE FROM NOTES TAKEN IN THE FIELD IN A BONA FIDE SURVEY MADE UNDER MY SUPERVISION.

STATE OF TEXAS REGISTERED WADE A. MERTZ 4082 PROFESSIONAL LAND SURVEYOR

WADE MERTZ TEXAS R.P.L.S. NO. 4082
MACON McDONALD TEXAS R.P.L.S. NO. 4398
MARCUS HOSTAS TEXAS R.P.L.S. NO. 5643
JOFRANK NEWMAN TEXAS R.P.L.S. NO. 5011

WEST COMPANY OF MIDLAND, INC.
110 W. LOUISIANA AVE. STE. 110
MIDLAND TEXAS, 79701
(432) 687-0865 – FAX: (432) 687-0868
T:\DEPT\...\20121020-21.dwg
WO# 2011-1012-1
STAKING WO# 2011-1012
DCP 27\63

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TDE

PACKET 16 September 13, 2012

PIPE LINE REPORT

RC–ORIGINATOR

SHEET 1 OF 1

LINE NO. G-16-6-7-10

DCP MIDSTREAM CORPORATION

AFE. NO. 121123204

DISTRICT PERMIAN BASIN PLANT OR AREA SPRAYBERRY LINE USED FOR WET GAS

DESCRIPTION RESURVEY GAS PIPELINE TO CONNECT ENDEAVOR ENERGY RESOURCES, LEWELLEN 9A#1, BEG. LN. ON LN. "G–16–6–7EXT.#3" IN: SEC. 09, T–2–S, BLOCK 38, T. & P. RR. CO. SURVEY, MIDLAND CO., TEXAS

DATE START CONST. _____ DATE END CONST. 8/3/11 INSPECTOR DANNY HALE

RESURVEY BY WADE MERTZ DATE 8/12/11

WORK CONTRACTED	CONTRACTORS	CONTRACT NO.
PIPE LAY	WEST STATES ENERGY	ALLIANCE
X–RAY		
INSPECTION		
HYDROSATIC TEST		
SURVEY	WEST COMPANY OF MIDLAND, INC.	HOURLY
OTHER		

LINE NO. OR MISC. PIPE	O. D. PIPE SIZE	COND. OF PIPE	SPEC. GRADE & TYPE	TEST MED. & PRES	WEIGHT PER FOOT	TYPE JTS.	AVE. LENGTH OF JTS.	METER RUN SIZE	BEGIN STATION	END STATION	LENGTH
LINE	4–1/2"	1	DRISCO	100# AIR	SDR–17		40'		0+00	20+09	2009'
METER# 727646–00					3" SIMPLEX METER TUBE						

PROTECTIVE COATINGS

BEGIN STATION	END STATION	LENGTH	TYPE COATING & MFG.	METHOD OF COATING	TYPE JOINT COATING & MANUFACTURER
			NA		

LINE PIPE: RECORD P.O. OR TRANSFER NO. AND ATTACH COPY OF EACH _____

SOURCE OF PIPE (MILL AND VENDOR) RED MAN PIPE & SUPPLY

REMARKS: ALL WORK DONE ON ALLIANCE; 3 SIGNS; 2 FINKS; NO ANODES; LOC. WR AND DOUBLE DITCH RAN FROM 0+00 TO 20+09

MIN. DEPTH COVER: 48" IN SOIL _____ IN ROCK

QUAD MAP _____ SHT. NO. _____

PACKET 16.17 September 28, 2021

SIGNED M A Angeles GROUP/STAFF GIS DATE _____

NOTE ATTACH FORM 319 OR FORM 3535.

FORM 3997–S 11–83

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 08/20/2021

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
Marsh USA Inc.
2929 Allen Parkway, Suite 2500
Houston, TX 77019
Attn: Houston.Certs@marsh.com Fax: 212-948-0509

CONTACT NAME:
PHONE (A/C, No, Ext): **FAX (A/C, No):**
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Starr Indemnity & Liability Company	38318
INSURER B : National Fire & Marine Insurance Co	20079
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
DCP Operating Company, LP
370 17th Street, Suite 2500
Denver, CO 80202

COVERAGES **CERTIFICATE NUMBER:** HOU-003817093-01 **REVISION NUMBER:** 3

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		
A	X **COMMERCIAL GENERAL LIABILITY** [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] PRO-JECT [ ] LOC [ ] OTHER:			1000090175211	04/01/2021	04/01/2022	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 1,000,000 2,000,000 2,000,000
A	**AUTOMOBILE LIABILITY** X ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY			1000635770211	04/01/2021	04/01/2022	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ $ $ $	1,000,000
B	X **UMBRELLA LIAB** X OCCUR **EXCESS LIAB** [ ] CLAIMS-MADE [ ] DED X RETENTION $ 10,000			42-UMO-301177-07	04/01/2021	04/01/2022	EACH OCCURRENCE AGGREGATE	$ $	10,000,000 10,000,000
A A	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N [N] **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		1000001665 (AOS) 1000004152 (MA)	04/01/2021 04/01/2021	04/08/2022 04/01/2022	X 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)
RE: Project Name/AFE:F139 - Ref:MSG1850807_WrflurUQVBkInyhaYptx - Right of Way License

Certificate Holder is added as an Additional Insured, excluding Workers' Compensation and Employers' Liability and provided with a Waiver of Subrogation as required by written contract but limited to the operations of the Insured under said contract, and always subject to the policy terms, conditions and exclusions.

CERTIFICATE HOLDER

CITY OF MIDLAND
300 N LORAINE
MIDLAND, TX 79701

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

Marsh USA Inc.

PACKET 16.18 September 28, 2021

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City Council Meeting

Item Number: 17

Meeting Date: September 28, 2021

To: City Council / City Manager

From: John Simmons, Manager, Right-of-Way

Subject: Motion authorizing the execution of a Right-of-Way License (21-329-037) with Endeavor Energy Resources, L.P., regarding City-owned property described as Sections 11,12,13 and 14, Block 37, Township 3 South, T&P RR Co. Survey, Midland County, Texas (DISTRICT: NONE) (UTILITIES)

Purpose:

This motion will provide a 30' wide right of way for Endeavor Energy to build a single pole, overhead 25 KV power distribution line on Sprayberry Farm property. Utility poles will be spaced at 250' intervals.

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 facilities of this nature.

Recommended City Council Action:

Approve

Fiscal Impact:

Application fee (one time): $1,000

Annual Lease Rate,

Annual Lease Rate / power lines (654.54 rods x $20/rod): $13,090.80 per year – first 5 years paid in advance: $65,454.00

Surface Damages: one time (654.54 rods x $10/ per rod): $6,545.40

Total Collected: $72,999.40

Discussion:

This is a privately-owned, overhead electric distribution line, overall right of way width will be 30’ with two additional temporary workspaces of 10’ each. As noted all poles and overhead lines are away from existing COM water monitoring wells. Power is in support of Endeavor's ongoing production under the existing Surface Use Agreement.

Certificates of Insurance are on file

City Secretary to record all documents



City Manager’s Office

PACKET

RIGHT OF WAY LICENSE

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

Date:	September 29, 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:	Endeavor Energy Resources, L.P.
Licensee's Representative:	**R. Ben Carter, Vice President - Land**
Licensee's Mailing Address:	110 N. Marienfeld St. Midland, Texas 79701
Property:	See **Exhibit A** attached hereto and incorporated herein for all purposes.
License Number:	21-329-037

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.

17.3

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.

September 28, 2021

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 SIXTY-FIVE THOUSAND FOUR HUNDRED FIFTY-FOUR and No/100 Dollars ($65,454.00) 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 SIX THOUSAND FIVE HUNDRED FORTY-FIVE and 40/100 Dollars ($6,545.40), 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.

PACKET 17.4 September 28, 2021

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.

A. Use

A. Permitted Use. Licensor does hereby grant unto Licensee, the right to enter upon certain property of Licensor, being thirty (30) feet in width of the line locations 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 line location, a single pole, overhead 25 KV power distribution line with utility poles spaced at two hundred fifty (250) foot intervals and 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 line(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 line(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. Intentionally omitted.

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.

PACKET 17.5 September 28, 2021

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 (except to the extent of Licensor's gross negligence or willful misconduct) 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 LINE(S) ARISING OUT OF THE NEGLIGENCE, BUT EXCLUDING THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OF 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 line 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 line or property 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.

PACKET 17.7 September 28, 2021

B. 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
Excess 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 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 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 LINE(S) 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 REASONABLE ATTORNEY'S FEES, BUT ONLY TO THE EXTENT LICENSEE OWES LICENSOR AN INDEMNITY UNDER THIS PARAGRAPH.

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 LINE(S) 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 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 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

PACKET 17.9 September 28, 2021

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 LINE(S) 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 REASONABLE 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 REASONABLE 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.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE PARTIES HEREBY EXPRESSLY WAIVE THEIR RIGHT TO RECOVER ANY PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. FURTHERMORE, IN NO EVENT SHALL LICENSEE'S INDEMNIFICATION OBLIGATIONS HEREUNDER EXTEND TO ANY CLAIMS, DAMAGES, INJURIES, DEATH, DAMAGES, LOSSES OR EXPENSES OF ANY CHARACTER WHATSOEVER TO THE EXTENT ARISING OUT TO THE GROSS NEGLIGENCE OF WILLFUL MISCONDUCT OF LICENSOR OR ANY OF LICENSOR'S OFFICERS, AGENTS, CONTRACTORS, SUBCONTRACTORS OR EMPLOYEES.

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

PACKET 17.10 September 28, 2021

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 REASONABLE ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE LICENSE OR THE CONSTRUCTION OR INTERPRETATION 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 REASONABLE 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

PACKET
17.11
September 28, 2021

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 OF THIS LICENSE, 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 WITH REGARDS TO THIS LICENSE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, TORT CLAIMS, LICENSOR'S NEGLIGENCE OR CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS; PROVIDED, HOWEVER, THAT SAID RELEASE SHALL NOT EXTEND TO ANY DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION RELATING TO INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE ON THE PART OF LICENSOR.

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,

PACKET
17.12
September 28, 2021

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

PACKET 17.13 September 28, 2021

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:

_____
Morris Williams, Assistant City Manager

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

PACKET
17.14
September 28, 2021

LICENSEE:
ENDEAVOR ENERGY RESOURCES, L.P.

EFS

By: R. Ben Carter

Printed Name: R. Ben Carter

Title: Vice President- Land

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this 15th day of September, 2021 personally appeared R. Ben Carter an officer of Endeavor Energy Resources, 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 15th day of September, 2021.

Laura D. Swopes

Notary Public, State of TEXAS

Laura D Swopes
My Commission Expires
11/13/2024
ID No 129201512

PACKET

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September 28, 2021

EXHIBIT "A"

21-329-037

POINT OF BEGINNING		
X=	1,537,877'	
Y=	812,809'	NAD 27
LAT.	31.892984° N	
LONG.	101.822258° W	

POINT OF ENDING		
X=	1,534,091'	
Y=	811,797'	NAD 27
LAT.	31.890063° N	
LONG.	101.834410° W	

DIRECTIONS TO LOCATION:

From the intersection of I-20 and FM 158, head Southeast along FM 158 approximately 16.33 miles. Turn right on an existing lease road and head South approximately 1.08 miles. Turn right on an existing lease road and head West approximately 1.61 miles to the proposed site on the West side of the road.

Fnd. ⅜" Rebar @ NE Corner of Section 11 (NAD 27) X= 1,537,993.23 Y= 818,312.29

T & P RR CO. A-955 Sec.12

T & P RR CO. A-480 Sec.11 Blk 37, T3S

City of Midland Vol. 234, Pg. 816

T & P RR CO. A-902 Sec.10

T & P RR CO. A-547 Sec.13

T & P RR CO. A-901 Sec.14 Blk 37, T3S

City of Midland Vol. 234, Pg. 816

S 01° 12' 45" W 5,504.87'

S 30° 55' 12" W 7,594.80'

Existing Pad

FM 1379

E County Road 200

Existing Pipeline

Existing Fence

Existing Power Line

Existing Power Lines

Existing Pipeline

Existing Fence

L1

L2

POINT OF BEGINNING

L3

SEE INSET A

Existing Fence

Existing Pipeline

Existing Cattle Guard

Existing Lease Road

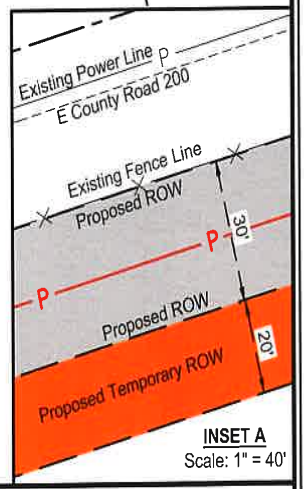
Existing Pipeline

POINT OF ENDING

PROPOSED 50' TRANSMISSION LINE ROW
±3,969.80', ±240.59 Rods, ±4.58 Acres
PROPOSED 30' ROW
±3,969.80', ±240.59 Rods, ±2.73 Acres
PROPOSED 20' TEMPORARY ROW
±3,969.80', ±240.59 Rods, ±1.85 Acres

Existing Pipelines

Called Abstract Line



INSET A
Scale: 1" = 40'

NAD 27 TEXAS CENTRAL ZONE

SCALE: 1" = 500'

500' 0 250' 500'

LEGEND	
P	Proposed Transmission Line
P	Proposed Transmission Line
P	Existing Power Line
	Existing Fence
	Existing Pipeline
	Existing Road/Pad
	Proposed ROW
	Section Line

Approximately 18.18 Miles Southeasterly from Midland, Texas

FOR THE EXCLUSIVE USE OF ENDEAVOR ENERGY RESOURCES, L.P.

I, Rex R. Jones Registered Professional Land Surveyor, do hereby state this plat is true and correct to the best of my knowledge.

09/02/2021

STATE OF TEXAS REGISTERED REX R. JONES 6024 PROFESSIONAL LAND SURVEYOR

17.16

Rex R. Jones
Registration No. 6024

DETAIL PLAT

Page 1 of 2

ENDEAVOR ENERGY RESOURCES, L.P.

PROPOSED WTH 15 SWD TO BATTLE TEX TRANSMISSION LINE
T & P RR CO. SURVEY, A-901,
SECTION 14, BLOCK 37, T3S
MIDLAND COUNTY, TEXAS

	REVISIONS			
DRAWN BY: RMB	#	BY:	DATE:	DESCRIPTION:
PROJ. MGR.: GDG				September 28, 2021
DATE: 09/02/2021				

FILENAME: T:\2021\2213583\DWG\WTH 15 SWD to Battle Tex Electrical Line_Sec 14.dwg

FENSTERMAKER

C. H. Fenstermaker & Associates, L.L.C.
135 Regency Sq. Lafayette, LA 70508
Ph. 337-237-2200 Fax. 337-232-3299
www.fenstermaker.com
Texas Firm No. 10028500

PACKET

POINT OF BEGINNING		
X=	1,539,302'	
Y=	813,360'	NAD 27
LAT.	31.894553° N	
LONG.	101.817691° W	
POINT OF ENDING		
X=	1,537,877'	
Y=	812,809'	NAD 27
LAT.	31.892984° N	
LONG.	101.822258° W	

DIRECTIONS TO LOCATION:
From the intersection of I-20 and FM 158, head Southeast along FM 158 approximately 16.33 miles. Turn right on an existing lease road and head South approximately 1.08 miles. Turn right on an existing lease road and head West approximately 1.61 miles to the proposed site on the West side of the road.

EXHIBIT "A" 21-329-037

Fnd. ⅜" Rebar @ NE Corner of Section 11 (NAD 27)
X= 1,537,993.23
Y= 818,312.29

S 14° 47' 58" E 5,121.83'

S 01° 12' 45" W 5,504.87'

T & P RR CO.
A-955
Sec.12
City of Midland
Vol. 763, Pg. 320

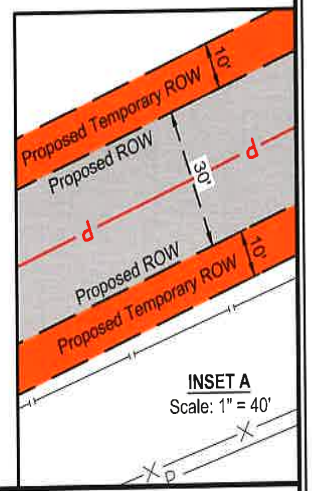
T & P RR CO.
A-480
Sec.11
Blk 37, T3S
City of Midland
Vol. 234, Pg. 816

T & P RR CO.
A-901
Sec.14
City of Midland
Vol. 234, Pg. 816

T & P RR CO.
A-547
Sec.13
City of Midland
Vol. 234, Pg. 816

PROPOSED 50' TRANSMISSION LINE ROW
±1,607.82', ±97.44 Rods, ±1.85 Acres
PROPOSED 30' ROW
±1,607.82', ±97.44 Rods, ±1.11 Acres
PROPOSED 20' TEMPORARY ROW
±1,607.82', ±97.44 Rods, ±0.74 Acres

FM 1379
Existing Pad
POINT OF BEGINNING
L1 L2 L3 L4 L5 L6 L7 L8
Existing Fence
Existing Pipeline
E County Road 200
Existing Power Line
Existing Fence
SEE INSET A
POINT OF ENDING
Existing Pipeline
Existing Power Line
Existing Fence
Existing Fence
Existing Power Lines
Existing Cattle Guard
Existing Lease Road
Existing Pipeline
Existing Pipeline



INSET A
Scale: 1" = 40'

NAD 27 TEXAS CENTRAL ZONE

SCALE: 1" = 500'
500' 0 250' 500'

LEGEND	
P	Proposed Transmission Line
P	Proposed Transmission Line
P	Existing Power Line
X	Existing Fence
	Existing Pipeline
	Existing Road/Pad
	Proposed ROW
	Section Line

STATE OF TEXAS
REGISTERED
09/02/2021
REX R. JONES
6024
PROFESSIONAL
LAND SURVEYOR

Approximately 18.18 Miles Southeasterly from Midland, Texas

FOR THE EXCLUSIVE USE OF ENDEAVOR ENERGY RESOURCES, L.P.
I, Rex R. Jones Registered Professional Land Surveyor, do hereby state this plat is true and correct to the best of my knowledge.

Rex R. Jones

17.17 Rex R. Jones
Registration No. 6024

FENSTERMAKER
C. H. Fenstermaker & Associates, L.L.C.
135 Regency Sq. Lafayette, LA 70508
Ph. 337-237-2200 Fax. 337-232-3299
www.fenstermaker.com
Texas Firm No. 10028500

PACKET

DETAIL PLAT
Page 1 of 2

ENDEAVOR ENERGY RESOURCES, L.P.

PROPOSED WTH 15 SWD TO BATTLE TEX TRANSMISSION LINE
T & P RR CO. SURVEY, A-480,
SECTION 11, BLOCK 37, T3S
MIDLAND COUNTY, TEXAS

	REVISIONS			
DRAWN BY: RMB	#	BY:	DATE:	DESCRIPTION:
PROJ. MGR.: GDG				
DATE: 09/01/2021				September 28, 2021

FILENAME: T:\2021\2213583\DWG\WTH 15 SWD to Battle Tex Electrical Line_Sec 11.dwg

POINT OF BEGINNING		
X=	1,539,470'	
Y=	813,220'	NAD 27
LAT.	31.894173° N	
LONG.	101.817142° W	

POINT OF ENDING		
X=	1,539,302'	
Y=	813,360'	NAD 27
LAT.	31.894553° N	
LONG.	101.817691° W	

DIRECTIONS TO LOCATION:
From the intersection of I-20 and FM 158, head Southeast along FM 158 approximately 16.33 miles. Turn right on an existing lease road and head South approximately 1.08 miles. Turn right on an existing lease road and head West approximately 1.61 miles to the proposed site on the West side of the road.

EXHIBIT "A"

21-329-037

T & P RR CO.
A-955
Sec.12
City of Midland
Vol. 763, Pg. 320

T & P RR CO.
A-547
Sec.13
City of Midland
Vol. 234, Pg. 816

T & P RR CO.
A-956
Sec.18 Blk 36, T3S
Blk 37, T3S

Point of Commencement/
Fnd. 1 ½" Iron Pipe @SE
Corner of Section 12
(NAD 27)
X= 1,544,460.48
Y= 814,475.26

Scrap File
15184

Future Battle Tex
Electrical Line

PROPOSED 50' TRANSMISSION LINE ROW
±305.16', ±18.48 Rods, ±0.35 Acres
PROPOSED 30' ROW
±305.16', ±18.49 Rods, ±0.21 Acres
PROPOSED 20' TEMPORARY ROW
±305.16', ±18.48 Rods, ±0.14 Acres

S 77° 48' 20" W 5,278.03'
S 75° 52' 42" W 5,145.92'

FM 1379
Existing Pad
POINT OF ENDING
L2
L1
SEE INSET A
POINT OF BEGINNING
56'
Existing Fence
Existing Power Line
Existing Pipeline
E County Road 200

INSET A
Scale: 1" = 40'
Existing Pipeline
Proposed Temporary ROW
Proposed ROW
Proposed ROW
Proposed Temporary ROW
Existing Fence
10'
15'
15'
10'

NAD 27 TEXAS CENTRAL ZONE

SCALE: 1" = 500'
500' 0 250' 500'

LEGEND	
P	Proposed Transmission Line
P	Proposed Transmission Line
P	Existing Power Line
	Existing Fence
	Existing Pipeline
	Existing Road/Pad
	Proposed ROW
	Section Line

Approximately 18.18 Miles Southeasterly from Midland, Texas

FOR THE EXCLUSIVE USE OF ENDEAVOR ENERGY RESOURCES, L.P.
I, Rex R. Jones Registered Professional Land Surveyor, do hereby state that this plat is true and correct to the best of my knowledge.

09/02/2021
REX R. JONES
6024
REGISTERED PROFESSIONAL LAND SURVEYOR
STATE OF TEXAS

Rex R. Jones
17.18 Rex R. Jones
Registration No. 6024

FENSTERMAKER
C. H. Fenstermaker & Associates, L.L.C.
135 Regency Sq. Lafayette, LA 70508
Ph. 337-237-2200 Fax. 337-232-3299
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Texas Firm No. 10028500

PACKET

DETAIL PLAT

ENDEAVOR ENERGY RESOURCES, L.P.

PROPOSED WTH 15 SWD TO BATTLE TEX TRANSMISSION LINE
T & P RR CO. SURVEY, A-955,
SECTION 12, BLOCK 37, T3S
MIDLAND COUNTY, TEXAS

	REVISIONS			
DRAWN BY: RMB	#	BY:	DATE:	DESCRIPTION:
PROJ. MGR.: GDG				
DATE: 09/01/2021				

September 28, 2021

FILENAME: T:\2021\2213583\DWG\WTH 15 SWD to Battle Tex Electrical Line_Sec 12.dwg

POINT OF BEGINNING		
X=	1,544,184'	
Y=	814,325'	NAD 27
LAT.	31.897384° N	
LONG.	101.802005° W	

POINT OF ENDING		
X=	1,539,470'	
Y=	813,220'	NAD 27
LAT.	31.894173° N	
LONG.	101.817142° W	

DIRECTIONS TO LOCATION:
From the intersection of I-20 and FM 158, head Southeast along FM 158 approximately 16.33 miles. Turn right on an existing lease road and head South approximately 1.08 miles. Turn right on an existing lease road and head West approximately 1.61 miles to the proposed site on the West side of the road.

Exhibit "A"

21-329-037

T & P RR CO.
A-955
Sec.12
City of Midland
Vol. 763, Pg. 320

T & P RR CO.
A-480
Sec.11

T & P RR CO.
A-547
Sec.13
City of Midland
Vol. 234, Pg. 816

T & P RR CO.
A-956
Sec.18
Blk 36, T3S
Blk 37, T3S

Scrap File
15184

Point of Commencement/
Fnd. 1 ½" Iron Pipe @NE
Corner of Section 13
(NAD 27)
X= 1,544,460.48
Y= 814,475.26

Future Battle Tex
Electrical Line

S 61° 34' 29" W
314.95'

SEE
INSET A

POINT OF
BEGINNING

PROPOSED 50' TRANSMISSION LINE ROW
±4,917.55', ±298.03 Rods, ±5.64 Acres
PROPOSED 30' ROW
±4,917.55', ±298.03 Rods, ±3.39 Acres
PROPOSED 20' TEMPORARY ROW
±4,917.55', ±298.03 Rods, ±2.26 Acres

S 75° 52' 42" W 5,145.92'

Existing Power Line
Existing Pipeline

L1

FM 1379

Existing
Pad

POINT OF
ENDING

56'

Existing Fence

L2

Existing Pipeline

E County Road 200

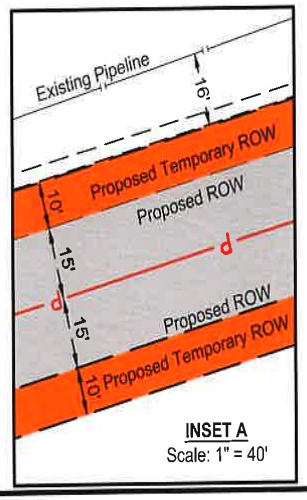
Existing
Fence

Existing
Power Line

Existing Pipeline

Existing Pipeline

Existing Pipeline
Existing Power Line
Existing Fence



INSET A
Scale: 1" = 40'

NAD 27 TEXAS CENTRAL ZONE

SCALE: 1" = 500'
500' 0 250' 500'

LEGEND	
P	Proposed Transmission Line
P	Proposed Transmission Line
P	Existing Power Line
	Existing Fence
	Existing Pipeline
	Existing Road/Pad
	Proposed ROW
	Section Line

Approximately 18.18 Miles Southeasterly from
Midland, Texas

FOR THE EXCLUSIVE USE OF
ENDEAVOR ENERGY RESOURCES, L.P.
I, Rex R. Jones Registered Professional
Land Surveyor, do hereby state this plat is true
and correct to the best of my knowledge.
09/02/2021

STATE OF TEXAS
REGISTERED
REX R. JONES
6024
PROFESSIONAL
LAND SURVEYOR

17.19 Rex R. Jones
Registration No. 6024

FENSTERMAKER
C. H. Fenstermaker & Associates, L.L.C.
135 Regency Sq. Lafayette, LA 70508
Ph. 337-237-2200 Fax. 337-232-3299
www.fenstermaker.com
Texas Firm No. 10028500

PACKET

DETAIL PLAT

ENDEAVOR ENERGY RESOURCES, L.P.

PROPOSED WTH 15 SWD TO BATTLE TEX TRANSMISSION LINE
T & P RR CO. SURVEY, A-547,
SECTION 13, BLOCK 37, T3S
MIDLAND COUNTY, TEXAS

	REVISIONS			
DRAWN BY: RMB	#	BY:	DATE:	DESCRIPTION:
PROJ. MGR.: GDG				
DATE: 09/01/2021				~~September 28, 2021~~
FILENAME: T:\2021\2213583\DWG\WTH 15 SWD to Battle Tex Electrical Line_Sec 13.dwg				

EXHIBIT "A"

21-329-037

POINT OF BEGINNING		
X=	1,537,877'	
Y=	812,809'	NAD 27
LAT.	31.892984° N	
LONG.	101.822258° W	
POINT OF ENDING		
X=	1,534,091'	
Y=	811,797'	NAD 27
LAT.	31.890063° N	
LONG.	101.834410° W	

DIRECTIONS TO LOCATION:
From the intersection of I-20 and FM 158, head Southeast along FM 158 approximately 16.33 miles. Turn right on an existing lease road and head South approximately 1.08 miles. Turn right on an existing lease road and head West approximately 1.61 miles to the proposed site on the West side of the road.

Fnd. ⅜" Rebar @ NE Corner of Section 11 (NAD 27)
X= 1,537,993.23
Y= 818,312.29

T & P RR CO. A-955 Sec.12

T & P RR CO. A-480 Sec.11 Blk 37, T3S
City of Midland
Vol. 234, Pg. 816

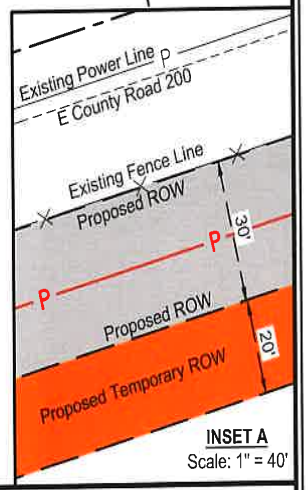
T & P RR CO. A-547 Sec.13

T & P RR CO. A-902 Sec.10

T & P RR CO. A-901 Sec.14 Blk 37, T3S
City of Midland
Vol. 234, Pg. 816

S 01° 12' 45" W 5,504.87'
S 30° 55' 12" W 7,594.80'
Existing Pad
FM 1379
E County Road 200
Existing Pipeline
Existing Fence
Existing Power Line
Existing Power Lines
Existing Pipeline
Existing Fence
L1
L2
POINT OF BEGINNING
L3
SEE INSET A
Existing Fence
Existing Cattle Guard
Existing Lease Road
Existing Pipeline
Existing Pipeline
POINT OF ENDING
Existing Pipelines
Called Abstract Line

PROPOSED 50' TRANSMISSION LINE ROW
±3,969.80', ±240.59 Rods, ±4.58 Acres
PROPOSED 30' ROW
±3,969.80', ±240.59 Rods, ±2.73 Acres
PROPOSED 20' TEMPORARY ROW
±3,969.80', ±240.59 Rods, ±1.85 Acres



INSET A
Scale: 1" = 40'

NAD 27 TEXAS CENTRAL ZONE

SCALE: 1" = 500'
500' 0 250' 500'

LEGEND	
P	Proposed Transmission Line
P	Proposed Transmission Line
P	Existing Power Line
	Existing Fence
	Existing Pipeline
	Existing Road/Pad
	Proposed ROW
	Section Line

Approximately 18.18 Miles Southeasterly from Midland, Texas

FOR THE EXCLUSIVE USE OF ENDEAVOR ENERGY RESOURCES, L.P.
I, Rex R. Jones Registered Professional Land Surveyor, do hereby state this plat is true and correct to the best of my knowledge.
09/02/2021

STATE OF TEXAS
REGISTERED
REX R. JONES
6024
PROFESSIONAL
LAND SURVEYOR

17.20 Rex R. Jones
Registration No. 6024

FENSTERMAKER
C. H. Fenstermaker & Associates, L.L.C.
135 Regency Sq. Lafayette, LA 70508
Ph. 337-237-2200 Fax. 337-232-3299
www.fenstermaker.com
Texas Firm No. 10028500

DETAIL PLAT

ENDEAVOR ENERGY RESOURCES, L.P.

PROPOSED WTH 15 SWD TO BATTLE TEX TRANSMISSION LINE
T & P RR CO. SURVEY, A-901,
SECTION 14, BLOCK 37, T3S
MIDLAND COUNTY, TEXAS

	REVISIONS		
DRAWN BY: RMB	#	BY:	DATE:	DESCRIPTION:
PROJ. MGR.: GDG				
DATE: 09/02/2021				~~September 28, 2021~~

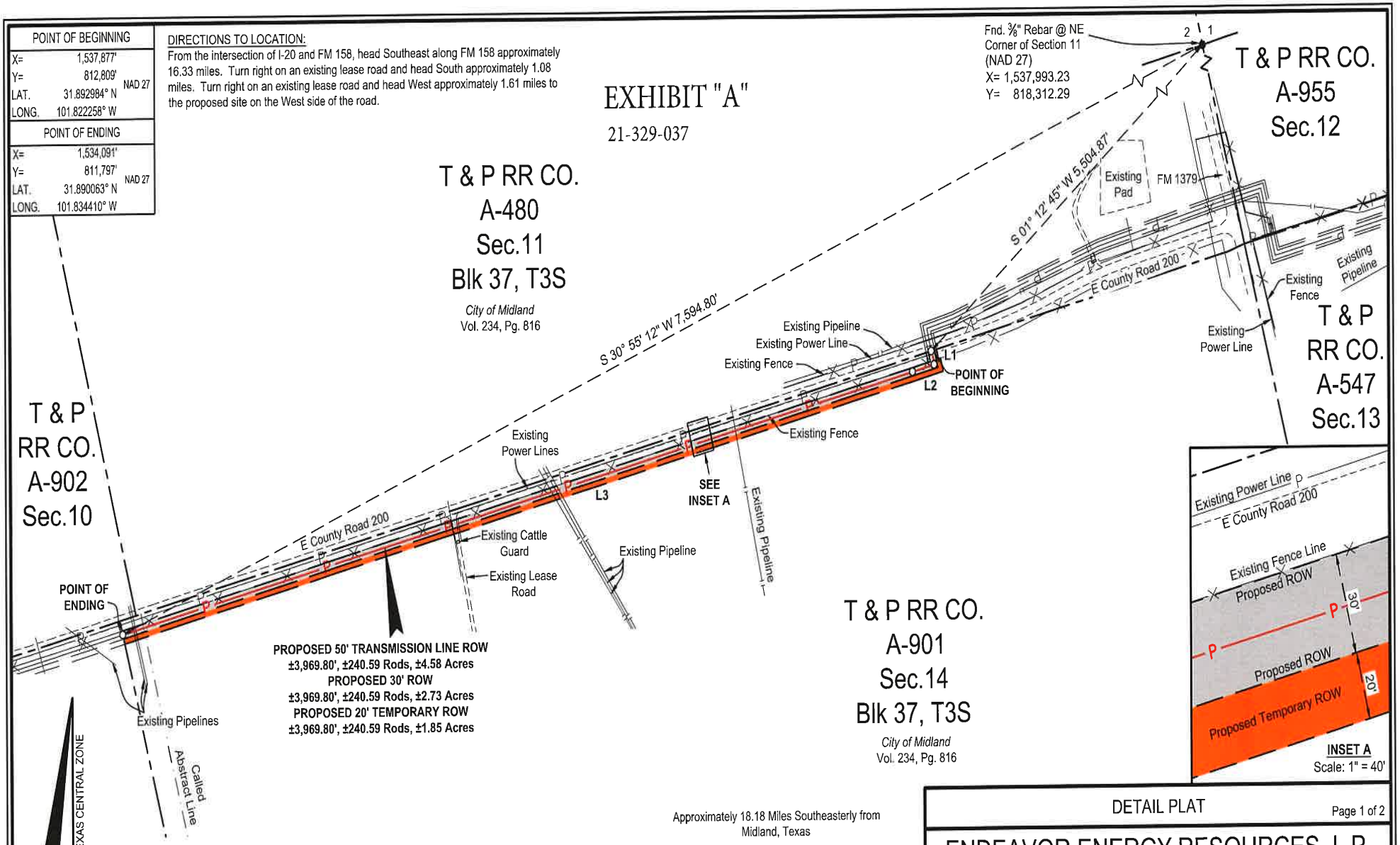
FILENAME: T:\2021\221358\3\DWG\WTH 15 SWD to Battle Tex Electrical Line_Sec 14.dwg

POINT OF BEGINNING		
X=	1,537,877'	
Y=	812,809'	NAD 27
LAT.	31.892984° N	
LONG.	101.822258° W	
POINT OF ENDING		
X=	1,534,091'	
Y=	811,797'	NAD 27
LAT.	31.890063° N	
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EXHIBIT "A"

21-329-037



INSET A
Scale: 1" = 40'

LEGEND	
P	Proposed Transmission Line
P	Proposed Transmission Line
P	Existing Power Line
X	Existing Fence
	Existing Pipeline
	Existing Road/Pad
	Proposed ROW
	Section Line

Approximately 18.18 Miles Southeasterly from Midland, Texas

FOR THE EXCLUSIVE USE OF ENDEAVOR ENERGY RESOURCES, L.P.
I, Rex R. Jones Registered Professional Land Surveyor, do hereby state this plat is true and correct to the best of my knowledge.
09/02/2021

STATE OF TEXAS REGISTERED PROFESSIONAL LAND SURVEYOR REX R. JONES 6024

17.21 Rex R. Jones
Registration No. 6024

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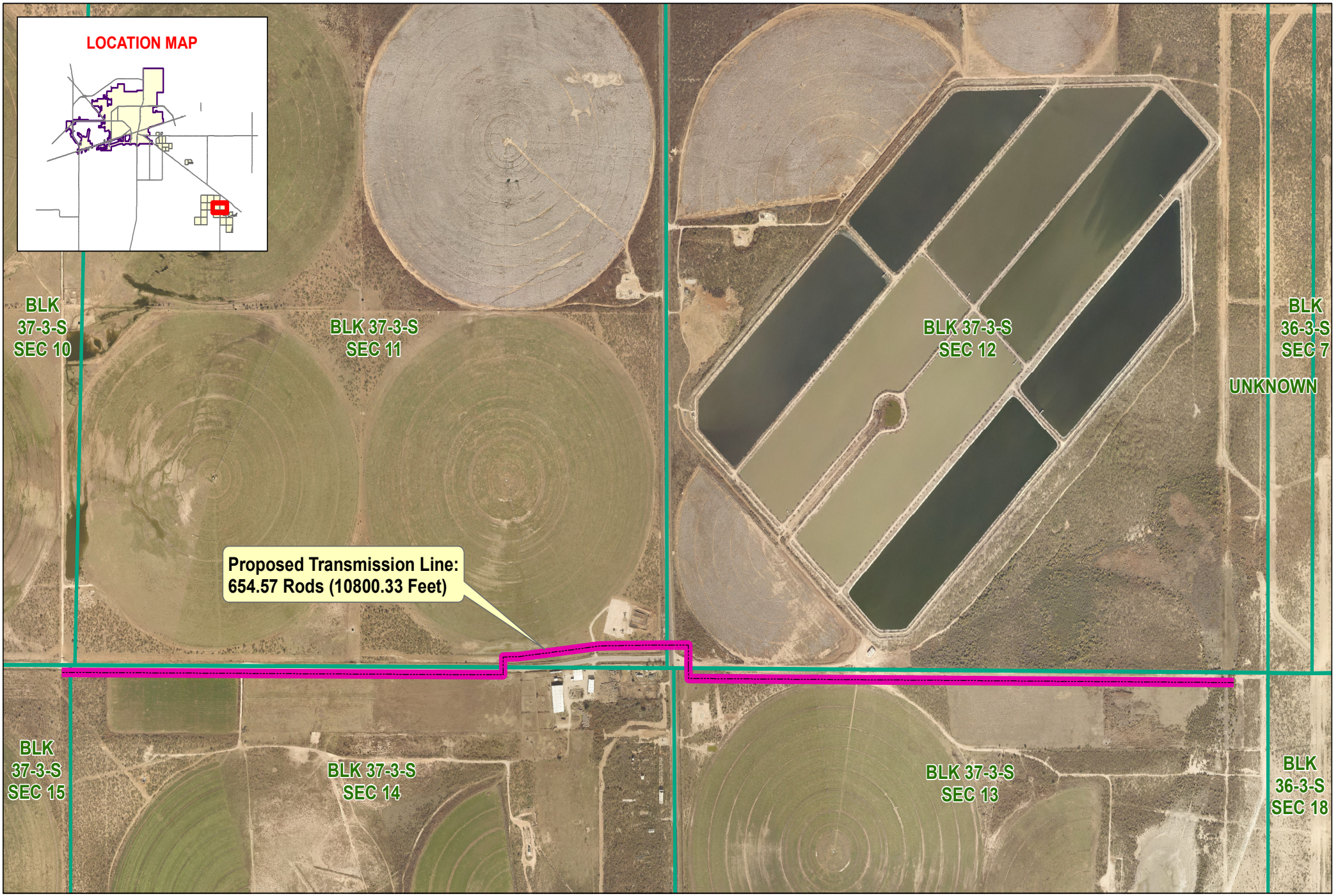
DETAIL PLAT

ENDEAVOR ENERGY RESOURCES, L.P.

PROPOSED WTH 15 SWD TO BATTLE TEX TRANSMISSION LINE
T & P RR CO. SURVEY, A-901,
SECTION 14, BLOCK 37, T3S
MIDLAND COUNTY, TEXAS

	REVISIONS			
DRAWN BY: RMB	#	BY:	DATE:	DESCRIPTION:
PROJ. MGR.: GDG				
DATE: 09/02/2021			~~September 28, 2021~~	

FILENAME: T:\2021\2213583\DWG\WTH 15 SWD to Battle Tex Electrical Line_Sec 14.dwg



Date: 9/7/2021

Proposed ROW
Survey Section

PACKET

17.22

Endeavor Proposed Transmission Line

September 28, 2021

0 250 500 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.

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 10/30/2020

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 MCGRIFF, SEIBELS & WILLIAMS OF TEXAS, INC. 10100 Katy Freeway, #400 Houston, TX 77043	**CONTACT NAME:** **PHONE (A/C, No, Ext):** 713-877-8975 **FAX (A/C, No):** 713-877-8974 **E-MAIL ADDRESS:**
INSURED Endeavor Energy Resources, L.P. and Per Attached Named Insureds 110 N Marienfeld, Suite 200 Midland, TX 79701	**INSURER(S) AFFORDING COVERAGE** — **NAIC #** **INSURER A :** Starr Indemnity & Liability Company — 38318 **INSURER B :** Lloyds of London **INSURER C :** The First Liberty Insurance Corporation — 33588 **INSURER D :** Liberty Insurance Corporation — 42404 **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** L86M7RRP **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		
C	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR [X] Self-Insured Retention $250,000 [X] Time Element Poll - Incl GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] PRO-JECT [ ] LOC [ ] OTHER:			EB6-641-443771-110	11/01/2020	11/01/2021	EACH OCCURRENCE	$	2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$	
							MED EXP (Any one person)	$	
							PERSONAL & ADV INJURY	$	2,000,000
							GENERAL AGGREGATE	$	4,000,000
							PRODUCTS - COMP/OP AGG	$	4,000,000
								$	
C	AUTOMOBILE LIABILITY [X] ANY AUTO [X] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [X] HIRED AUTOS ONLY [X] NON-OWNED AUTOS ONLY			AS6-641-443771-100	11/01/2020	11/01/2021	COMBINED SINGLE LIMIT (Ea accident)	$	2,000,000
							BODILY INJURY (Per person)	$	
							BODILY INJURY (Per accident)	$	
							PROPERTY DAMAGE (Per accident)	$	
								$	
A	[ ] UMBRELLA LIAB [X] OCCUR [X] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $			1000095483201	11/01/2020	11/01/2021	EACH OCCURRENCE	$	5,000,000
							AGGREGATE	$	5,000,000
								$	
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N [ ] N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			WA7-64D-443771-090	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
B	Excess Liability $5m xs $5m			20XS2H13266	11/01/2020	11/01/2021	Each Occurrence	$	5,000,000
							Aggregate	$	5,000,000
								$	
								$	
								$	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate Holder is included as Additional Insured as respects to General Liability and Automobile Liability as required by written contract subject to policy terms, conditions and exclusions. A Waiver of Subrogation is provided as respects to General Liability, Automobile Liability, Excess Liability and Workers' Compensation as required by written contract subject to policy terms, conditions and exclusions.

CERTIFICATE HOLDER

City of Midland
300 N. Loraine
Midland, TX 79701

PACKET 17.23

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

September 28, 2021

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AGENCY CUSTOMER ID: _____

LOC #: _____

ADDITIONAL REMARKS SCHEDULE

PRODUCER MCGRIFF, SEIBELS & WILLIAMS OF TEXAS, INC.	INSURED Endeavor Energy Resources, L.P. and Per Attached Named Insureds
POLICY NUMBER	
CARRIER / NAIC CODE	ISSUE DATE: 10/30/2020

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: _____ FORM TITLE: _____

ENDEAVOR ENERGY RESOURCES, L.P.
Named Insured List:
Endeavor Energy Resources L.P. dba EER Energy Services
Endeavor Energy Resources L.P. dba Energy Services Well Servicing Division fka Endeavor Energy Resources, L.P. dba J & L Well Service
Endeavor Energy Resources L.P. dba Energy Services Roustabout Division fka Endeavor Energy Resources, L.P. dba Compadre Roustabout Service
Endeavor Energy Resources L.P. dba Energy Services Trucking Division fka Endeavor Energy Resources, L.P. dba C & W Transports
Endeavor Energy Resources L.P. dba Energy Services Wireline Division fka Endeavor Energy Resources, L.P. dba Jones Wireline Service
Endeavor Energy Resources, L.P. dba Electrical Maintenance and Construction
Endeavor Energy Resources, L.P. dba ACS Pump & Supply
Endeavor Energy Resources L.P. dba Energy Services Construction Division fka Endeavor Energy Resources, L.P. dba Red Dog Construction
Endeavor Petroleum, LLC
Endeavor Energy Resources L.P. dba Energy Services Vehicle Maintenence Division fka Endeavor Energy Resources, L.P. dba Vehicle Service Company
Environmental Disposal Systems, LLC

PACKET

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CERTIFICATE NUMBER: L86M7RRP

City Council Meeting

Item Number: 18

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 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)

Purpose:

The applicant is requesting this zone change to RR, Regional Retail District, for future development.

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 Recreation Center and the location of the Scharbauer Sports Complex. The properties to the east across N. Loop 250

West, are zoned MF-16, Multiple-Family Dwelling District and the location of multi-family housing, and SF-2, Single-Family Dwelling District, and the location of residences. The properties to the south are zoned PD, Planned District for an Office Center and PD, Planned District for a Shopping Center, and the location of a vacant lot, and O-2, Office District, and the location of a parking lot. The property to the west is zoned O-2, Office District and the location of a vacant lot.

Analysis:

The applicant is requesting this zone change to RR, Regional Retail District, for future development.

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)

Depending on the nature and scale of the proposed development, a Traffic Impact Analysis MAY be required prior to approval of construction drawings.

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 Future Land Use map in the Tall City Tomorrow Comprehensive Plan calls for Urban-High lot (U-H) in which these areas improve economic performance and opportunities for social interaction, by locating diverse and complementary uses in close proximity. Such as higher-density mix of housing, major commercial, office, and service uses, and limited industrial in suitable locations, and allows for a density of 12+ (DU/A).

This request has been recommended for approval by a unanimous vote at the July 19, 2021 Planning and Zoning Commission meeting.

Staff recommends approval of the zone change from O-2, Office District to RR, Regional Retail District, subject to condition A.

Conditions:

A. That the use and development of this property shall conform to the regulations of the RR, Regional Retail District.

Letters of Objection:

As of July 28, 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 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

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 3.093-acre tract of land out of Lot 3, Block 6, Westridge Park Addition, Section 31, 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 RR, Regional Retail 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 O-2, Office District to RR, Regional Retail 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

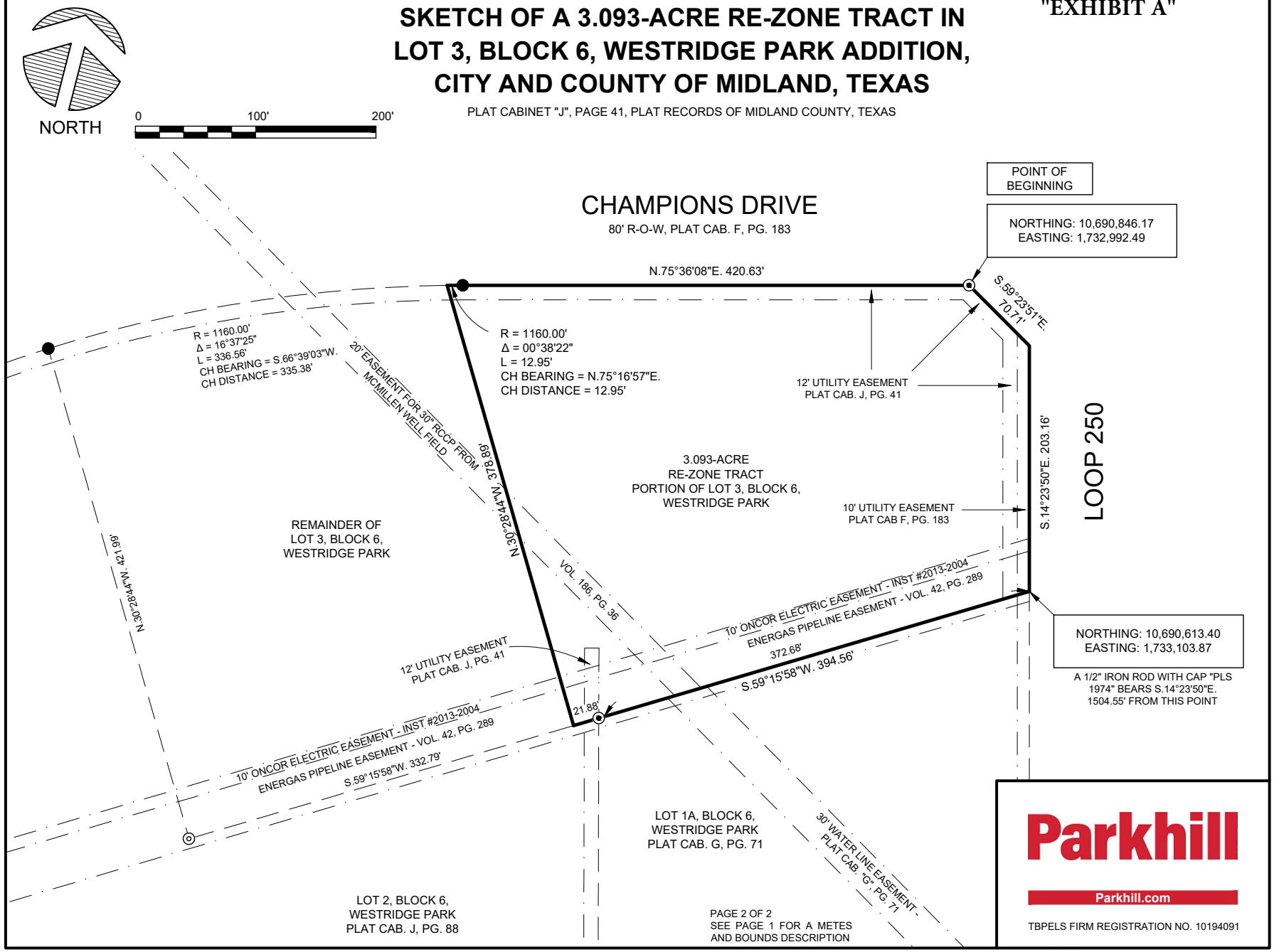
APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

"EXHIBIT A"

SKETCH OF A 3.093-ACRE RE-ZONE TRACT IN LOT 3, BLOCK 6, WESTRIDGE PARK ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS

PLAT CABINET "J", PAGE 41, PLAT RECORDS OF MIDLAND COUNTY, TEXAS



PAGE 2 OF 2
SEE PAGE 1 FOR A METES AND BOUNDS DESCRIPTION

Parkhill

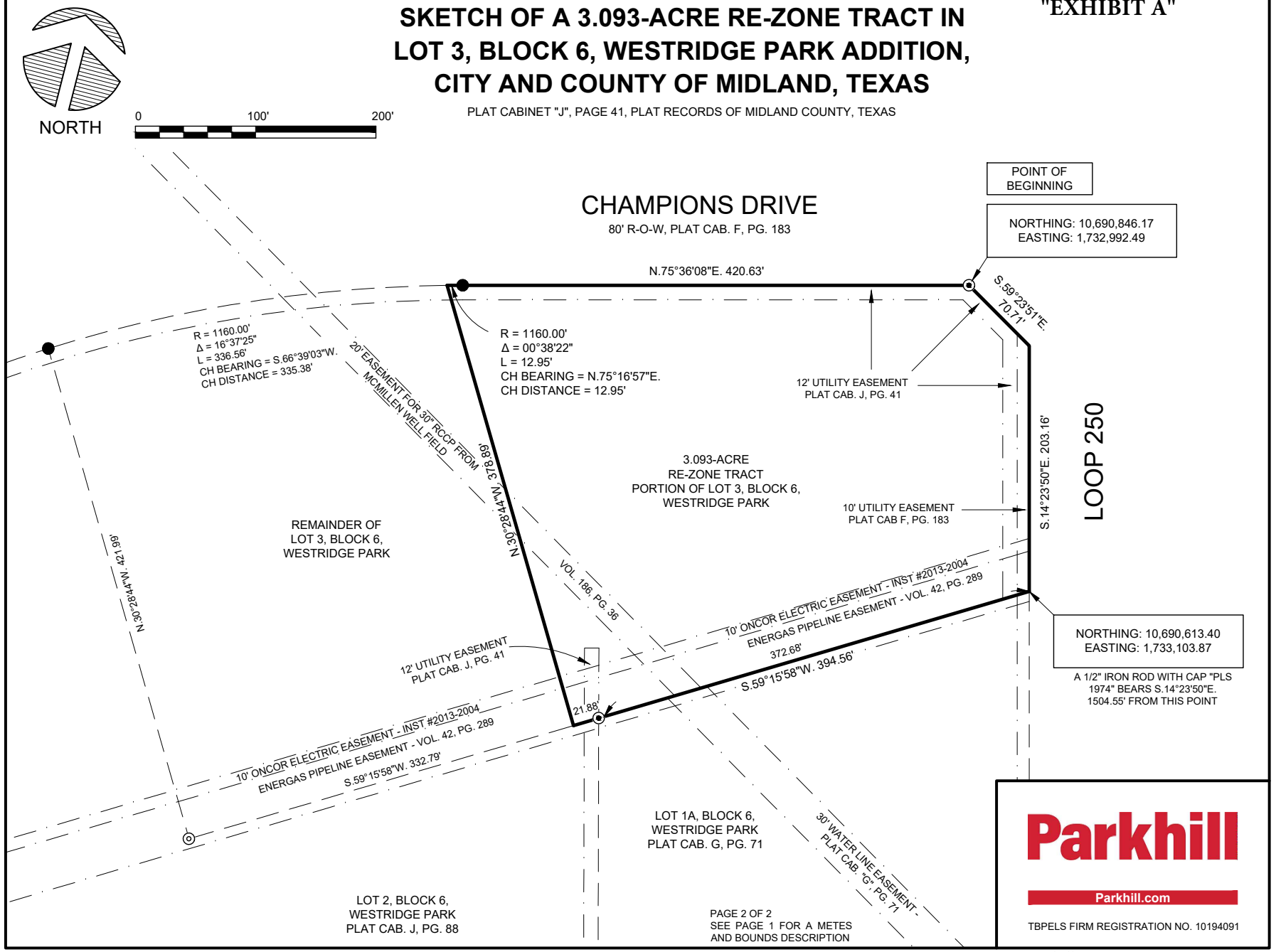
Parkhill.com

TBPELS FIRM REGISTRATION NO. 10194091

"EXHIBIT A"

SKETCH OF A 3.093-ACRE RE-ZONE TRACT IN LOT 3, BLOCK 6, WESTRIDGE PARK ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS

PLAT CABINET "J", PAGE 41, PLAT RECORDS OF MIDLAND COUNTY, TEXAS



PAGE 2 OF 2
SEE PAGE 1 FOR A METES AND BOUNDS DESCRIPTION

Parkhill

Parkhill.com

TBPELS FIRM REGISTRATION NO. 10194091

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: 2-21-0247

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: FP Westridge Energy Plaza, LP		Phone (713) 266-1101 Email afeinsilver@pontikesdev.com	
Address 1885 St James Place, Suite 1100	City Houston	State TX	Zip 77056

Property Owner Printed Name: FP Westridge Energy Plaza, LP		Phone (713) 266-1101 Email afeinsilver@pontikesdev.com	
Address 1885 St James Place, Suite 1100	City Houston	State TX	Zip 77056

Representative *(if different from Applicant or Property Owner)* Firm: Parkhill Printed Name: Josh Wallender Job # 7061.21		Phone (432) 697-1447 Email jwallender@parkhill.com	
Address 1700 W. Wall Street, Suite 100	City Midland	State Tx	Zip 79701

Street Address: 5500 Champions Drive

Legal Description Please see attached metes and bounds
Lot: E 1/2 of 3 Block: 6 Subdivision: Westridge Park Addtion, Section 31

Current Zoning: O2	**Proposed Zone:** RR *(List by tracts if more than one district is requested)*

Reason for Annexation/Zone Change Request: To suit the zoning needs of the developer

Present Use of Property: Vacant land

Proposed Use of Property: Commercial

How would this annexation/zone change affect the public health, safety and welfare? No adverse effect

Describe how this annexation/zone change will affect adjacent properties: No adverse effect

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): Alan Feinsilver Date: 6/19/21

Applicant (printed): ALAN FEINSILVER

Property Owner (signature): Alan Feinsilver Date: 6/19/21

Property Owner (printed) : ALAN FEINSILVER

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,Parkhill who, being by me duly sworn, upon oath says: That (s)he is authorized by FP Westridge Energy Plaza, LP, 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 23 day of June, 2021, to certify which witness my hand and seal of office.

MIRNA A. GRANADOS
Notary Public, State of Texas
Comm. Expires 04-07-2024
Notary ID 130610784

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

- ☑ Property Owner Authorization
- ☑ Application Fee
- Check # 001507
- ☑ Metes and Bounds (Sealed by Surveyor) not sealed
- ☑ Files in Digital Format (PDF/JPEG)
- ☐ Petition

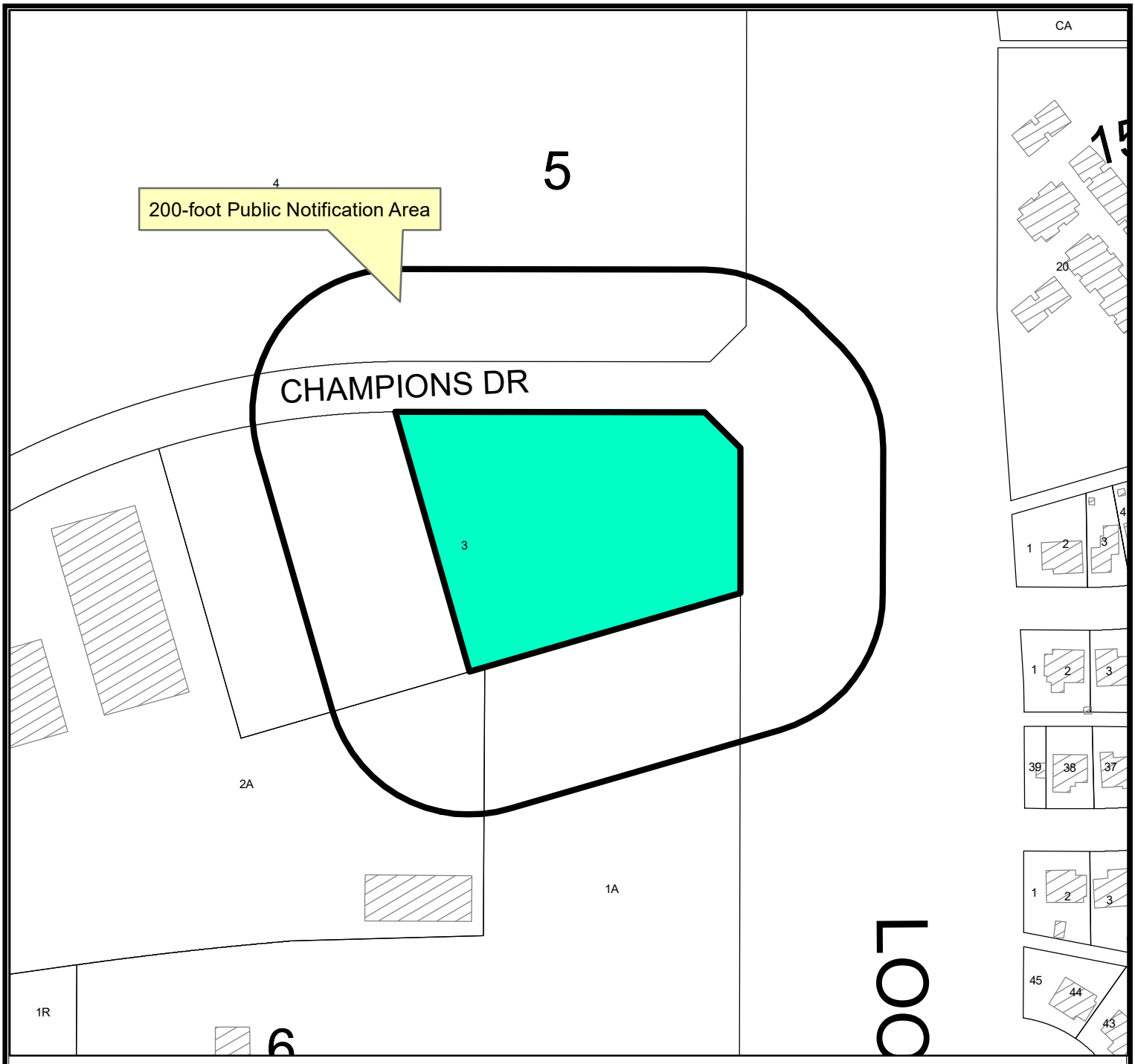
Received By: Joseph Manyuk

RECEIVED JUN 22 2021 BY: .....

Date:

RECEIVED JUN 22 2021 BY: .....

****Application will not be considered for scheduling until reviewed by staff.**



LOCATION MAP

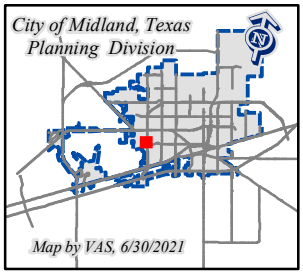
Z-21-0247 **Scale: 1" = 200'**

Consider a request by FP Westridge Energy Plaza LP, for a zone change from O-2, Office District, to RR, Regional Retail District, on the east 3.093 acres of Lot 3, Block 6, Westridge Park Addition, Section 31; City and County of Midland, Texas.

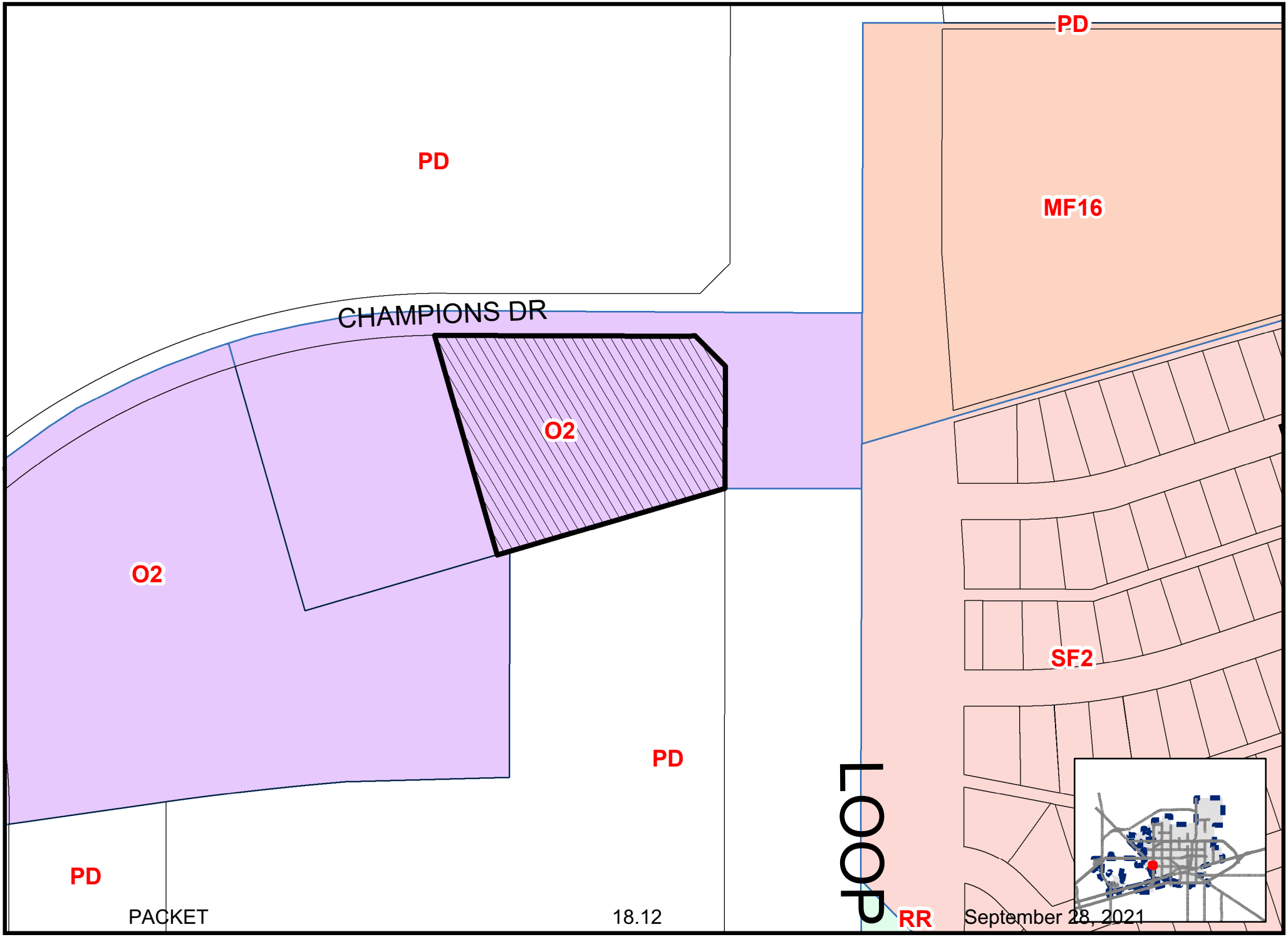
Generally located on the southwest corner of the intersection of Champions Drive and N. Loop 250 West Frontage Road. (Council District 4)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



September 28, 2021



Map By VAS, 6/30/2021

Z-21-0247

Scale: 1" = 200'

ZONING MAP

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STOP





City Council Meeting

Item Number: 19

Meeting Date: September 14, 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 5, BLOCK 8, GREENWOOD ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM C, COMMERCIAL DISTRICT TO SF-3, SINGLE FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF SOUTH STONEWALL STREET, APPROXIMATELY 90 FEET NORTH OF KENTUCKY 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, Jorge Chavez is requesting to rezone the property located at 308 S. Stonewall 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 south are zoned C, Commercial District, and the locations of vacant lots. The property to the west is zoned RR, Regional Retail District and the location of a vacant lot.

Analysis:

The applicant, Jorge Chavez, is requesting to rezone the property from C, Commercial District to SF-3, Single-Family Dwelling District, to allow for the construction of a residential home. Per 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. This 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 residential-medium, a classification that calls for a mix of housing types, including single-family, two-family dwelling, and townhouse. This zone change will provide additional housing for the residents of the City of Midland.

This request was approved at the August 16, 2021 Planning and Zoning Commission meeting.

Therefore, staff recommends approval of this zone change from C, Commercial 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 September 8, 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 5, BLOCK 8, GREENWOOD ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, FROM C, COMMERCIAL DISTRICT TO SF-3, SINGLE FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF SOUTH STONEWALL STREET, APPROXIMATELY 90 FEET NORTH OF KENTUCKY 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 5, Block 8, Greenwood 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 C, Commercial 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: 2-21-0251

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Jorge Chavez		Phone (432) 889-7005 Email jjorgecchavezz@gmail.com	
Address 714 N. Calhan St.	City Midland	State TX	Zip 79701

Property Owner Printed Name: Same		Phone ( ) Email	
Address	City	State	Zip

Representative *(if different from Applicant or Property Owner)* Firm: Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 308 S. Stonewall

Legal Description
Lot: 5 Block: 8 Subdivision: Greenwood Add.

Current Zoning:	**Proposed Zone:** *(List by tracts if more than one district is requested)*

Reason for Zone Change Request: To residential

Present Use of Property: Vacant

Proposed Use of Property: New build

How would this zone change affect the public health, safety and welfare? N/A

Describe how conditions affecting the property have changed since present zoning designation: None

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)

RECEIVED
JUL 14 2021
BY: .....

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature):	Date:
Applicant (printed):	
Property Owner (signature): Jorge Chavez	Date: 07-14-2021
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 ☐ Dimensioned Site Plan

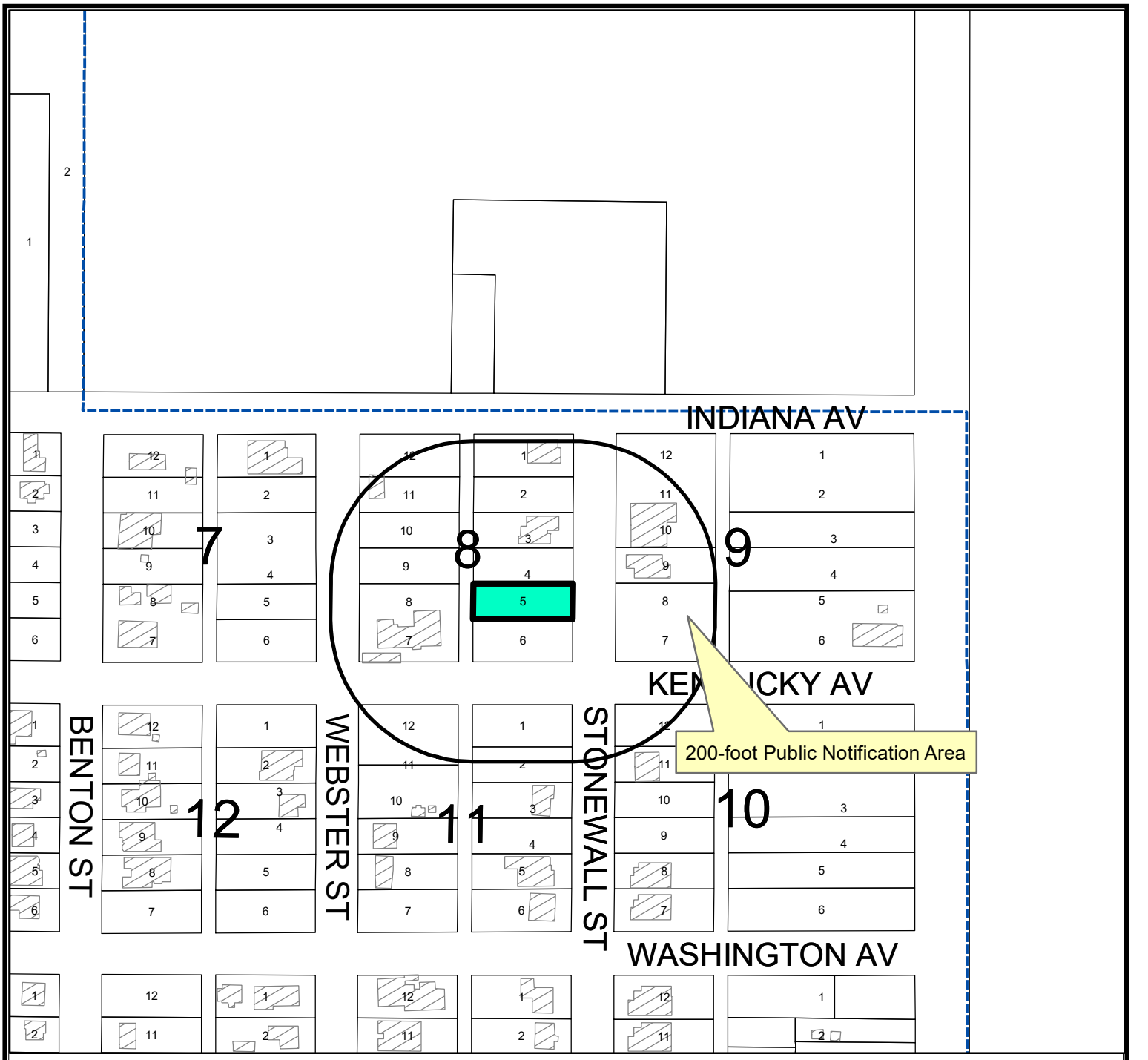
☒ Application Fee ☐ Plans in Digital Format (PDF/JPEG)

Check # #1473

RECEIVED
JUL 14 2021
BY:

Received By: Date:

Application will not be considered for scheduling until reviewed by a planner.



LOCATION MAP

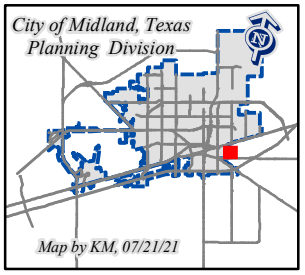
Z-21-0251 **Scale: 1" = 200'**

Consider a request by Jorge Chavez for a zone change from C, Commercial District to SF-3, Single-Family Dwelling District on Lot 5, Block 8, Greenwood Addition, Section 2, City and County of Midland, Texas.

Generally located on the west side of S. Stonewall Street, approximately 90-feet north of Kentucky Avenue. (Council District 2)

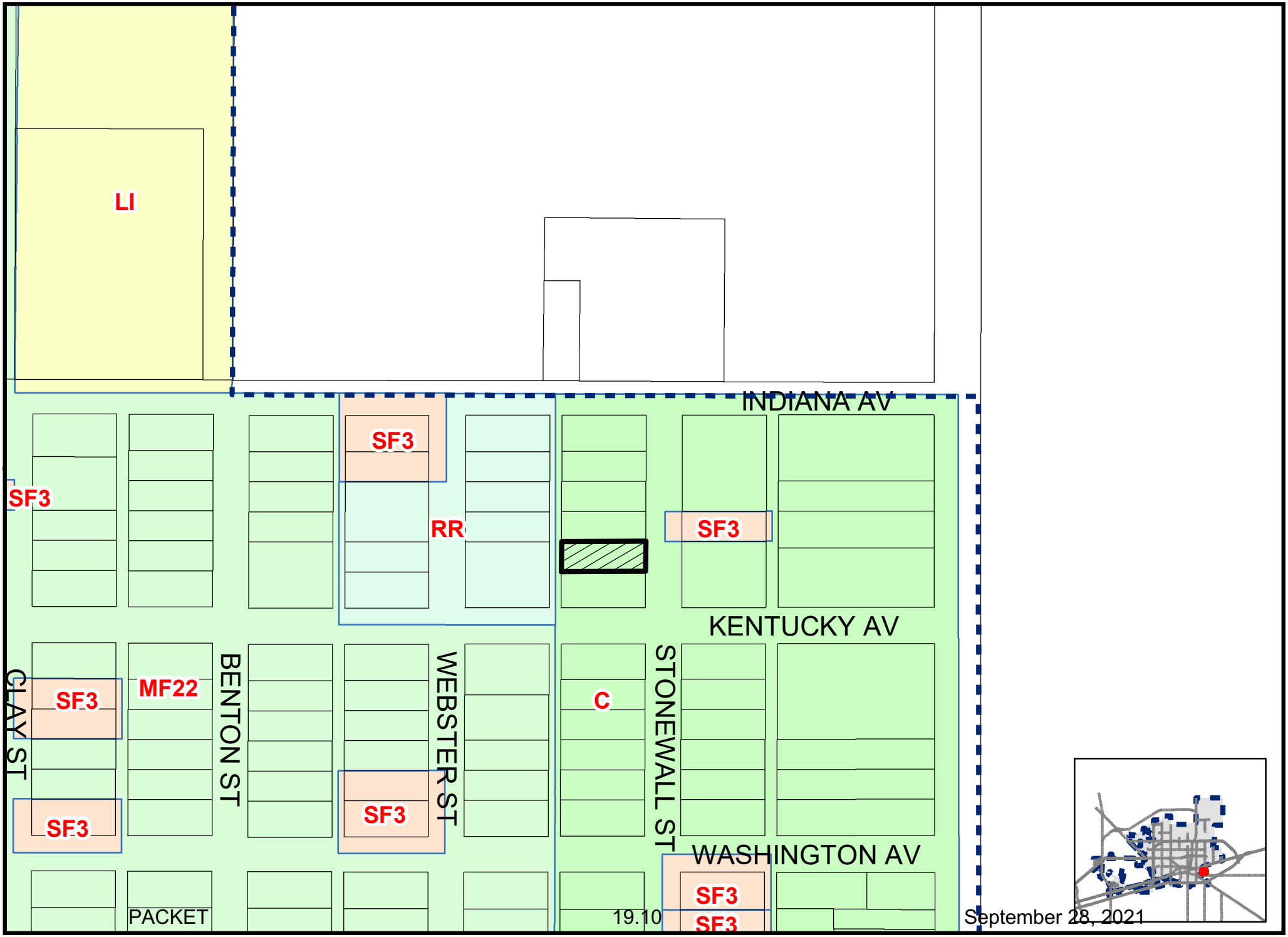
LEGEND

- 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.

September 28, 2021



Map By KM, 07/21/2021

Z-21-0251

Scale: 1" = 200'

ZONING MAP

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City Council Meeting

Item Number: 20

Meeting Date: September 14, 2021

To: City Council / City Manager

From: Kelly Martinez, Planner

Subject: **AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 4,774-SQUARE FOOT PORTION OF LOT 1, BLOCK 1, MESA VERDE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF NEELY AVENUE AND NORTH MIDLAND DRIVE), 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 4) (DEVELOPMENT SERVICES)**

Purpose:

The applicant, Hook and Reel Midland LLC, is requesting a Specific Use Designation with Term for the sale of all alcoholic beverages, for on premises consumption, in a restaurant located at 2215 N Midland Drive, Suite 2A.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Current Zoning:

RR, Regional Retail District

Surrounding Zoning and Land Use:

The properties to the north are zoned RR, Regional Retail District and MF-16, Multi-Family Dwelling District and the locations of an apartment complex, a car wash, and a liquor store. The property to the east is zoned MF-16, Multi-Family Dwelling District and the location of an apartment complex. The properties to the south and west are zoned SF-2, Single-Family Dwelling District and the location of residential homes.

Discussion:

Hook and Reel Midland LLC is requesting a Specific Use Designation to be able to sell all alcoholic beverages for on premises consumption, within a restaurant. The property is zoned RR, Regional Retail District, which allows for the sale and on-premises consumption of alcoholic beverages with the approval of a Specific Use Designation.

Hook and Reel Cajun Seafood and Bar is currently not in operation and does not have a specific use designation for the sale of all alcoholic beverages. The floor plan attached hereto as “Exhibit A” illustrates that the establishment will have a total square footage of 4,744 square feet, with an alcohol serviceable area of 3,600 square feet.

The proposed hours of operation are:

Monday through Sunday from 11:00 a.m. to 9:00 p.m.

The applicant is requesting alcohol service hours as the following:

Monday through Friday from 11:00 a.m. to 9:00 p.m., and
Saturday through Sunday from 12:00 p.m. (noon) to 5:00 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.

Engineering: (Approved)

No objections.

Fire: (Approved)

No objections.

Transportation: (Approved)

No objection to zone change.

Code Administration: (Approved)

The SUD for Hook and Reel is acceptable. The property must adhere to the current maximum occupant load of 240. 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) Hook and Reel Cajun Seafood and Bar is an establishment that promotes a positive environment where Midland residents can gather and socialize.

This request was approved at the August 16th, Planning and Zoning Commission meeting.

This request meets all requirements; therefore, staff recommends approval of the request for a 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 alcohol serviceable area of the cocktail lounge shall be limited to approximately 3,600 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.**

B. **That the days and hours of alcoholic beverages sales and consumption shall be limited to:**

    Monday through Friday from 11:00 a.m. to 9:00 p.m.
    Saturday through Sunday from 12:00 p.m. (noon) to 5:00 p.m.

C. **That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.**

D. **That the establishment shall meet all requirements of the Fire Department and Code Administration.**

E. **That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.**

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 September 8, 2021, staff has not received any letters of objections.

Attachments:

Floor Plan (Exhibit A)
Site 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 4,774-SQUARE FOOT PORTION OF LOT 1, BLOCK 1, MESA VERDE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF NEELY AVENUE AND NORTH MIDLAND DRIVE), 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 4,774-square foot portion of Lot 1, Block 1, Mesa Verde Addition, 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 cocktail lounge (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 3,600 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 the following:

Monday through Friday from 11:00 a.m. to 9:00 p.m.; and
Saturday and Sunday from 12:00 p.m. (noon) to 5:00 p.m.

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

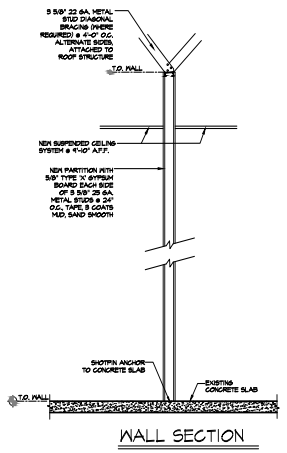
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

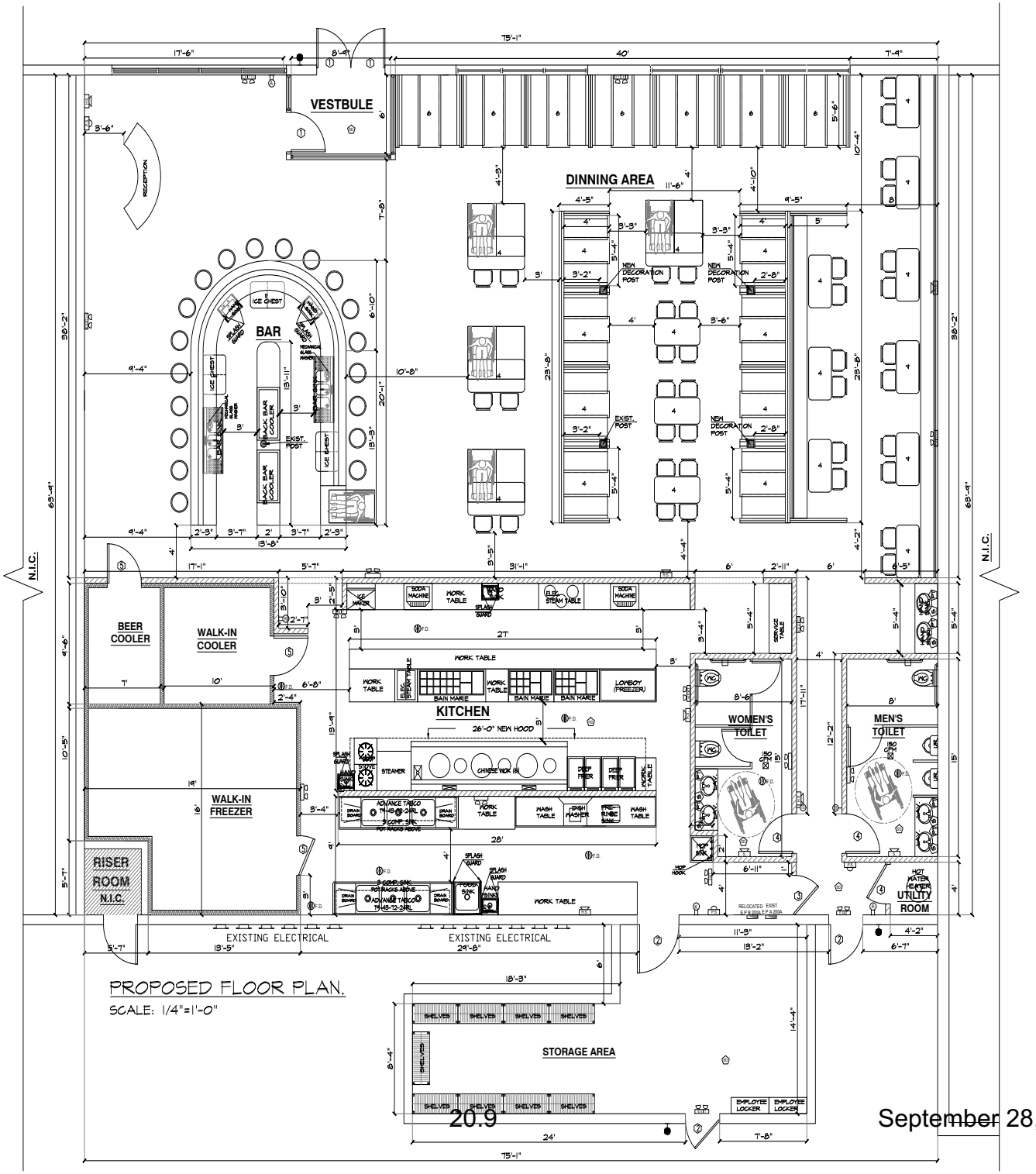
_____
John Ohnemiller, City Attorney

LEGEND	
SYMBOL	DESCRIPTION
	EXISTING WALL OR PARTITION TO REMAIN
	NEW 1 HR. PARTITION UL U404, 3 5/8" 25 GA. METAL STUDS @16" O.C. WITH 5/8" GYPSUM BOARD EACH SIDE TO 10'-6" A.F.F., TAPE, 3 COATS MUD, SAND SMOOTH, PAINT.
	EXISTING STOREFRONT TO REMAIN
	NEW PARTITION WITH 5/8" TYPE 'X' GYPSUM BOARD EACH SIDE OF 3 5/8" 25 GA. METAL STUDS @ 24" O.C.
	EXTERIOR DISCHARGE LIGHTING WITH BATTERY BACK-UP
	PORTABLE FIRE EXTINGUISHER, 10LB. TYPE K @48" A.F.F. MAX.
	ABC PORTABLE EXTINGUISHER, 10LB. @ 48" A.F.F. MAX.
	TACTILE SYMBOL
E.P.	ELECTRICAL PANEL
	EXIT SIGN WITH BATTERY BACKUP & EMERGENCY LIGHT, WIRE TO LOCAL LIGHTING CIRCUIT (EXISTING OR NEW)
	EMERGENCY LIGHT WITH BATTERY BACKUP, WIRE TO LOCAL LIGHTING CIRCUIT (EXISTING OR NEW)
HD	HEAT DETECTOR
SD	SMOKE DETECTOR
S	SOAP DISPENSER
P	RECESSED PAPER TOWEL DISPENSER & WASTE RECEPTACLE
F.D.	FLOOR DRAIN
F.S.	FIRE SUPPRESSION PULL STATION MOUNTED @ 44" A.F.F.
H.S.	HORN & STROBE
S	STROBE



WALL SECTION

SCALE: 1/2" = 1' - 0"



PROPOSED FLOOR PLAN.

SCALE: 1/4"=1'-0"

Frank D. Mileto AIA
Architect-Professional Planner
14 BEAVER BROOK DRIVE
LONG VALLEY, N.J. 07853
TEL: (908) 876-9400
FAX: (908) 876-9455

JD DESIGN ASSOCIATES INC.
2 ALLEN STREET, SUITE 4H, N.Y 10002
TEL: (212) 966-7828 FAX: (646) 863-5112

These drawings shall be used for the specific project location indicated within the Title Block, and shall not BE USED AT ANY OTHER LOCATION.

PROJECT :

PROPOSED RESTAURANT

2215 MIDLAND DR
MIDLAND, TX 79707

DISTRICT	SECTION	BLOCK	LOT

PRO. NO. : 04921

DATE	4/2/2021
SCALE	AS NOTED
DRWN BY	D.J
CHKD BY	

FLOOR PLAN & DETAILS

NO.	REVISIONS	DATE

SEAL & SIGNATURE :

REGISTERED ARCHITECT FRANK D. MILETO 18782 STATE OF TEXAS

REF. NO. : JD-02221

DWG NO. : A-1-0

MIDLAND
Planning Division

Specific Use Designation with Term for the Sale of Alcoholic Beverages for On-Premises Consumption

Project Number: _____

Case Number: SUD-21-0111

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Hook and Reel Midland LLC		Phone (432 312-7210 Email LSingh@Ad.com	
Address 2215 N Midland Dr. ste 2A	City Midland	State TX	Zip 79707
Property Owner Printed Name: Gordon Mesa Verde, LLC		Phone (832) 900-2270 Email INFO@gordonpartners.com	
Address c/o Gordon Partners 4900 Woodway Dr #1125	City Houston	State TX	Zip 77056
Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name: Xu Shen		Phone (214 799-9838 Email Bangni@ymail.com	
Address 2037 Camelot Dr.	City Allen	State TX	Zip 75013

Street Address: 2215 N Midland Dr. #2A, Midland TX 79707

Business Name: Hook and Reel Cajun Seafood and Bar

Legal Description Lot: 1 Block: 1 Subdivision: Mesa Verde

Current Zoning: RR Regional Retail

Reason for Request: to sell alcohol

Type of Business *(restaurant, bar, lounge, nightclub, etc.)*: Restaurant

Proposed/Current Days and Hours of Operation: M-Su 11:00 am — 9:00 pm

Proposed Days and Hours of Alcohol Service: M-F. 11:00 am - 9:00 pm. Sat Sun 12:00 - 5:00 pm

Total Square Footage of Business: 4,774 square feet

Square Footage of Alcohol Serviceable Area: 3600 square feet

Restroom Fixtures:	*Men*	**Toilets/Urinals:**	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: 7/12/2021
Applicant (printed): Hook and Rod Midland LLC	
Property Owner (signature):	Date: 7/12/2021
Property Owner (printed): Gordon/Mesa Verde, LLC	

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 XING LIN who, being by me duly sworn, upon oath says: That (s)he is authorized by Gordon Mesa Verde, LLC 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 13 day of July, 2021, to certify which witness my hand and seal of office.

MIRNA A. GRANADOS
Notary Public, State of Texas
Comm. Expires 04-07-2024
Notary ID 130610784

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

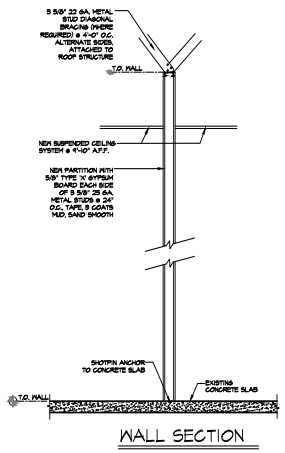
****Application will not be considered for scheduling until reviewed by a planner.****

FOR OFFICE USE ONLY	
☑ Property Owner Authorization	☑ Dimensioned Floor Plan
☑ Application Fee	☑ Site Plan
Check # 2176	☐ Plans in Digital Format (PDF/JPEG) ✓ missing will send later
Received By: KM	Date: JUL 13 2021

RECEIVED
BY: KM

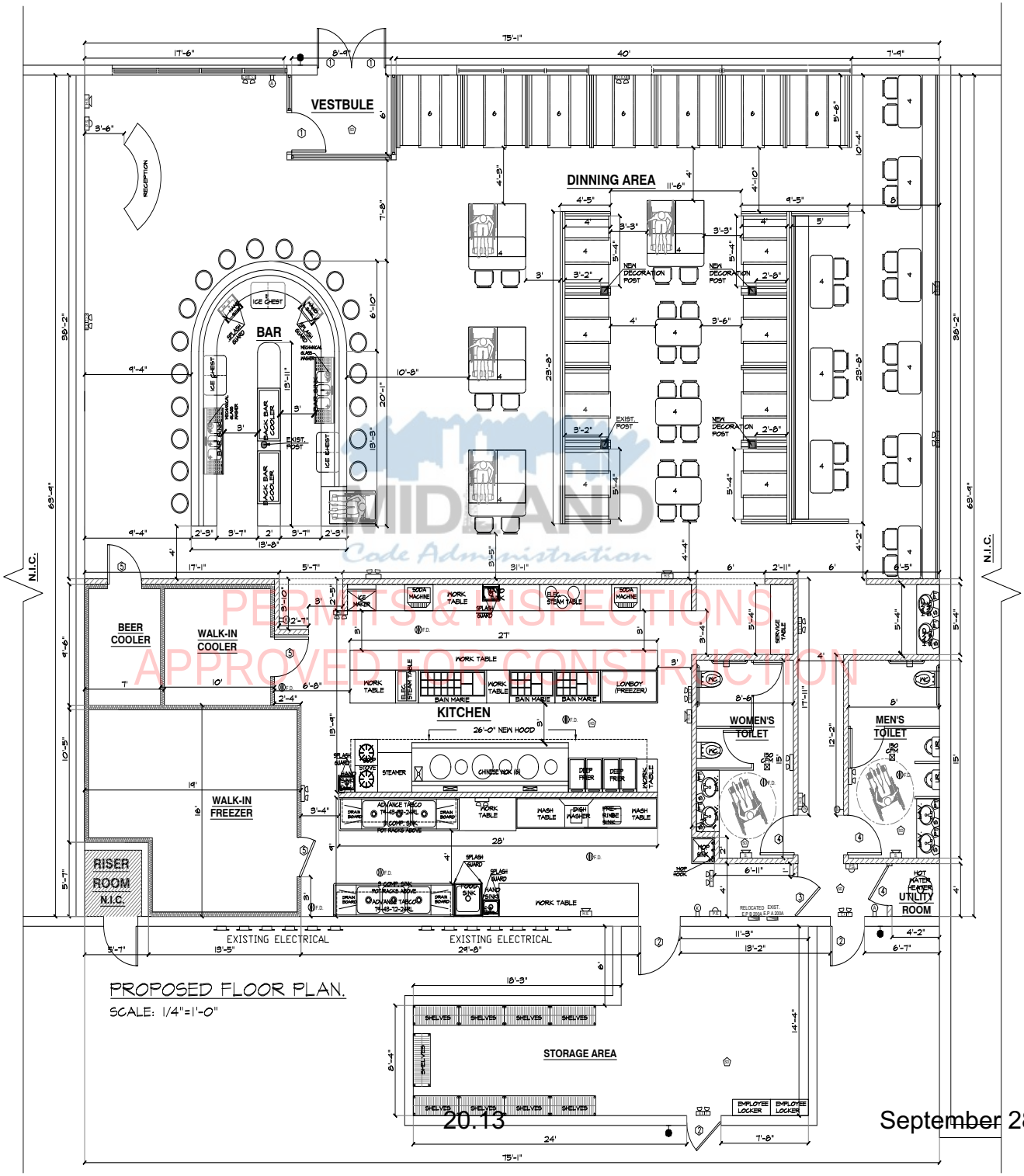
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LEGEND	
SYMBOL	DESCRIPTION
	EXISTING WALL OR PARTITION TO REMAIN
	NEW 1 HR. PARTITION UL. U404, 3 5/8" 25 GA. METAL STUDS @16" O.C. WITH 5/8" GYPSUM BOARD EACH SIDE TO 10'-0" A.F.F., TAPE, 3 COATS MUD, SAND SMOOTH, PAINT.
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E.P.	ELECTRICAL PANEL
	EXIT SIGN WITH BATTERY BACKUP & EMERGENCY LIGHT, WIRE TO LOCAL LIGHTING CIRCUIT (EXISTING OR NEW)
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SD	SMOKE DETECTOR
S	SOAP DISPENSER
P	RECESSED PAPER TOWEL DISPENSER & WASTE RECEPTACLE
F.D.	FLOOR DRAIN
F.S.	FIRE SUPPRESSION PULL STATION MOUNTED @ 44" A.F.F.
H.S.	HORN & STROBE
S	STROBE



WALL SECTION

SCALE: 1/2" = 1' - 0"



PROPOSED FLOOR PLAN.

SCALE: 1/4"=1'-0"

MIDLAND Code Administration
PERMITS & INSPECTIONS
APPROVED FOR CONSTRUCTION

Frank D. Mileto AIA
Architect-Professional Planner
14 BEAVER BROOK DRIVE
LONG VALLEY, N.J. 07853
TEL: (908) 876-9400
FAX: (908) 876-9455

JD DESIGN ASSOCIATES INC.
2 ALLEN STREET, SUITE 4H, N.Y 10002
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PROJECT :

PROPOSED RESTAURANT

2215 MIDLAND DR
MIDLAND, TX 79707

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DATE	4/2/2021
SCALE	AS NOTED
DRWN BY	D.J
CHKD BY	

FLOOR PLAN & DETAILS

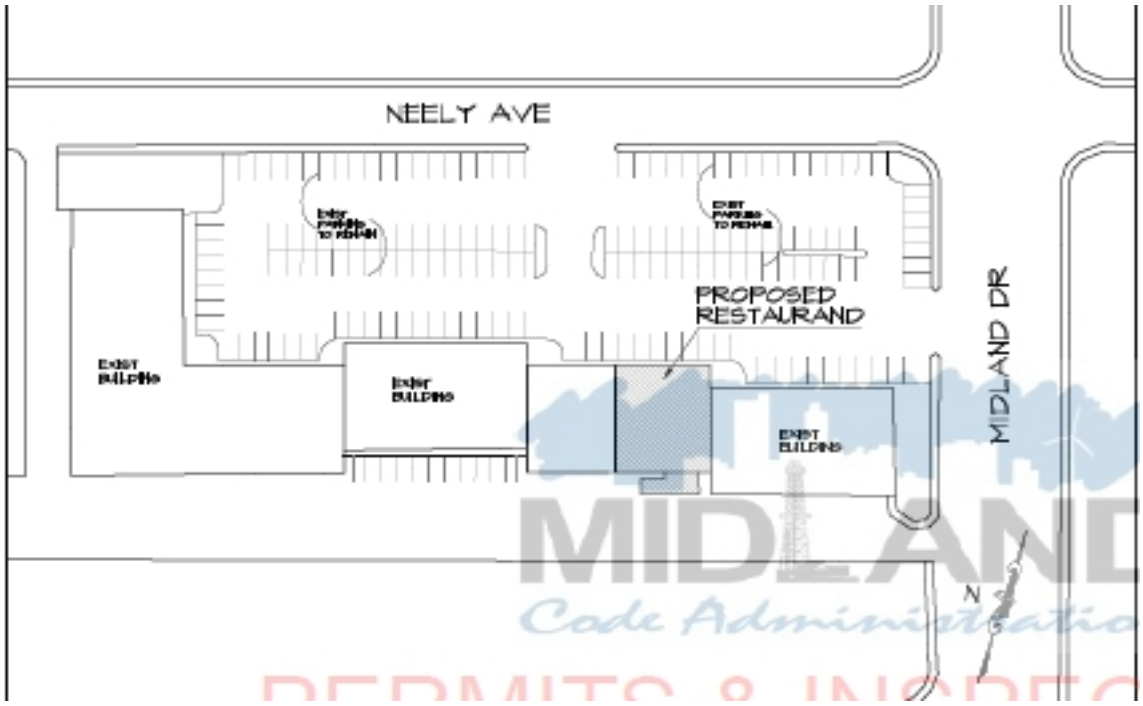
NO.	REVISIONS	DATE

SEAL & SIGNATURE :

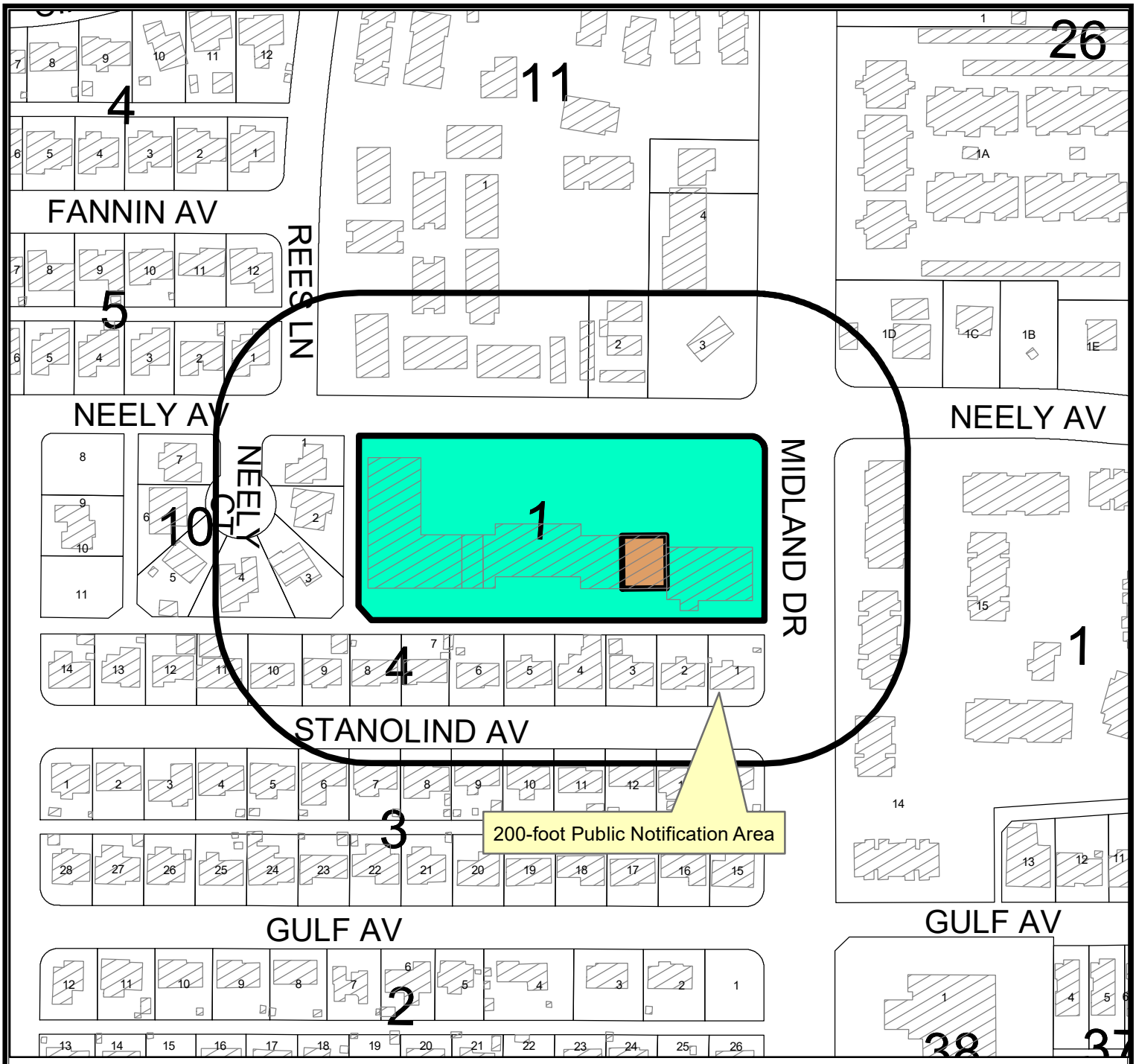
REGISTERED ARCHITECT FRANK D. MILETO 18782 STATE OF TEXAS

REF. NO. : JD-02221

DWG NO. : A-1-0



MIDLAND
Code Administratio
PERMITS & INSPEC



LOCATION MAP

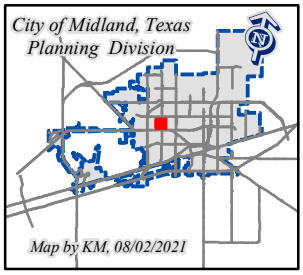
SUD-21-0111 **Scale: 1" = 200'**

Consider a request by Hook and Reel Midland LLC, 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 foot portion of Lot 1, Block 1, Mesa Verde, City and County of Midland, Texas.

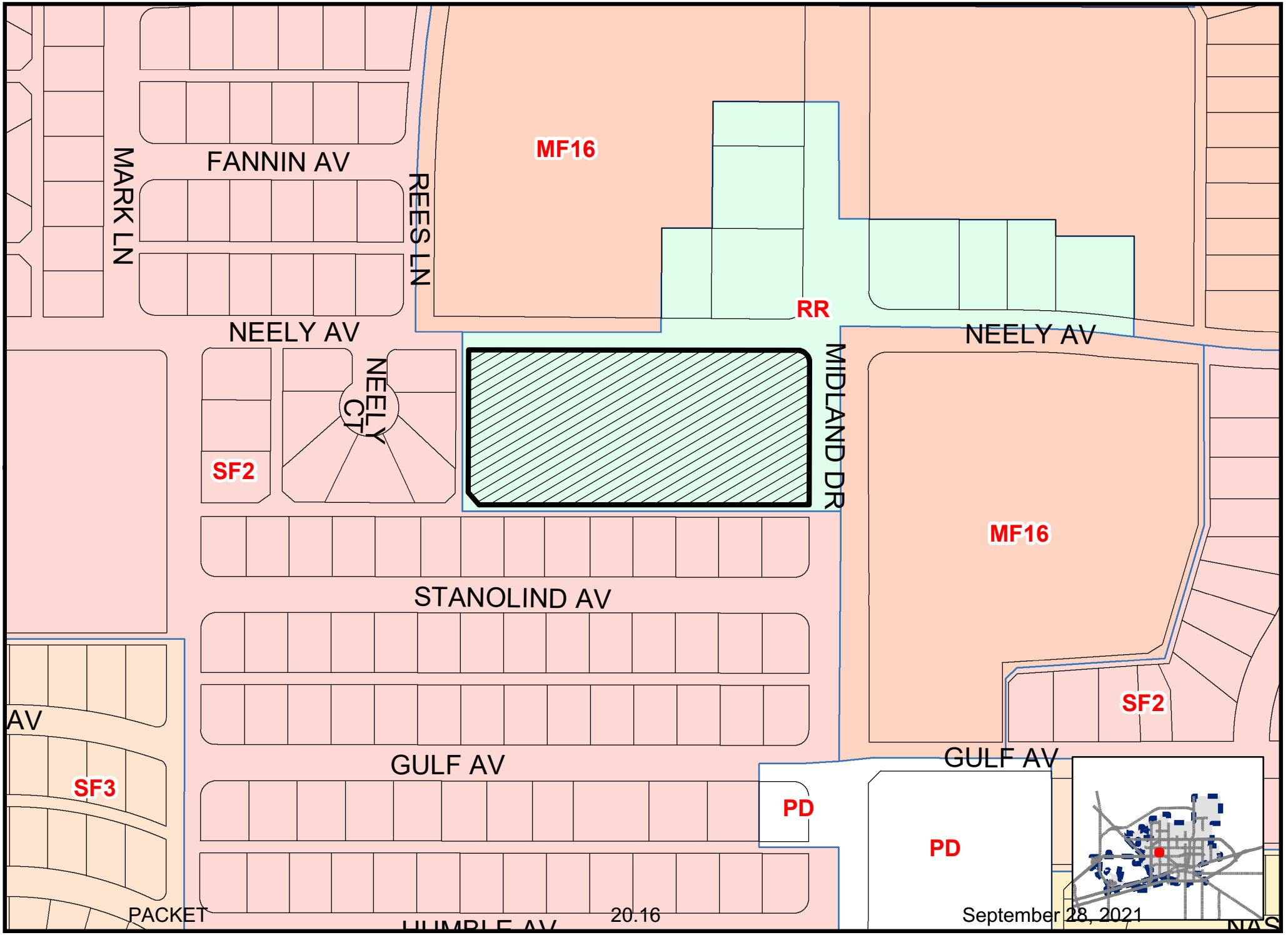
Generally located on the southwest corner of the intersection of Neely Avenue and N. Midland Drive. (Council District 4)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY 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 KM, 07/26/2021

SUD-21-0111

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.




SHERWIN-WILLIAMS PAINTS


AVAILABLE
RESTAURANT SPACE
2,000 SF - 4,500 SF
(832) 937-5900
G
GORDON PARTNERS


SUPERCUTS
NAILS & SPA

City Council Meeting

Item Number: 21

Meeting Date: September 14, 2021

To: City Council / City Manager

From: Kelly Martinez, Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO GRANT A SPECIFIC USE DESIGNATION WITH TERM FOR A 1,081-SQUARE FOOT PORTION OF BLOCK 64, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF WEST WALL STREET AND SOUTH COLORADO STREET), WHICH IS PRESENTLY ZONED CB, CENTRAL BUSINESS DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A COCKTAIL LOUNGE 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, Lee Sanchez, is requesting a Specific Use Designation with Term for the sale of all alcoholic beverages, for on premises consumption, in a cocktail lounge located in the basement of 303 W. Wall Street.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Current Zoning:

CB, Central Business District

Surrounding Zoning and Land Use:

The properties to the north, east, south, and west are all zoned CB, Central Business District and the locations of office buildings.

Discussion:

The applicant, Lee Sanchez, is requesting a Specific Use Designation to be able to sell all alcoholic beverages for on premises consumption, within a cocktail lounge. The property is zoned CB, Central Business District, which allows for the sale and on-premises consumption of alcoholic beverages with the approval of a Specific Use Designation.

SIP Haus is currently not in operation and does not have a specific use designation for the sale of all alcoholic beverages. The floor plan attached hereto as “Exhibit A” illustrates that the establishment will have a total square footage of 1,081 square feet, with an alcohol serviceable area of 850 square feet.

The proposed hours of operation are:

Monday through Sunday from 8:00 a.m. to 12:00 a.m. (midnight)

The applicant is requesting alcohol service hours as the following:

Monday through Sunday from 11:00 a.m. to 12:00 a.m. (midnight)

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.

Engineering: (Approved)

No objections.

Fire: (Approved)

No objections.

Transportation: (Approved)

No objection to zone change.

Code Administration: (Approved)

No objection. Previous occupancy for the BOA Basement Cafe amounts to 46. If any construction is to occur, apply for the necessary permits.

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) SIP Haus will create a vibrant atmosphere where residents can socialize and enjoy alcoholic beverages.

This request was approved at the August 16th, Planning and Zoning Commission meeting.

This request meets all requirements; therefore, staff recommends approval of the request for a Specific Use Designation with Term for the sale of all alcoholic beverages, for on-premises consumption, in a cocktail lounge, subject to Condition A through G.

Conditions:

A. **That the alcohol serviceable area of the cocktail lounge shall be limited to approximately 850 square feet as shown in Exhibit "A", which is attached hereto and incorporated herein for all purposes.**

B. **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)

C. **That the occupancy of the establishment shall not exceed the maximum occupancy determined by the Building Code and Fire Code.**

D. **That the establishment shall meet all requirements of the Fire Department and Code Administration.**

E. **That the sale and on-premises consumption of alcoholic beverages shall conform to applicable state and local laws.**

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 September 8, 2021, staff has not received any letters of objections.

Attachments:

Floor Plan (Exhibit A)
Application
Maps

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 1,081-SQUARE FOOT PORTION OF BLOCK 64, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF WEST WALL STREET AND SOUTH COLORADO STREET), WHICH IS PRESENTLY ZONED CB, CENTRAL BUSINESS DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A COCKTAIL LOUNGE 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 1,081-square foot portion of Block 64, Original Town Addition, 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 cocktail lounge (the "Establishment") for on-premises consumption, together with the uses permitted in the present CB, Central Business 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 850 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 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 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

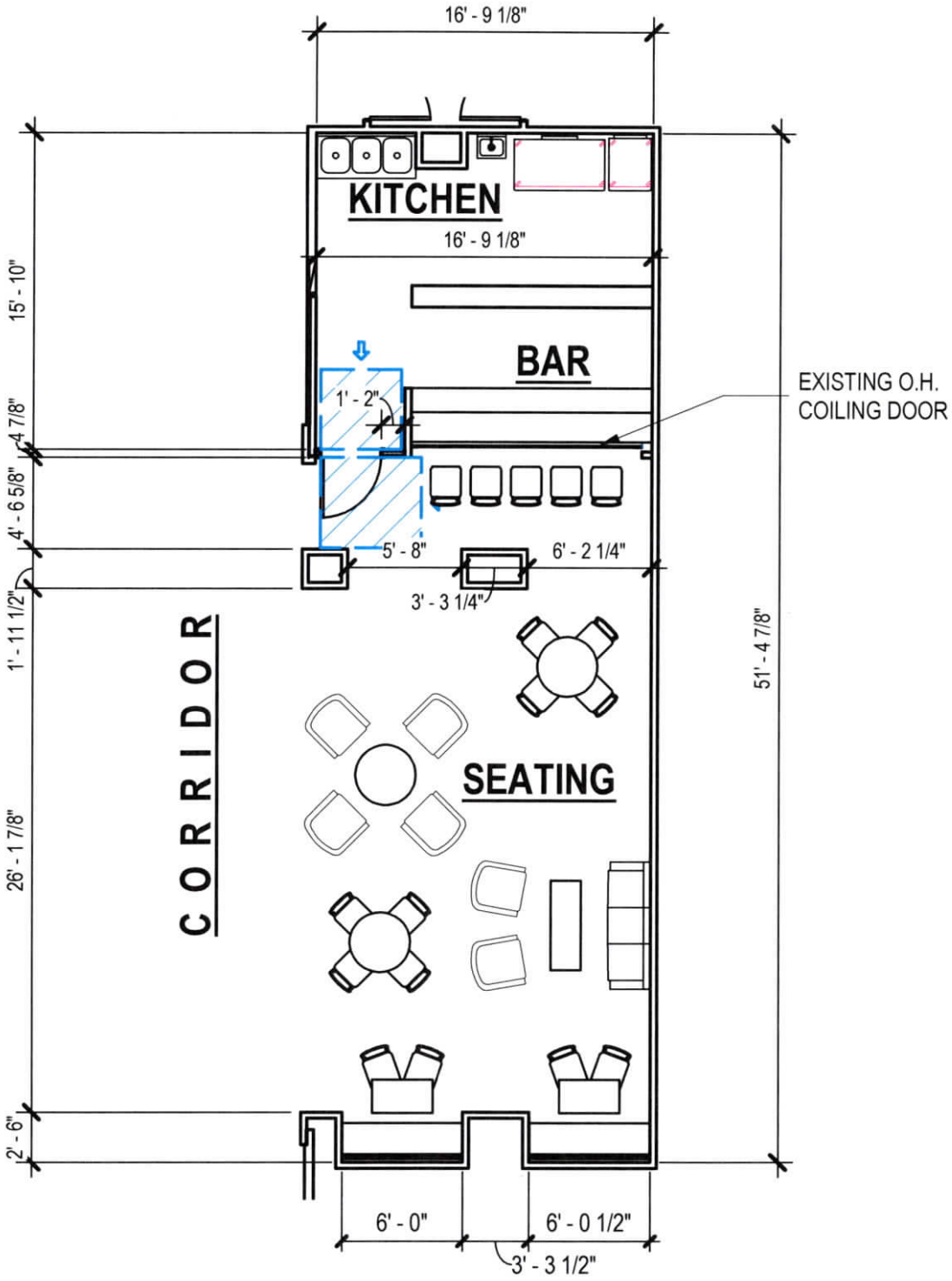
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"



FLOOR PLAN - BASEMENT CAFE

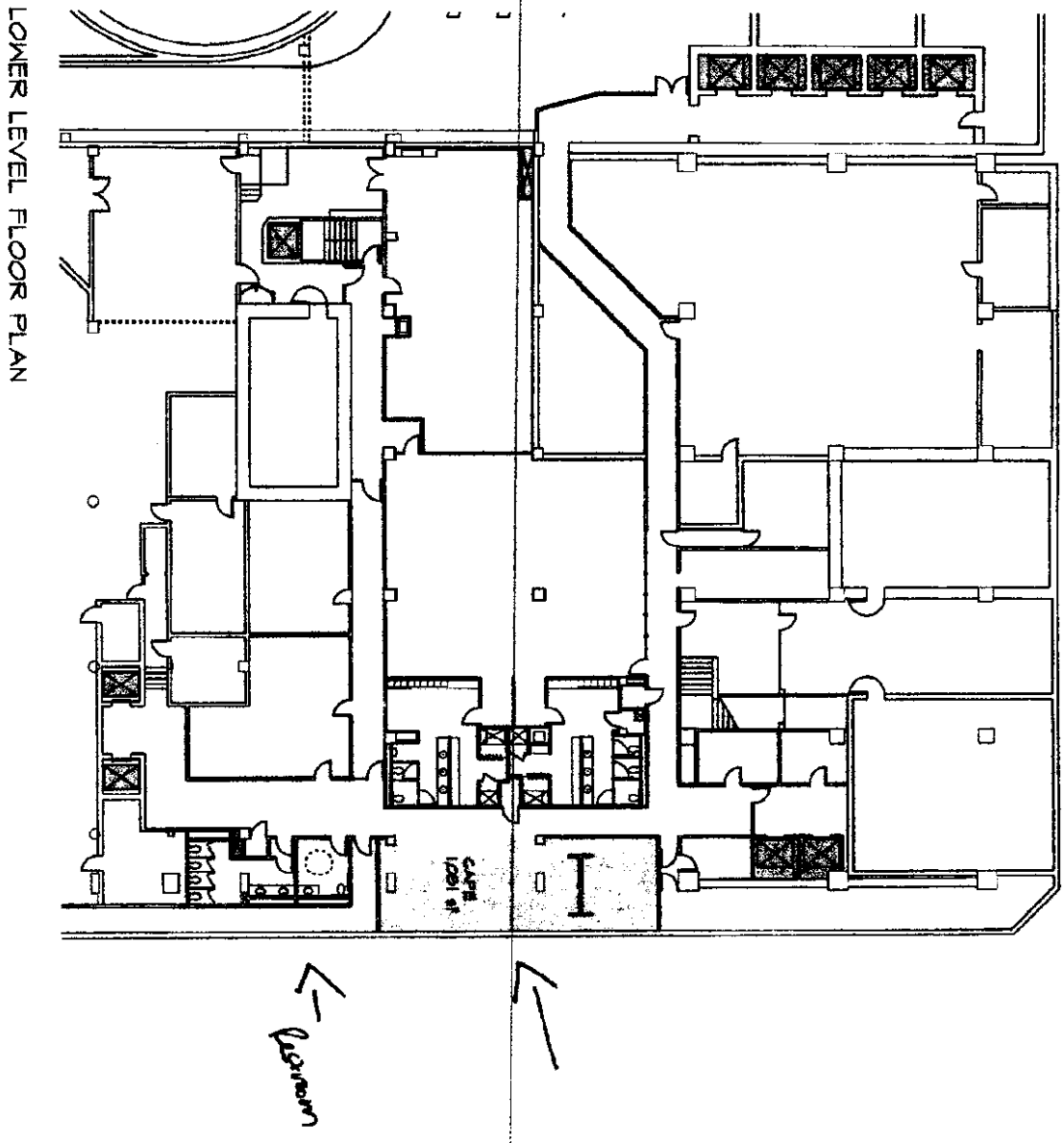
1/8" = 1'-0"

VANDERGRIFF GROUP
ARCHITECTS • PC
312 N. BIG SPRING SUITE 100 (432)687-0781 MIDLAND, TEXAS

© Copyright 2021 Vandergriff Group Architects PC

EXHIBIT "A" (cont'd)

Restroom location



MIDLAND Planning Division

Specific Use Designation with Term for the Sale of Alcoholic Beverages for On-Premises Consumption

Project Number: SUD-21-0112

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Lee Sanchez		Phone (432) 853-5659 Email Lee@sculpt-haus.com	
Address 5105 King Richards Row	City Midland	State TX	Zip 79707
Property Owner Printed Name: Franklin Mountain Permian II LP Jamil Gallagher		Phone (915) 504-7087 Email Jgallagher@FMMEP.com	
Address 201 E Main St 1615	City El Paso	State TX	Zip 79901
Representative *(if different from Applicant or Property Owner)* Firm: Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 303 W Wall ST 90 (Basement) Midland TX 79701

Business Name: Sip Haus LLC

Legal Description
Lot: 13-18 Block: 64 Subdivision:

Current Zoning: Commercial

Reason for Request: Cocktail Lounge / TABC licensurse

Type of Business *(restaurant, bar, lounge, nightclub, etc.)*: Cocktail Lounge

Proposed/Current Days and Hours of Operation: ~~Tuesday~~ Monday - Sunday 8a - Midnight

Proposed Days and Hours of Alcohol Service: Tues - Sunday 7pm - 12am ~~Saturday/Sunday 12pm - 5pm~~ Mon-Sun 11am - midnight ↑updated hours

Total Square Footage of Business: 1081

Square Footage of Alcohol Serviceable Area: 850

Restroom Fixtures: *Men*	**Toilets/Urinals:**	1 / 0	**Bathroom Sinks:**
Women	**Toilets:**		**Bathroom Sinks:**

1 unisex restroom ADA Compliant - 1 sink 1 toilet in common area.

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: 7/1/2021
Applicant (printed): Lee Sanchez	DocuSigned by:	
Property Owner (signature):	Jamie Gallagher 5227DE9206CC43D...	Date: 7/1/2021
Property Owner (printed): Jamie Gallagher		

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 Lee Sanchez who, being by me duly sworn, upon oath says: That (s)he is authorized by Jamie Gallagher 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 1st day of July, 2021, to certify which witness my hand and seal of office.

PIPPI G ESPINOZA
Notary ID #130125755
My Commission Expires
February 20, 2023

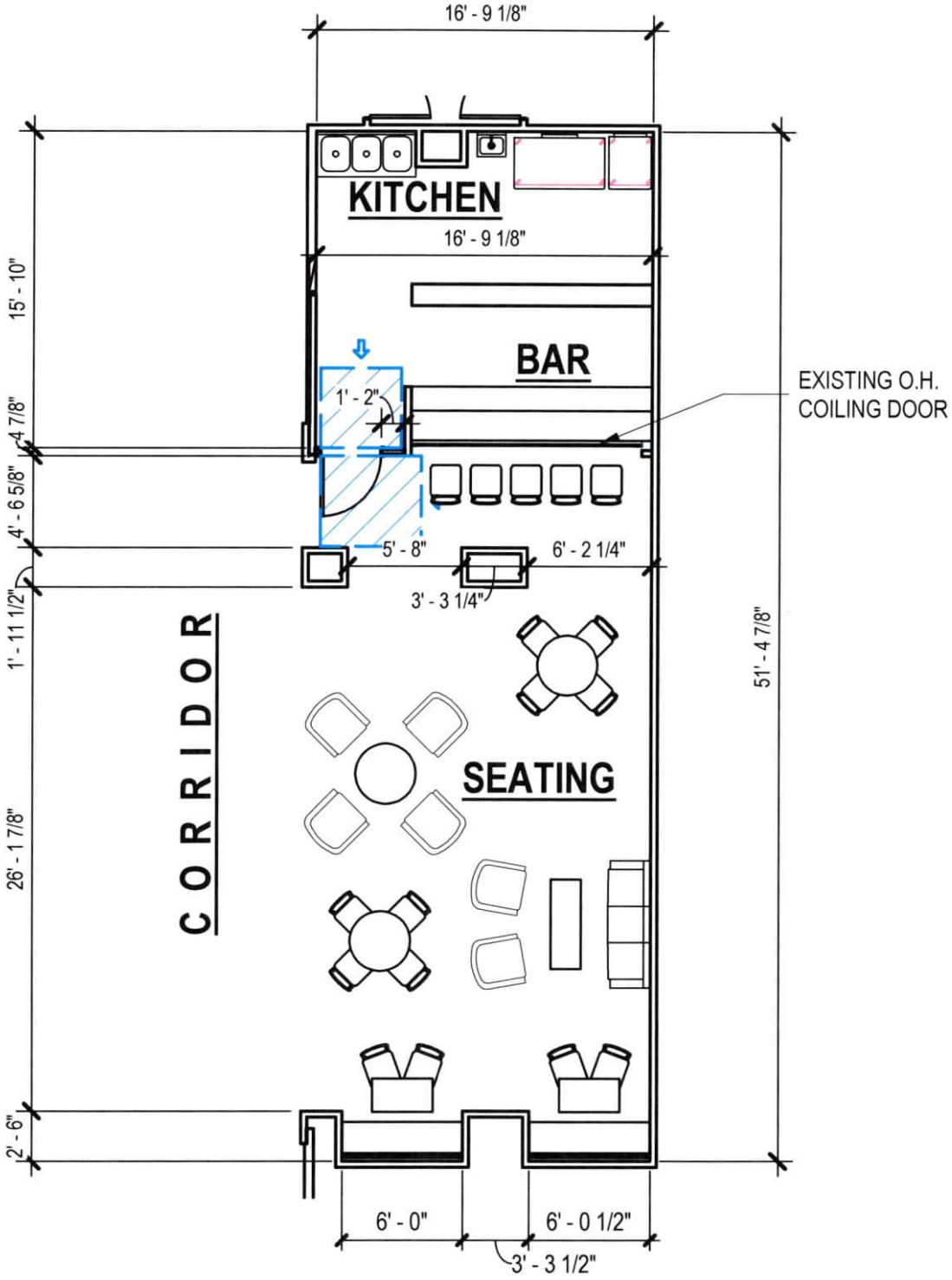
Pippi G. Espinoza

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: Emailed	Date: 7/29/21

****Application will not be considered for scheduling until reviewed by a planner.****



FLOOR PLAN - BASEMENT CAFE

1/8" = 1'-0"

VANDERGRIFF GROUP

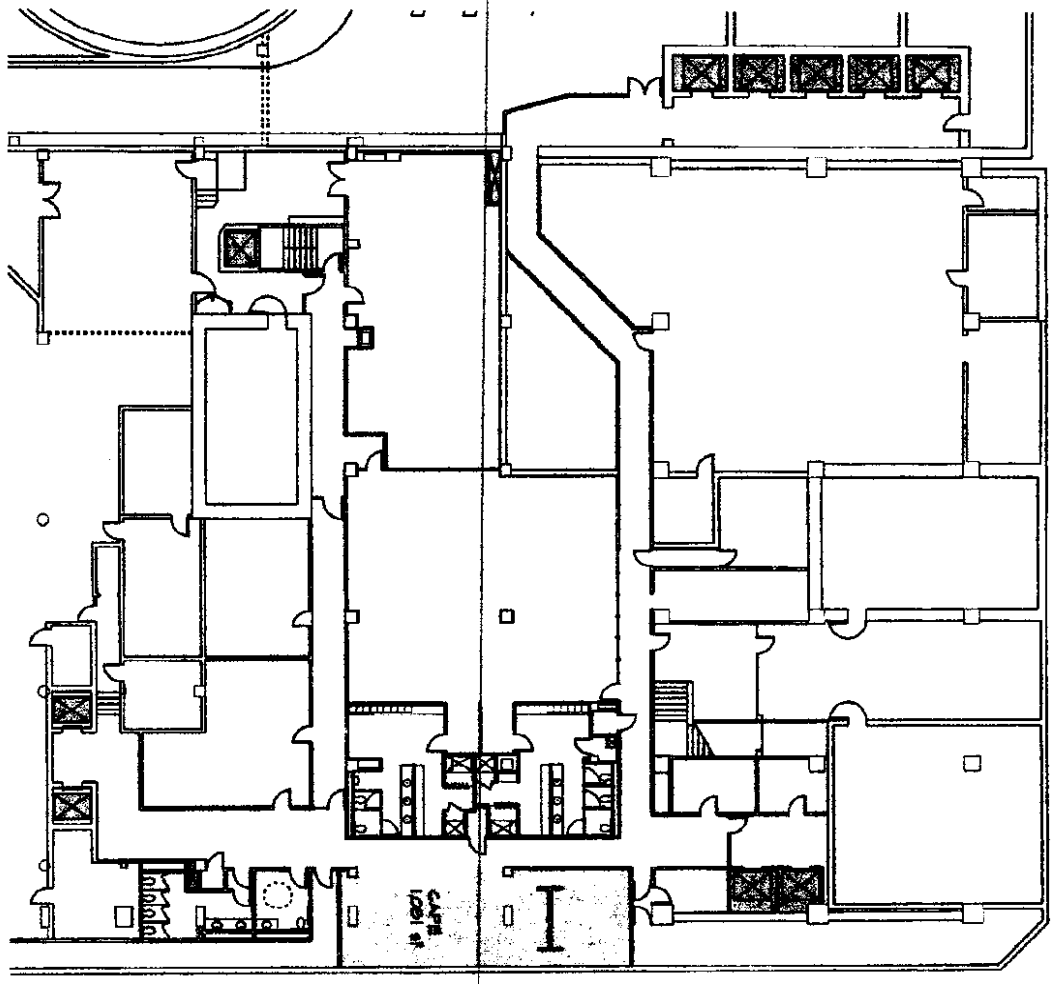
ARCHITECTS • PC

312 N. BIG SPRING SUITE 100 (432)687-0781 MIDLAND, TEXAS

© Copyright 2021 Vandergriff Group Architects PC

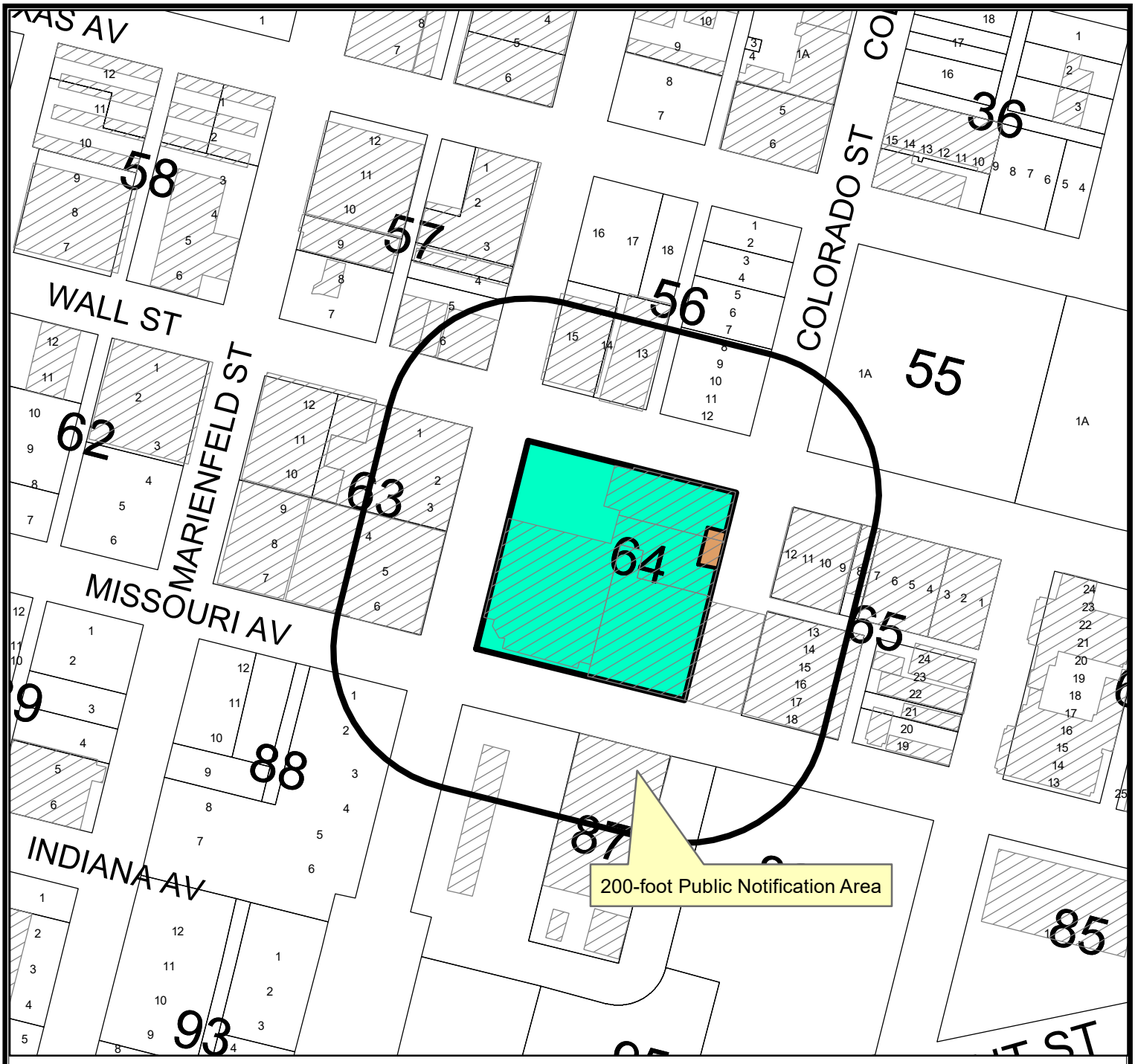
Restroom location

LOWER LEVEL FLOOR PLAN



Restrooms

BOA LL	BANK OF AMERICA LOWER LEVEL PLAN SCALE: 1/32" = 1'-0"	14107	BOA MIDLAND AQUISITION	EDMONDS International USA



LOCATION MAP

SUD-21-0112 **Scale: 1" = 200'**

Consider a request by Lee Sanchez for a Specific Use Designation with Term for the sale of all alcoholic beverages for on-premises consumption, in a cocktail lounge, on a 1,081 square foot portion of all Block 64, Original Town, City and County of Midland, Texas.

Generally located on the southwest corner of W. Wall Street and S. Colorado Street. (Council District 2)

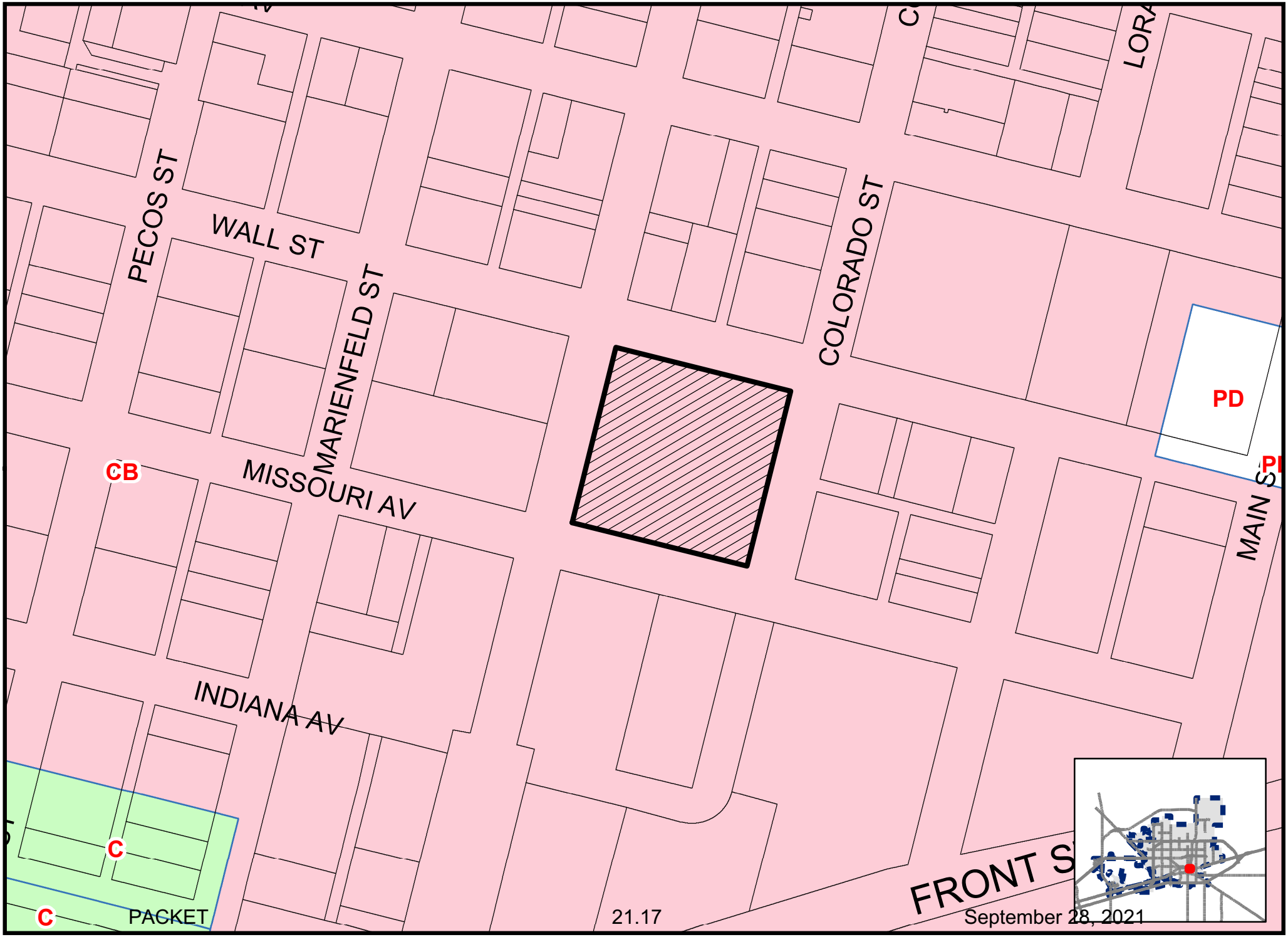
LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ITS PRIOR 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.

September 28, 2021



Map By KM, 08/03/2021

SUD-21-0112

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.


COLORADO ST
CENTENNIAL PARK


MIDLAND
CHAMBER
OF COMMERCE
303 WEST WALL





City Council Meeting

Item Number: 22

Meeting Date: September 14, 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 1, BLOCK 1, RUCKUS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM TH, TOWNHOUSE (ATTACHED) DWELLING DISTRICT, IN PART, SF-2, SINGLE-FAMILY DWELLING DISTRICT, IN PART, SF-3, SINGLE-FAMILY DWELLING DISTRICT, IN PART, MF-16, MULTIPLE-FAMILY DWELLING DISTRICT, IN PART, AND PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, IN PART, TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF FAIRGROUNDS ROAD, APPROXIMATELY 1,899 FEET SOUTH OF EAST LOOP 250 NORTH); 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, Barbara French, is requesting a zone change from TH, Townhouse (Attached) Dwelling District in part; SF-2, Single-Family Dwelling District in part; SF-3, Single-Family Dwelling District in part; MF-16, Multiple-Family Dwelling District in part; and PD, Planned District for a Housing Development in part; to RR, Regional Retail District, in order to obtain a Specific Use Designation Permit Without Term, to allow for future development of the Lone Star Animal Sanctuary facilities.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the city.

Discussion:

Current Zoning:

TH, Townhouse (Attached) Dwelling District in part; SF-2, Single-Family Dwelling District in part; SF-3, Single-Family Dwelling District in part; MF-16, Multiple-Family Dwelling District in part; and PD, Planned District for a Housing Development in part.

Surrounding Zoning and Land Use:

The properties to the north are zoned MF-16, Multiple-Family Dwelling District, and the location of a residence, and PD, Planned District for a Housing Development, and the location of vacant land. The property to the east is zoned SF-2, Single-Family Dwelling District, and the location of vacant land. The properties to the south are zoned SF-2, Single-Family Dwelling District, and MF-16, Multiple-Family Dwelling District, and the location of vacant land. The property to the west across N. Fairgrounds Road is zoned SF-1, Single-Family Dwelling District, and the location of a golf course.

Analysis:

The applicant, Barbara French, is requesting a zone change to RR, Regional Retail District, in order to obtain a permit, to allow for future development of Lone Star Animal Sanctuary facilities. A kennel is allowed in the RR, Regional Retail District with a Specific Use Designation Permit, according to the Midland City code (11-1-1-(B)-19).

Per the previous zoning ordinance, kennels were allowed within this zoning district with an approved SUD without term. As of July 1, 2019, the new zoning ordinance does not allow the use of kennels within the TH, Townhouse (Attached) Dwelling District in part; SF-2, Single-Family Dwelling District in part; SF-3, Single-Family Dwelling District in part; MF-16, Multiple-Family Dwelling District in part; and PD, Planned District for a Housing Development in part. Changing the zoning of this property to RR, Single Regional Retail District, will bring this lot into conformance with the current zoning ordinance and allow for the future expansion.

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 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.

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 to zone change.

Oil and Gas: (Approved)

No oil and gas issues.

Planning:

This proposed development fits with Chapter 3, An Integrated Land Use Vision, “Future Land Use Map” of the Tall City Tomorrow comprehensive plan as this area is called for Urban Low. This designation calls for a mix of relatively low-density housing and easily accessed neighborhood commercial services. Compatibility will be achieved through gradual increases of intensity transitioning from one land use to another. Therefore, the future expansion of Lone Star Sanctuary for animals at this location is in conformance with the recommendations of the Tall City Tomorrow plan as it provides for the integration of uses.

This request has circulated to and reviewed by all pertinent City departments for internal review and has received no objections.

This request has been recommended for approval at the August 16, 2021 Planning and Zoning Commission meeting.

Staff recommends approval of the zone change from TH, Townhouse (Attached) Dwelling District in part; SF-2, Single-Family Dwelling District in part; SF-3, Single-Family Dwelling District in part; MF-16, Multiple-Family Dwelling District in part; and PD, Planned District for a Housing Development in part; to RR, Regional Retail District, subject to condition A.

Conditions:

A. That the use and development of this property shall conform to the regulations of the RR, Regional Retail District.

Letters of Objection:

Staff has not received any objections as of September 9, 2021.

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 1, BLOCK 1, RUCKUS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM TH, TOWNHOUSE (ATTACHED) DWELLING DISTRICT, IN PART, SF-2, SINGLE-FAMILY DWELLING DISTRICT, IN PART, SF-3, SINGLE-FAMILY DWELLING DISTRICT, IN PART, MF-16, MULTIPLE-FAMILY DWELLING DISTRICT, IN PART, AND PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, IN PART, TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF FAIRGROUNDS ROAD, APPROXIMATELY 1,899 FEET SOUTH OF EAST LOOP 250 NORTH); 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 1, Block 1, Ruckus Addition, City and County of Midland, Texas (the "Property") to RR, Regional Retail 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 TH, Townhouse (Attached) Dwelling District, in part, SF-2, Single-Family Dwelling District, in part, SF-3, Single-Family Dwelling District, in part, MF-16, Multiple-Family Dwelling District, in part, and PD, Planned District for a Housing Development, in part, to RR, Regional Retail 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: Z-21-0250

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Barbara French		Phone (432) 352-8287 Email lssfa4200@gmail.com	
Address 5512 Carmel Ct	City Midland	State TX	Zip 79707

Property Owner Printed Name: Dolores L. McCall		Phone (432) 682-5662 Email doloresmccall@dlmccall.com	
Address 2608 W Dengar	City Midland	State TX	Zip 79705

Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address:
4200 N Fairgrounds Road

Legal Description
Lot: Block: Subdivision: Ruckus Addition

Current Zoning:
None

Proposed Zone: Regional Retail
(List by tracts if more than one district is requested)

Reason for Zone Change Request: To build and improve facilities at Lone Star Sanctuary for Animals, a no-kill animal shelter for dogs and cats.

Present Use of Property: _____

Proposed Use of Property: To house and care for Midland's homeless animals until they can be placed in permanent loving homes.

How would this zone change affect the public health, safety and welfare?
Would enable Lone Star to provide adequate housing and facilities for their staff and animals, and help relieve the burden of Midland Animal Control.

Describe how conditions affecting the property have changed since present zoning designation: No change. Property is undeveloped.

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): Barbara French	Date: 7-6-21
Applicant (printed): BARBARA FRENCH	
Property Owner (signature): Dolores L. McCall	Date: 7-6-21
Property Owner (printed) : DOLORES L. McCALL	

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 BARBARA FRENCH who, being by me duly sworn, upon oath says: That (s)he is the owner of _____ or authorized by Dolores L. McCall, 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.

Barbara French
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 6th day of July, 2021, to certify which witness my hand and seal of office.

Walter Chandler Tate

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

NOTARY PUBLIC STATE OF TEXAS
Walter Chandler Tate
My Commission Expires
01/30/2023
ID No. 131872990

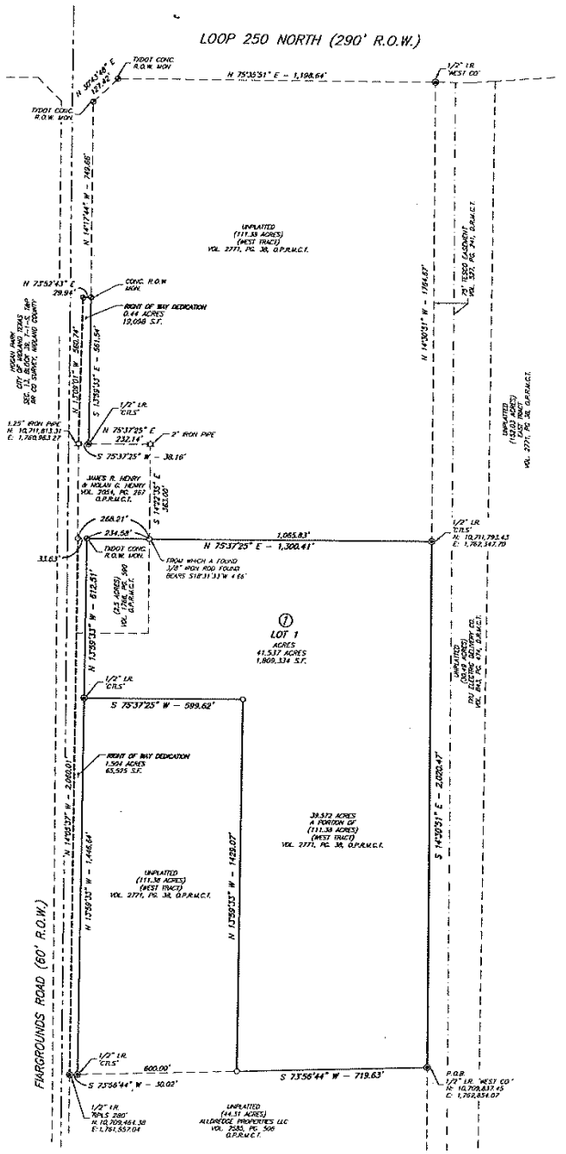
FOR OFFICE USE ONLY

☑ Property Owner Authorization	☐ Dimensioned Site Plan N/A
☑ Application Fee	☐ Plans in Digital Format (PDF/JPEG)
Check # 4395	
Received By: Joseph Maynard	Date: RECEIVED JUL 14 2021 BY:

****Application will not be considered for scheduling until reviewed by a planner.****

RUCKUS ADDITION

BEING A 41.537 ACRE TRACT OUT OF OF THE WEST/2 OF SECTION 30, BLOCK 38, T-1-S, T&P RAILROAD COMPANY SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS.



200 100 0 200

SCALE 1" = 200'

GRID

BEARINGS, DISTANCES, COORDINATES AND ACREAGE SHOWN HEREON ARE GRID, NAD83(CORS96), TEXAS CENTRAL ZONE (4203), US FEET.

LEGEND

⊕	FOUND IRON RODS AS NOTED
○	FOUND IRON PIPE AS NOTED
⊗	FOUND TXDOT CONCRETE R.O.W. MONUMENT
○	1/2 INCH IRON REBAR W/ PLASTIC CAP MARKED "JFW FIRM #100133-00"
	PROPERTY BOUNDARY LINE
	NEW LOT LINE
	EXISTING EASEMENT LINE
	TRACT LOT LINE
	SECTION LINE
O.P.R.M.C.T.	OFFICIAL PUBLIC RECORDS MIDLAND COUNTY TEXAS
D.R.M.C.T.	DEED RECORDS MIDLAND COUNTY TEXAS
(ACRES/TRACT)	RECORD CALL

UTILITY COMPANY'S CERTIFICATE
This plat has been checked for accessibility of utilities.

	MARK Litz
	Marsha Auchando
	Luis Mendez
	Eric Bullock
	MIKE TODE
	Jeffrey D. Henderson

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 THE DEVELOPMENT OF ANY LOT AND BEFORE A BUILDING PERMIT MAY BE OBTAINED.
3. BEARINGS, DISTANCES AND ACREAGE SHOWN HEREON ARE MADE FROM GRID, LAMBERT GRID AND CONFORM TO THE TEXAS COORDINATE SYSTEM, "TEXAS CENTRAL ZONE". UTILIZING NGS GPS SOLUTION, COMBINED SCALE FACTOR = 0.99988439.

OWNER'S CERTIFICATE

THE STATE OF TEXAS
COUNTY OF MIDLAND

WHEREAS I, Dolores L. McCall, am the record owner of a 39.572 acre tract of land situated in the W/2 of Section 30, Block 38, T-1-S, T&P Railroad Company Survey, County of Midland,

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That I, DOLORES L. MCCALL, being the owner of the land shown on this plat designated as RUCKUS ADDITION, an Addition to the City of Midland, Midland County, Texas and whose name is subscribed hereto, do hereby dedicate to the public use forever the streets, alleys, and easements shown hereon, and do hereby give an easement of ingress and egress to the City of Midland for garbage and trash collection, and location and maintenance of street lighting and access thereto, and condition said easement that no construction shall commence on said lot or lots until the exact location of said conductors thereunto have been selected and approved by the Director of Utilities.

WITNESS my hand at Midland, Texas, this
the 30th day of March, 2016.
Dolores L. McCall
By: DOLORES L. MCCALL

OWNER'S CERTIFICATE

THE STATE OF TEXAS
COUNTY OF MIDLAND

WHEREAS Lone Star Sanctuary for Animals, Inc., the record owner of a 2.5 acre tract of land situated in the W/2 of Section 30, Block 38, T-1-S, T&P Railroad Company Survey, County of Midland,

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That I, DOLORES L. MCCALL, being the authorized representative of Lone Star Sanctuary for Animals, Inc. of the land shown on this plat designated as RUCKUS ADDITION, an Addition to the City of Midland, Midland County, Texas and whose name is subscribed hereto, do hereby dedicate to the public use forever the streets, alleys, and easements shown hereon, and do hereby give an easement of ingress and egress to the City of Midland for garbage and trash collection, and location and maintenance of street lighting and access thereto, and condition said easement that no construction shall commence on said lot or lots until the exact location of said conductors thereunto have been selected and approved by the Director of Utilities.

WITNESS my hand at Midland, Texas, this
the 31st day of March, 2016.
Dolores L. McCall
By: DOLORES L. MCCALL, AUTHORIZED REPRESENTATIVE LONE STAR SANCTUARY FOR ANIMALS, INC.

ACKNOWLEDGEMENT

THE STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared DOLORES L. MCCALL, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he was acting as owner, and that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated. Given under my hand and seal of office this

the 31st day of March, 2016.

NOTARY PUBLIC, STATE OF TEXAS

PALADIN MCCABA
Notary Public, State of Texas
Comm. Expires 06-26-2019
Notary ID 130341158

ACKNOWLEDGEMENT

THE STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared DOLORES L. MCCALL, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he was acting as owner, and that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated. Given under my hand and seal of office this

the 31st day of March, 2016.

NOTARY PUBLIC, STATE OF TEXAS

PALADIN MCCABA
Notary Public, State of Texas
Comm. Expires 06-26-2019
Notary ID 130341158

CERTIFICATE OF APPROVAL

This is to certify that the above and foregoing plat of "RUCKUS ADDITION", was approved by proper action of the City Planning and Zoning Commission of the City of Midland, Texas on this 19th day of October, 2016.

JANE WOLF, CHAIRMAN

JESSICA CARPENTER, SECRETARY

SURVEYOR'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

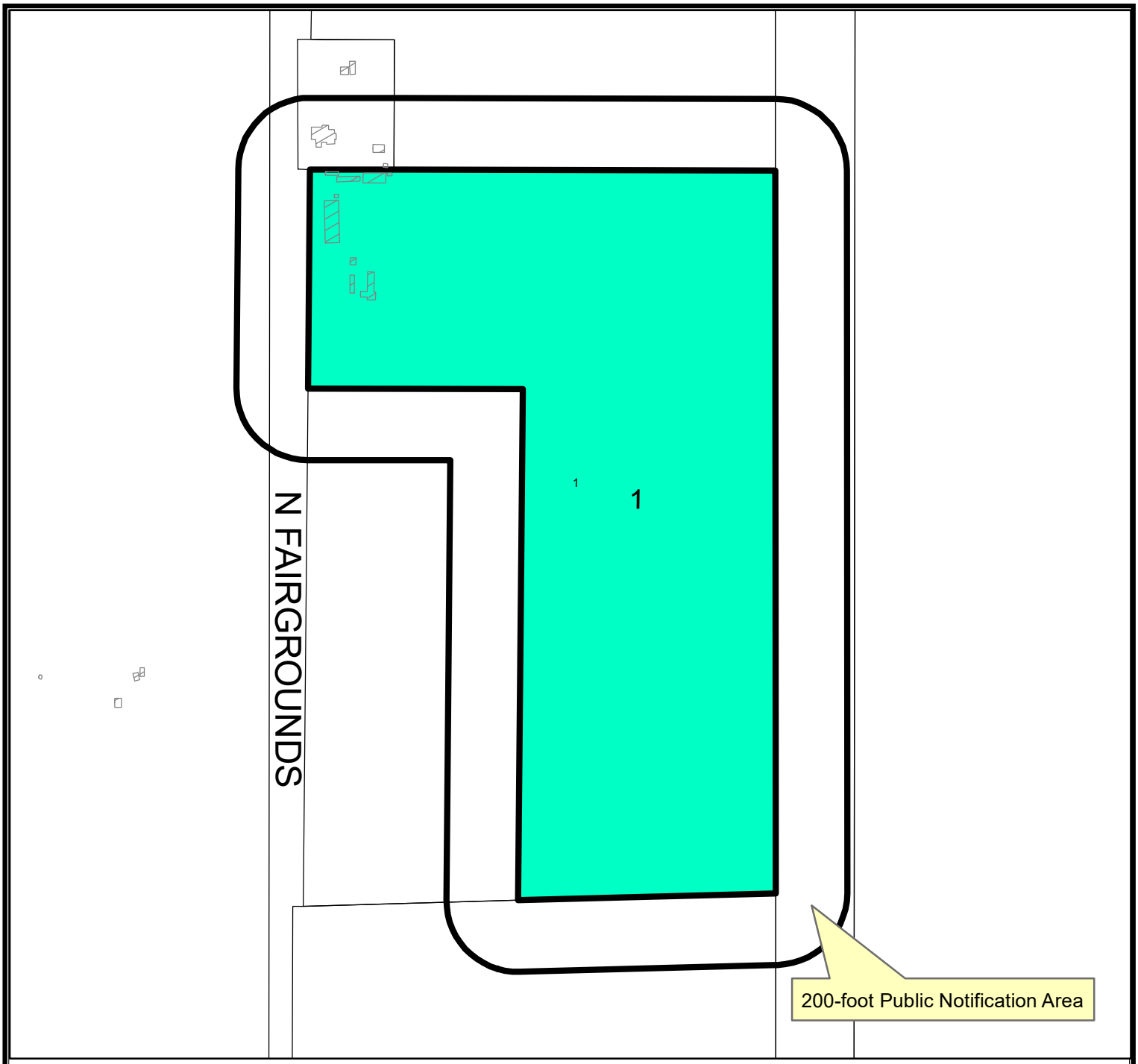
That I, Phillip J. Sublett, a Registered Professional Land Surveyor of the State of Texas, do hereby certify that this plat was prepared from an actual and accurate survey of the land and that the corner monuments shown hereon were properly located under my personal supervision, in accordance with the Subdivision Regulations of the City of Midland, Texas.

Phillip J. Sublett, R.P.L.S.
Registration Number - 5455

PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS
NO. 2016-13309 CABINET J
DATE 5-12-2016 PAGE 132

John F. Watson & Company
LAND & DEVELOPMENT SERVICES
PROFESSIONAL LAND SURVEYORS
1901 N. Lamesa, Suite 220 ph. (432) 520-2400
Midland, Texas 79701 fax (432) 520-2494
T.B.P.E.S.F.Ref 10115500 www.watsonsurvey.com
Your Future Is Responsible Development
JOB NO.: 13-02052 FIELD BOOK 277/17
DRAFT REV.

RUCKUS ADDITION



LOCATION MAP

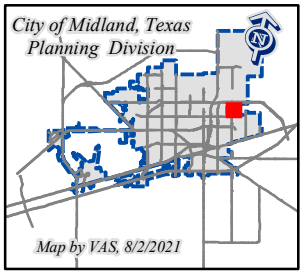
Z-21-0250 **Scale: 1" = 400'**

Consider a request by Barbara French for a zone change from TH, Townhouse (Attached) Dwelling District in part; SF-2, Single-Family Dwelling District in part; SF-3, Single-Family Dwelling District in part; MF-16, Multiple-Family Dwelling District in part; and PD, Planned District for a Housing Development in part; to RR, Regional Retail District, on Lot 1, Block 1, Ruckus Addition, City and County of Midland, Texas.

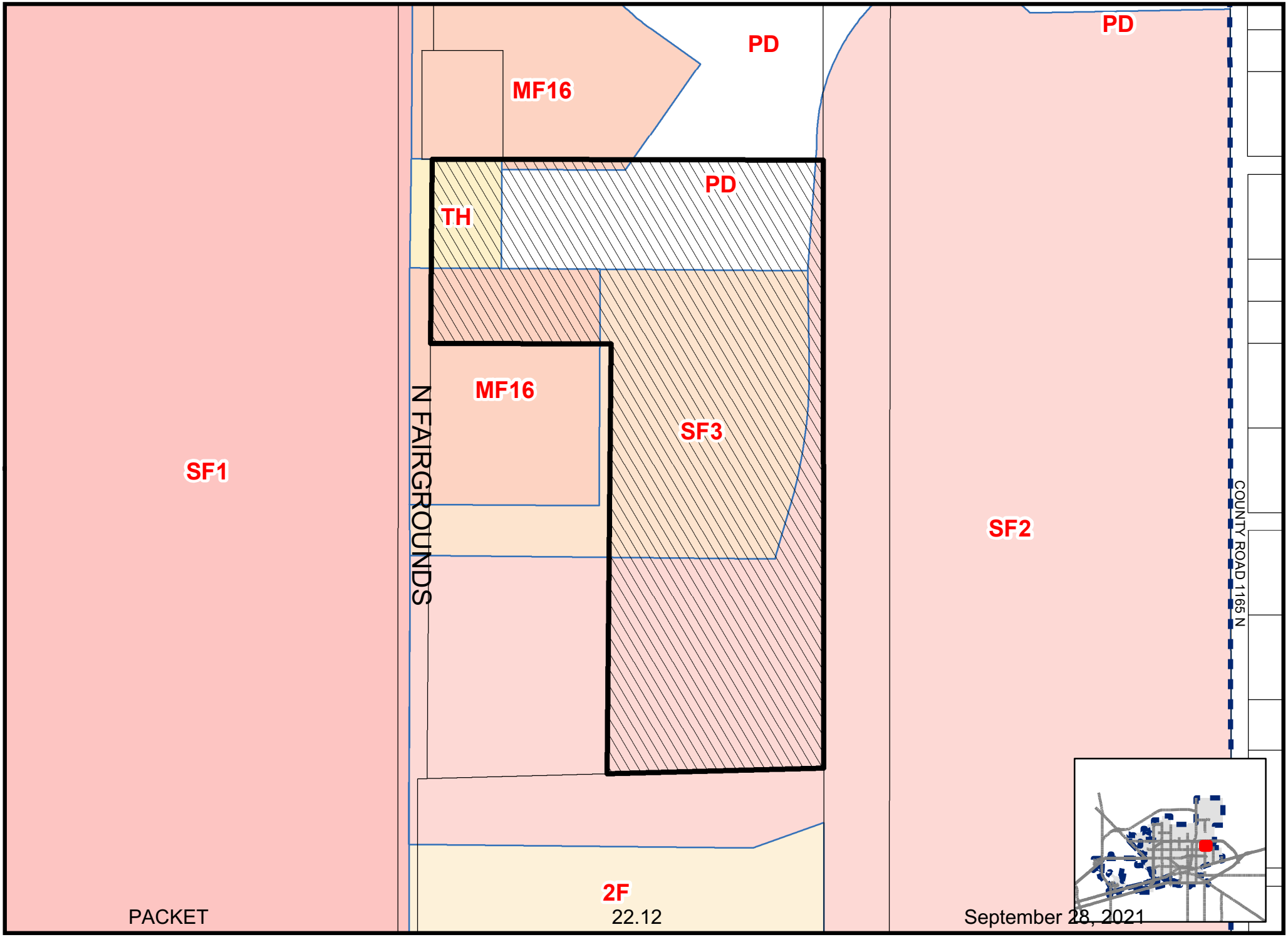
Generally located on the east side of Fairgrounds Road, approximately 1,899 feet south of E. Loop 250 North. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ATTORNEY OPINION NOR IS IT DESIGNED TO BE USED AS THE 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.



PACKET 22.12 September 28, 2021

Map By VAS, 8/2/2021

Z-21-0250 **Scale: 1" = 200'** **ZONING MAP**




WARNING


Lone Star Sanctuary For Animals
"Saving and Changing Lives"
4200 North Fairgrounds Road
(432) 563-7287



City Council Meeting

Item Number: 23

Meeting Date: September 14, 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 5, BLOCK 39, GREENWOOD ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF SOUTH BENTON STREET, APPROXIMATELY 162 FEET NORTH OF EAST CALIFORNIA 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, Guadalupe Zarate, is requesting a zone change from MF-22, Multiple-family dwelling District, to SF-3, Single-Family Dwelling District, for the construction of a new single-family residence.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the city.

Discussion:

Current Zoning:

MF-22, Multi-Family Dwelling District.

Surrounding Zoning and Land Use:

The property to the north is zoned SF-3, Single-Family Dwelling District, and the location of a vacant lot. The properties to the east, south, and west are zoned MF-22, Multiple-Family Dwelling District, and the location of a single-family residence and vacant land, respectively.

Analysis:

The property is located at 708 South Benton Street and is currently vacant. The applicant, Guadalupe Zarate, is requesting this zone change to allow for the construction of a single-family residence on the property. The current zoning of this property is MF-22, Multiple-Family Dwelling District. Per the previous zoning ordinance, single-family detached dwellings were allowed within this zoning district. As of July 1, 2019, the new zoning ordinance does not allow the use of single-family detached dwellings within the MF-22, Multiple-Family Dwelling District. The property meets the minimum lot size requirements for the SF-3, Single Family Dwelling District.

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 comments.

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:

This proposed development fits with Chapter 3, An Integrated Land Use Vision, Future Land Use Map of the Tall City Tomorrow comprehensive plan as this area calls for Urban Medium uses. This designation serves to connect commercial, office, and mixed-use areas with residential uses. Therefore, the construction of single family housing at this location is in conformance with the recommendations of the Tall City Tomorrow plan as it provides for the integration of uses. It would also support the existing neighborhood characteristics and uses of the area.

The Planning and Zoning Commission recommended approval of this request at the August 16, 2021 meeting.

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:

As of September 9, 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 REZONE LOT 5, BLOCK 39, GREENWOOD ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF SOUTH BENTON STREET, APPROXIMATELY 162 FEET NORTH OF EAST CALIFORNIA 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 5, Block 39, Greenwood 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 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: 2-21-0253

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Property Owner Printed Name: Guadalupe Zarate		Phone (432) [redacted]349-0746 Email / zarate66@gmail	
Address 4102 Amistad Dr.	City Midland	State TX	Zip 79707

Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 708 S. Benton

Legal Description
Lot: 50 Block: 39 Subdivision: Greenwood Addn.

Current Zoning: MF22

Proposed Zone: SF3
(List by tracts if more than one district is requested)

Reason for Zone Change Request: Residential build

Present Use of Property: Vacant

Proposed Use of Property: New Family home

How would this zone change affect the public health, safety and welfare? N/A

Describe how conditions affecting the property have changed since present zoning designation: residential not allowed in MF22

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)

RECEIVED
JUL 19 2021
BY: DK

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature):	Date:
Applicant (printed):	
Property Owner (signature): Guadalupe Zamora	Date: 7-19-21
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 ☐ Dimensioned Site Plan

☒ Application Fee ☐ Plans in Digital Format (PDF/JPEG)

Check # 2123

Received By: Date: RECEIVED JUL 19 2021

BY: .....

Application will not be considered for scheduling until reviewed by a planner.

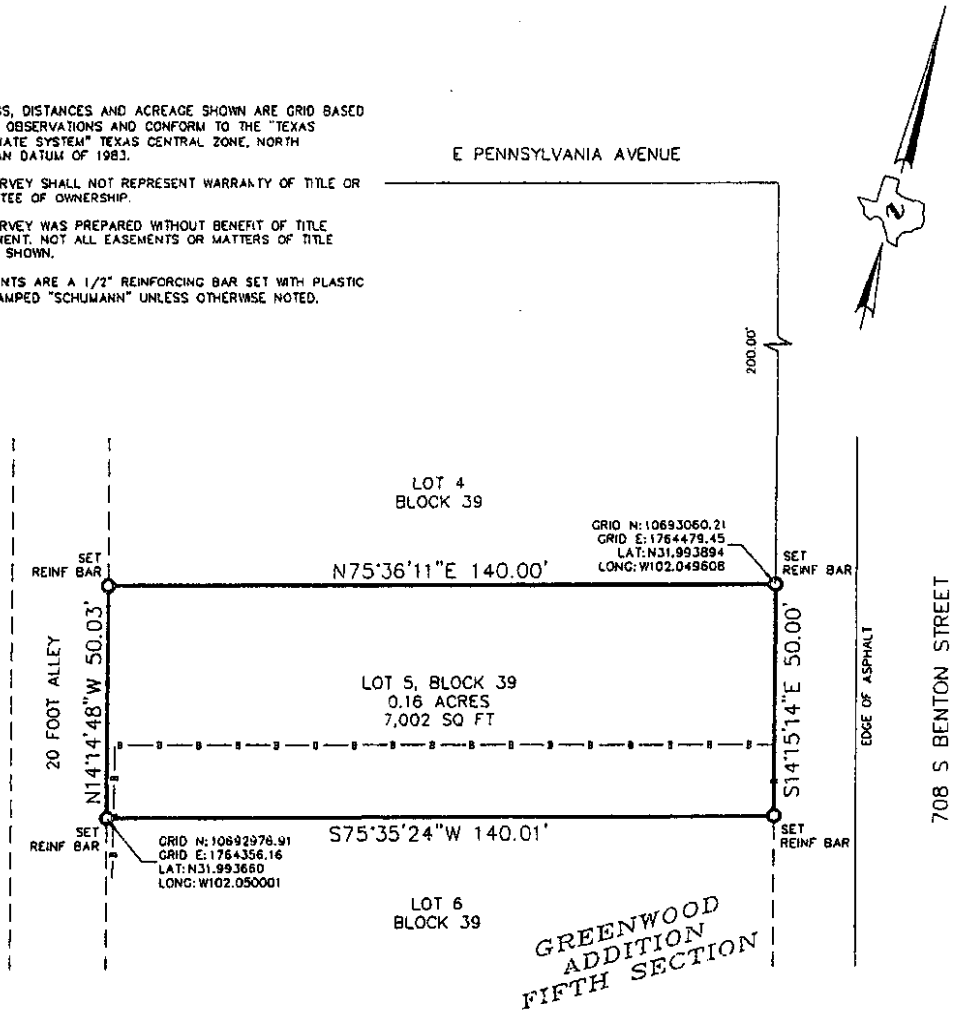
NOTES:

BEARINGS, DISTANCES AND ACREAGE SHOWN ARE GRID BASED ON GPS OBSERVATIONS AND CONFORM TO THE "TEXAS COORDINATE SYSTEM" TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.

THIS SURVEY SHALL NOT REPRESENT WARRANTY OF TITLE OR GUARANTEE OF OWNERSHIP.

THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF TITLE COMMITMENT. NOT ALL EASEMENTS OR MATTERS OF TITLE MAY BE SHOWN.

MONUMENTS ARE A 1/2" REINFORCING BAR SET WITH PLASTIC CAP STAMPED "SCHUMANN" UNLESS OTHERWISE NOTED.



Surveyor Certification

TO THE LIENHOLDERS, MARIA L CUETO DE FLORES

(OWNER) OF THE PREMISES AND TO THE ISSUING TITLE INSURANCE UNDERWRITER: THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND OF THE PROPERTY LEGALLY DESCRIBED HEREON AND THAT THERE ARE NO KNOWN DISCREPANCIES, CONFLICTS, SHORTAGES IN AREA, BOUNDARY LINE CONFLICTS, ENCROACHMENTS, OVERLAPPING OF IMPROVEMENTS, EASEMENTS OR RIGHTS-OF-WAY, EXCEPT AS SHOWN HEREON.

DATED THIS 9TH DAY OF SEPTEMBER, 2020

RJ DAUM
TEXAS RPLS# 4828

SCHUMANN
ENGINEERING CO.
A LATERAL LAND COMPANY
CIVIL ENGINEERING - LAND SURVEYING
TEXAS FIRM No. F1880 - TEXAS FIRM No. 10149500
600 N. MARIENFELD STREET SUITE 100
MIDLAND, TEXAS 79701
Office (432) 684-5548

SURVEY

LOT 5

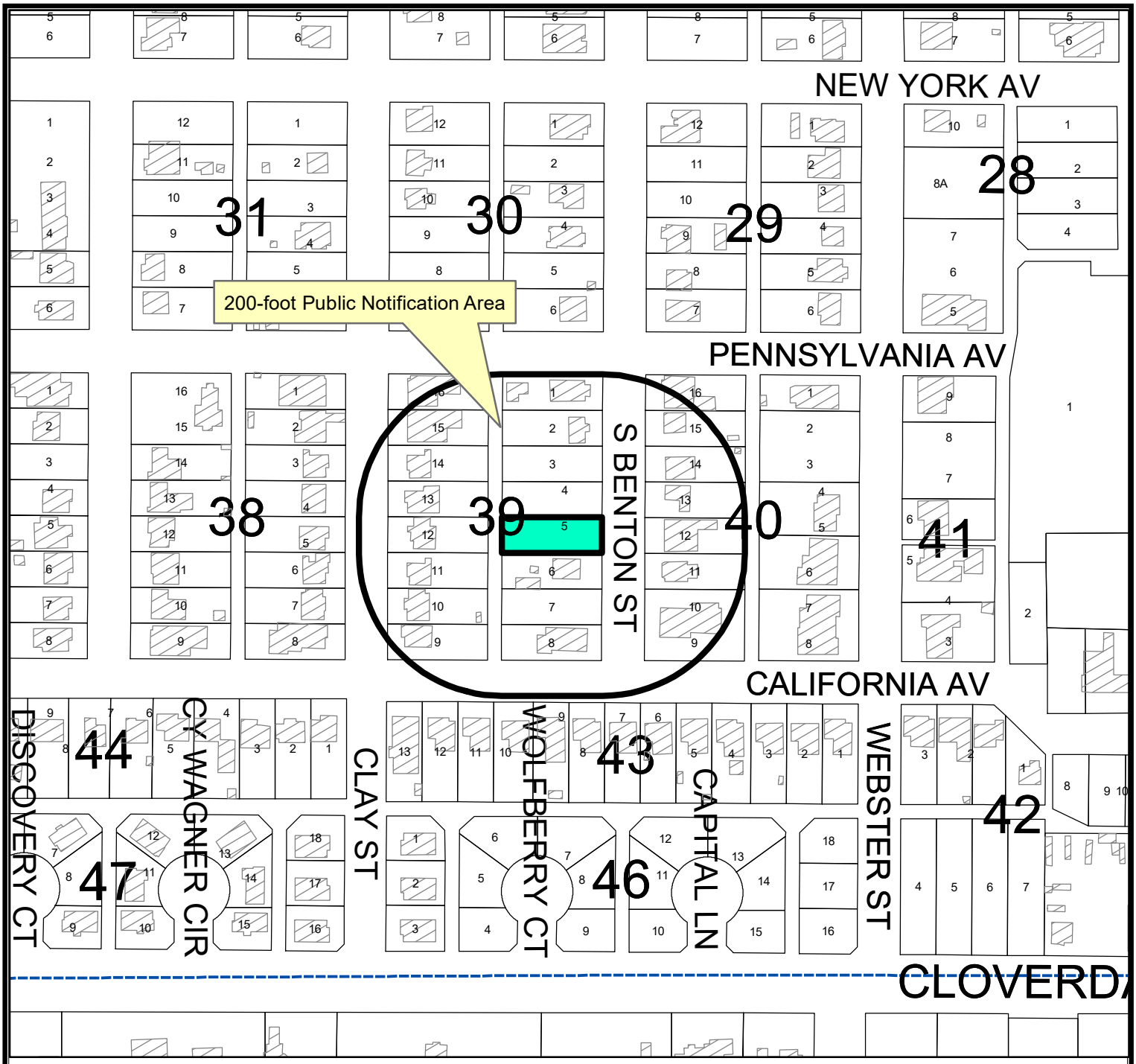
BLOCK 39

GREENWOOD ADDITION

AN ADDITION TO THE CITY OF MIDLAND, AS PER DEED OF RECORD IN VOLUME 180, PAGE 187, DEED RECORDS, MIDLAND COUNTY, TEXAS

SCALE: 1" = 30'

PROJECT: 77640
JOB NO.: 77640



LOCATION MAP

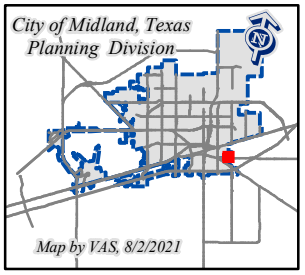
Z-21-0253 **Scale: 1" = 200'**

Consider a request by Guadalupe Zarate for a zone change from MF-22, Multiple-Family Dwelling District, to SF-3, Single-Family Dwelling District on Lot 5, Block 39, Greenwood Addition, City and County of Midland, Texas.

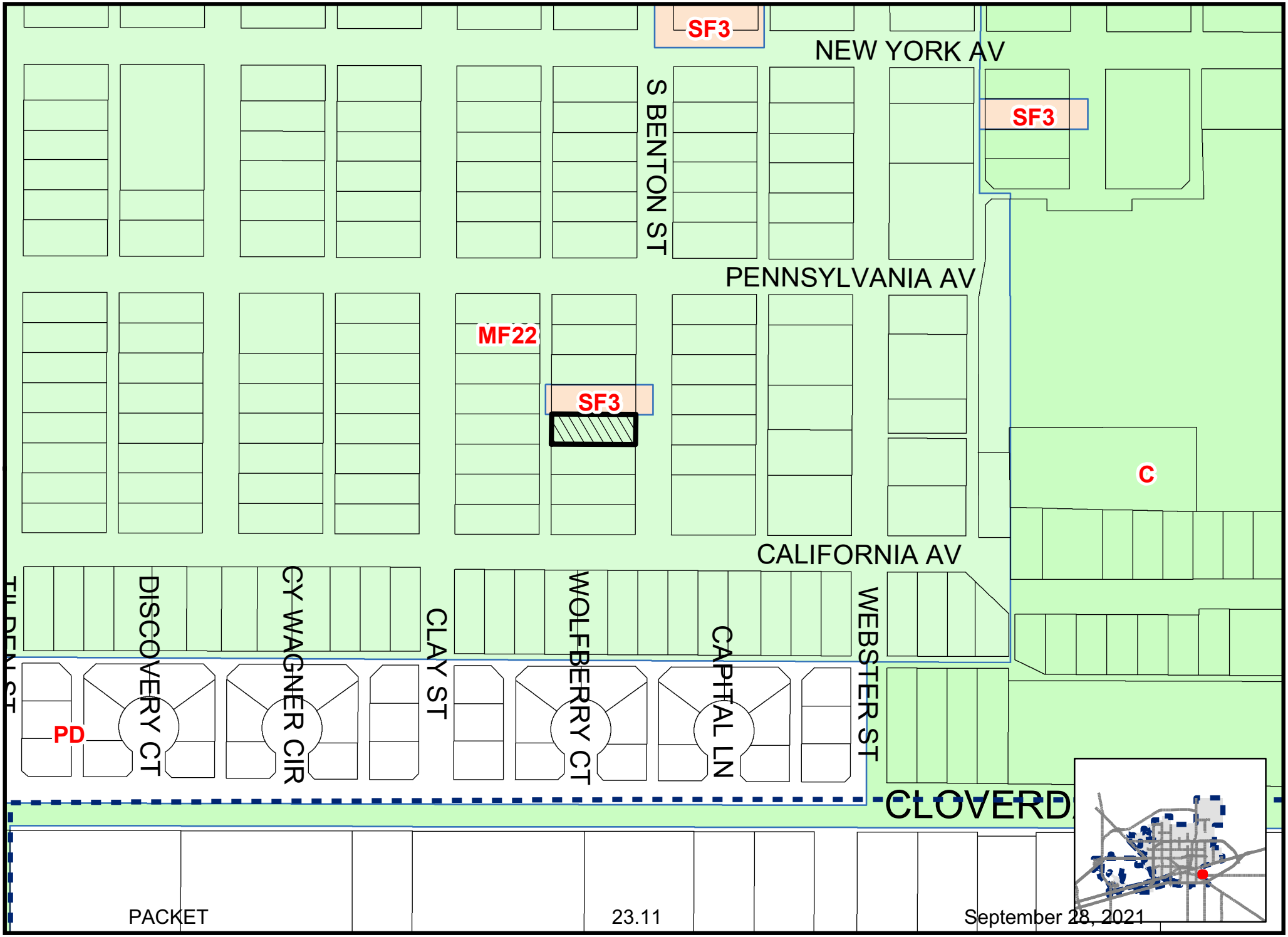
Generally located on the west side of S. Benton Street, approximately 162 feet north of E. California Avenue. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ANY PRIOR 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.



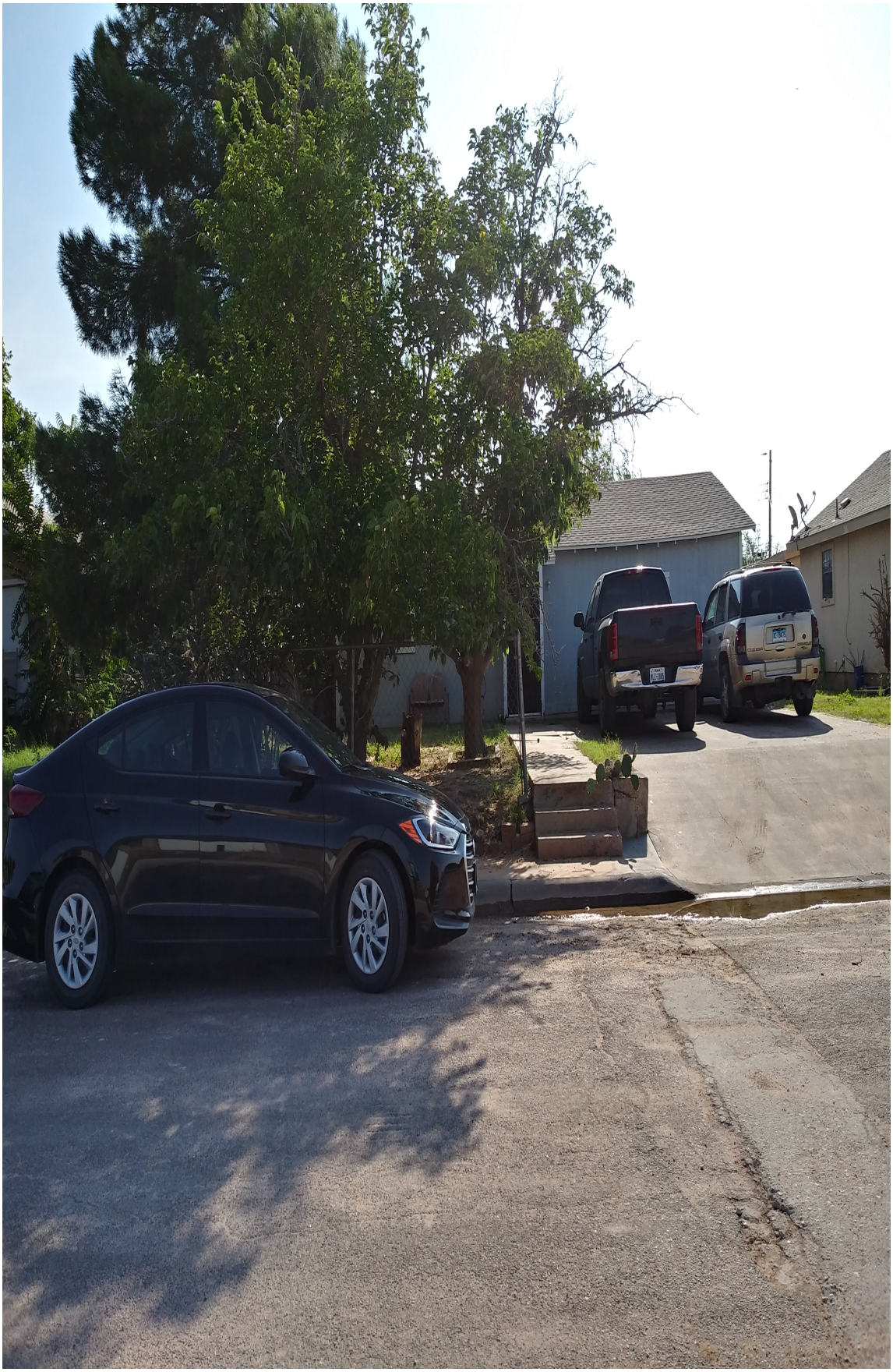
Map By VAS, 8/2/2021

Z-21-0253

Scale: 1" = 200'

ZONING MAP


CONTRACT PENDING
Rikki Martin
432-853-5452







City Council Meeting

Item Number: 24

Meeting Date: September 14, 2021

To: City Council / City Manager

From: Carl Craigo, Director

Subject: AN ORDINANCE AMENDING THE CITY OF MIDLAND'S DROUGHT CONTINGENCY PLAN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS ($500.00); AND ORDERING PUBLICATION (DISTRICT: ALL) (UTILITIES)

Purpose:

An Ordinance Amending the City of Midland's Drought Contingency Plan (9310)

Recommended City Council Action:

Approve

Fiscal Impact:

The water rates will increase during stage 3 and 4 for consumption of water above 2000 gallons. Stage 3 would be 20% and Stage 4 would be 40%.

Discussion:

The current drought contingency plan was approved by Council on 8/26/2014 as ordinance 9310. This amendment provides information required by the TCEQ on possible future wholesale water customers for the City to acquire our bed and banks permit for the discharge of water from the Water Reclamation Facility. Stage 3 and Stage 4 drought response stages will change to increase rates above 2000 gallons of consumption by 20% and 40% respectively. Stage 3 is a severe water storage and stage 4 is a critical water storage.



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CITY OF MIDLAND'S DROUGHT CONTINGENCY PLAN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS ($500.00); AND ORDERING PUBLICATION

WHEREAS, the City Council approved the City of Midland's current drought contingency plan by Ordinance No. 9310, which was approved on August 26, 2014; and

WHEREAS, the Texas Commission on Environmental Quality ("TCEQ") requires the City to submit potential future wholesale water customer information in order to retain the City's water rights during discharge activities; and

WHEREAS, the City Council finds it to be in the public interest to increase the water rates during Stages 3 and 4 of the drought response stages for consumption above 2,000 gallons; and

WHEREAS, the City Council finds it to be in the public interest to amend the City of Midland's drought contingency plan to include said TCEQ requirement and rate changes;

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

SECTION ONE. That the drought contingency plan attached hereto and marked as Exhibit A, is hereby adopted and approved for all purposes.

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 five hundred dollars ($500.00). It is hereby declared that the culpable mental state required by Texas Penal Code Section 6.02 is specifically negated and clearly and plainly dispensed with and an offense under this ordinance is declared to be a strict liability offense. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense.

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 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

_____
Carl Craigo, Director of Utilities

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

CITY OF MIDLAND

DROUGHT CONTINGENCY PLAN

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Drought Contingency Plan for the City of Midland, Texas

(Revised August 2021)

Section I: Declaration of Policy, Purpose and Intent

To conserve the available water supply and protect the integrity of water supply facilities, with particular regard for domestic water use, sanitation, and fire protection, and to protect and preserve public health, welfare, and safety and minimize the adverse impacts of a water supply shortage or other water supply emergency conditions, the City of Midland (hereinafter referred to as "City" hereby adopts the following Drought Contingency Plan (the Plan) for both wholesale and residential customers.

Water uses regulated or prohibited under this Plan are considered to be nonessential and continuation of such uses during times of water shortage or other emergency water supply conditions are deemed to constitute a waste of water which subjects the offender(s) to penalties as defined in Section XI of this Plan.

Section II: Application

The provisions of this Plan shall apply to all persons, customers, and property utilizing water provided by the City. The terms "person" and "customer" as used in the Plan include individuals, corporations, partnerships, associations, and all other legal entities.

Section III: TCEQ Rules

The TCEQ rules governing the development of drought contingency plans for public water suppliers are contained in Title 30, Part 1, Chapter 288, Subchapter B, Rule 288.20 and Rule 288.22 of the Texas Administrative Code. Copy of rules also in Appendix B.

Section IV: Provisions to Inform the Public, Wholesale Customers and Opportunity for Public Input

Opportunity for the public and wholesale customers to provide input into the preparation of the Drought Contingency Plan was and will be provided by the City of Midland utilizing press releases, emails and scheduling. Public notices of a public meeting to accept input of the Drought Contingency Plan will be posted in conspicuous places served by the public water system (city hall, county courthouse).

Section V: Public and Wholesale Water Customer Education

The City of Midland will periodically provide the public with information about the Drought Contingency Plan, including information about the conditions under which each stage of the Drought Contingency Plan is to be initiated or terminated and the drought response measures to be implemented in each stage. This information will be provided utilizing press releases, social media releases and utility bill inserts. The City will periodically provide wholesale water customers with information about the Plan, including information about the conditions under which each stage of the Plan is to be initiated or terminated and the drought response measures to be implemented in each stage. This information will be disseminated by providing copies of the Plan and/or changes to the Plan, and scheduled meetings to discuss the Plan and any changes.

Section VI: Coordination with Regional Water Planning Groups

The service area of the city of Midland is located within the Region F water planning area and the City of Midland has provided a copy of this Plan to the Region F Planning Group.

Section VII: Initiation and Termination of Drought Response Stages

The City Manager, or his/her designee, shall monitor water supply and/or demand conditions daily and shall determine when conditions warrant initiation or termination of each stage of the Drought Contingency Plan. Public notification of the initiation or termination of drought response stages shall be through the press and social media releases. Wholesale water customers shall be notified through phone calls, emails, or meetings. The City of Midland shall notify the executive director within 5 business days of the implementation of any mandatory provisions of the drought contingency plan. The triggering criteria described below are based on the water supply sources and statistical analysis of the vulnerability of the water source under drought of record conditions.

Stage 1 Mild Water Shortage Conditions

Requirements for initiation Customers shall be requested to voluntarily conserve water and adhere to the prescribed restrictions on certain water uses, defined in Appendix A, when:

(a) Pursuant to requirements specified in the City of Midland wholesale water purchase contract with CRMWD notification is received requesting initiation of Stage 1 of the Drought Contingency Plan; or
(b) Request of the Colorado River Municipal Water District due to the limitation in available supplies or their transmission facilities; or
(c) The request of the Midland County Fresh Water Supply District #1 due to limitation in available supplies or transmission; or
(d) Total daily water demand reaches 94% of the treatment plant capacity for 5 consecutive days.

Requirements for termination

Stage 1 of the Drought Contingency Plan may be rescinded when all of the triggering events have ceased for 3 days.

Stage 2 Moderate Water Shortage Conditions

Requirements for initiation

Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses provided in Appendix A of the Drought Contingency Plan, when:

(a) Pursuant to requirements specified in the City of Midland wholesale water purchase contract with CRMWD notification is received requesting initiation of Stage 2 of the Drought Contingency Plan; or
(b) Request of the Colorado River Municipal Water District due to the limitation in available supplies or their transmission facilities; or
(c) Total daily water demand reaches or exceeds 95% of the water plant's capacity for 5 consecutive days; or
(d) The request of the Midland County Fresh Water Supply District #1 due to limitation in available supplies or transmission.

Requirements for termination

Stage 2 of the Drought Contingency Plan may be rescinded when all of the triggering events have ceased for 3 consecutive days. Upon termination of Stage 2, Stage 1 becomes operative.

Stage 3 Severe Water Shortage Conditions

Requirements for initiation

Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses for Stage 3 of this Drought Contingency Plan, when:

(a) Pursuant to requirements specified in the City of Midland wholesale water purchase contract with CRMWD notification is received requesting initiation of Stage 3 of the Drought Contingency Plan; or
(b) The request of the Midland County Fresh Water Supply District #1 to initiation of Stage 3 of the Drought Contingency Plan due to limitation in available supplies or transmission.
(c) The failure or threatening failure of a major system component will result in an immediate health or safety hazard; or
(d) Total daily water demand reaches the system limit, stressing the system to failure.

Requirements for termination

Stage 3 of the Drought Contingency Plan may be rescinded when all of the triggering events have ceased for 3 consecutive days. Upon termination of Stage 3, Stage 2 becomes operative.

Stage 4 Critical Water Shortage Conditions

Requirements for initiation

Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses for Stage 4 of this Plan, when:

(a) Pursuant to requirements specified in the City of Midland wholesale water purchase contract with CRMWD notification is received requesting initiation of Stage 4 of the Plan; or
(b) The request of the Midland County Fresh Water Supply District #1 to initiation of Stage 3 of the Plan due to limitation in available supplies or transmission; or
(c) Treated water storage levels do not restore overnight.

Requirements for termination

Stage 4 of the Drought Contingency Plan may be rescinded when all of the triggering events have ceased for 3 consecutive days. Upon termination of Stage 4, Stage 3 becomes operative.

Stage 5 Emergency Water Shortage Conditions

Requirements for initiation

Customers shall be required to comply with the requirements and restrictions for Stage 5 of this Drought Contingency Plan when the City Manager, or his/her designee, determines that a water supply emergency exists based on:

(a) Major water line breaks, or pump or system failure occurs, which cause unprecedented loss of capability to provide water service; or
(b) Natural or man-made contamination of the water supply source(s).

Requirements for termination

Stage 5 of the Plan may be rescinded when all of the triggering events have ceased for 3 consecutive days.

Section VIII: Goals for Reduction in Water Use

The City of Midland has established quantifiable goals for water use reduction for each stage of the Drought Contingency Plan. These goals are outlined below.

Stage 1, Mild Water Shortage Conditions

Goal: Achieve a 10 percent reduction in total daily water use

Stage 2, Moderate Water Shortage Conditions

Goal: Achieve a 15 percent reduction in total daily water use

Stage 3, Severe Water Shortage Conditions

Goal: Achieve a 20 percent reduction in total daily water use

Stage 4, Critical Water Shortage Conditions

Goal: Achieve a 25 percent reduction in total daily water use

Stage 5, Emergency Water Shortage Conditions

Goal: Achieve a 75 percent reduction in total daily water use

Section IX: Drought and Emergency Response Stages Management Measures and Restrictions

Management measures are used to manage a limited water supply and/or reduce demand. The City Manager, or his/her designee, shall monitor water supply and/or demand conditions daily and, in accordance with the triggering criteria outlined in Section VII of the Plan, shall determine the condition implement the following actions upon publication of notice in a newspaper of general circulation:

Stage 1 - Mild Water Shortage Conditions

(a) Supply Management Measures:

To manage limited water supplies and/or reduce water demand, the City of Midland shall implement the following measures:

i. reduced flushing of water mains
ii. increased use of alternative supply source(s) if available (Paul Davis Wellfield)

(b) Voluntary Water Use Restrictions:

i. Water customers are requested to voluntarily limit the irrigation of landscaped areas to days and times designated by the City manager or his/her designee.
ii. All operations of the City of Midland and its employees shall adhere to water use restrictions prescribed and shall be considered governmental functions. c) water customers are requested to practice water conservation and to minimize or discontinue water use for non-essential purposes.

Stage 2 - Moderate Water Shortage Conditions

(a) Supply Management Measures:

To manage limited water supplies and/or reduce water demand, the City of Midland shall implement the following measures:

i. reduced flushing of water mains
ii. reduced irrigation of public landscaped areas
iii. increased use of an alternative supply source(s).

(b) Mandatory Water Use Restrictions:

Under threat of penalty for violation, the following water use restrictions shall apply to all persons:

i. Irrigation of landscaped areas with hose-end sprinklers or automatic irrigation systems shall be limited to days and times designated by the City Manager or his/her designee. However, irrigation of landscaped areas is permitted at any time if it is by means of a hand-held hose, a faucet-filled bucket or watering can of five (5) gallons or less, or a drip irrigation system.
ii. Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle is prohibited except on designated watering days between the hours of 6:00 p.m. and 10:00 a.m. beginning on their designated watering days. Such

washing, when allowed, shall be done with a hand-held bucket or a hand-held hose equipped with a positive shutoff nozzle for quick rinses. Vehicle washing may be done at any time on the immediate premises of a commercial car wash or commercial service station. Further, such washing may be exempted from these regulations if the health, safety, and welfare of the public are contingent upon frequent vehicle cleansing, such as garbage trucks and vehicles used to transport food and perishables.

iii. Use of water to fill, refill or add to any indoor or outdoor swimming pools, wading pools, or Jacuzzi-type pools is prohibited except on designated watering days between the hours of 6:00 p.m. and 10:00 a.m. beginning on their designated watering days.

iv. Operation of any ornamental fountain or pond for aesthetic or scenic purposes is prohibited except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system.

v. Use of water from hydrants shall be limited to firefighting, related activities, or other activities necessary to maintain public health, safety, and welfare, or activities deemed to be governmental functions undertaken by the City of Midland or its officials, agents, employees or independent contractors.

vi. Use of water for the irrigation of golf course greens, tees, and fairways is prohibited except on designated watering days between the hours 6:00 p.m. and 10:00 a.m. beginning on their designated watering days. However, if the golf course utilizes a water source other than that provided by the City of Midland, the facility shall not be subject to these regulations.

vii. All restaurants are prohibited from serving water to their patrons except when requested.

viii. The following uses of water are defined as non-essential and are prohibited:

1) Wash down of any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas;
2) Use of Water to wash down buildings or structures for purposes other than immediate fire protection;
3) Use of Water for dust control;
4) Flushing gutters or permitting water to run or accumulate in any gutter or street; and
5) Failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s).

Stage 3 - Severe Water Shortage Conditions

(a) Supply Management Measures:

To manage limited water supplies and/or reduce water demand, the City of Midland shall implement the following measures:

i. reduced flushing of water mains

ii. reduced irrigation of public landscaped areas to a minimum required to avoid vegetation loss
iii. increased use of an alternative supply source(s).
iv. 20% increase in water rates for use above 2,000 gallons

(b) Mandatory Water Use Restrictions. All requirements of Stage 2 shall remain in effect during Stage 3 except:

i. Irrigation of landscaped areas shall be limited to days and times designated by the City Manager or his designee and shall be by means of hand-held hoses, hand-held buckets, drip irrigation, or permanently installed automatic sprinkler systems only. The use of hose-end sprinklers is prohibited at all times.
ii. The watering of golf course tees is prohibited unless the golf course utilizes a water source other than that provided by the City of Midland.

Stage 4 - Critical Water Shortage Conditions

(a) Supply Management Measures:

To manage limited water supplies and reduce water demand, the City of Midland shall implement the following measures:

i. reduced or discontinued flushing of water mains except during emergencies
ii. reduced or discontinued irrigation of public landscaped areas to a minimum required to avoid vegetation loss
iii. increased use of an alternative supply source(s):
iv. 40% increase in water rates for use above 2,000 gallons

(b) Mandatory Water Use Restrictions:

All requirements of Stage 2 and 3 shall remain in effect during Stage 4 except:

i. Irrigation of landscaped areas shall be limited to days and times designated by the City Manager or his designee and shall be by means of hand-held hoses, hand-held buckets, or drip irrigation only. The use of hose-end sprinklers or permanently installed automatic sprinkler systems are prohibited at all times.
ii. Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicles not occurring in a commercial car wash and not in the immediate interest of public health, safety, and welfare is prohibited. Further, such vehicle washing at commercial car washes shall occur only between the hours of 8:00 a.m. and 6:00 p.m.
iii. The filling, refilling or adding of water to swimming pools, wading pools, and Jacuzzi-type pools are prohibited.
iv. Operation of any ornamental fountain or pond for aesthetic or scenic purposes is prohibited except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system.
v. No applications for new, additional, expanded, or increased-in-size water service

connections, meters, service lines, pipeline extensions, mains, or water service facilities of any kind shall be allowed or approved.

Stage 5 - Emergency Water Shortage Conditions

(a) Supply Management Measures:

To manage limited water supplies and reduce water demand The City of Midland shall discontinue the following:

i. flushing of water mains
ii. irrigation of public landscaped areas

(b) Mandatory Water Use Restrictions. All requirements of Stage 2, 3, and 4 shall remain in effect during Stage 5 except:

i. irrigation of landscaped areas is prohibited.
ii. use of water to wash any motor vehicle, motorbike, boat, trailer, airplane, or other vehicle is prohibited.

Section X: Pro-Rata Water Allocation

If the triggering criteria specified in Section VII of the Plan for Stage 3 - Severe Water Shortage Condition have been met, the City Manager is hereby authorized to initiate allocation of water supplies on a pro-rata basis in accordance with Texas Water Code Section 11.039. Every wholesale water contract, (treated and untreated water) entered into or renewed after the adoption of this Plan, including any contract extensions, will contain language notifying parties to the contract that the water to be distributed shall be divided in accordance with the following water allocation policies and procedures:

(a) A wholesale customer's monthly allocation shall be a percentage of the customer's water usage baseline. The percentage will be set by resolution of the Midland City Council based on the City Manager's assessment of the severity of the water shortage condition and the need to curtail water diversions and/or deliveries and may be adjusted periodically by resolution of the Council as conditions warrant. Once pro-rata allocation is in effect, water diversions by, or deliveries to, each wholesale customer shall be limited to the allocation established for each month.

(b) A monthly water usage allocation shall be established by the City Manager, or his/her designee, for each wholesale customer. The wholesale customer's water usage baseline will be computed on the average water usage by month for the last five (5) year period. If the wholesale water customer's billing history is less than 5 years, the monthly average for the period for which there is a record shall be used for any monthly period for which no billing history exists.

(c) The City Manager shall provide notice by certified mail to each wholesale customer informing them of their monthly water usage allocations and shall notify the news media and the executive director of the Texas Commission on Environmental Quality upon initiation of pro-rata water allocation.

(d) Upon request of the customer or at the initiative of the City Manager, the allocation may be reduced or increased if:

i. the designated period does not accurately reflect the wholesale customer's

normal water usage

ii. the customer agrees to transfer part of its allocation to another wholesale customer, or

iii. other objective evidence demonstrates that the designated allocation is inaccurate under present conditions. A customer may appeal an allocation established hereunder to the Midland City Council.

Section XI: Enforcement

(a) No person shall use or allow the use of water from the City of Midland for residential, commercial, industrial, agricultural, governmental, or any other purpose in a manner contrary to any provision of this Plan, or in an amount above that permitted by the drought response stage in effect at the time pursuant to action taken by the City Manager, or his/her designee, under provisions of this Plan.

(b) Any person who violates this Plan is guilty of a misdemeanor and, upon conviction shall be punished by a fine of not more than five hundred ($500) dollars. Each day that one or more of the provisions in this Plan is violated shall constitute a separate offense. If a person is convicted of three or more violations of this Plan, the City Manager shall, upon due notice to the customer, be authorized to discontinue water service to the premises where such violations occur. Services discontinued under such circumstances shall be restored only upon payment of the re-connection charge, established by City policy, and any other costs incurred by the City of Midland in discontinuing service. In addition, suitable assurance must be given to the City Manager that the same action shall not be repeated while the Plan is in effect. Compliance with this plan may also be sought in any court of competent jurisdiction.

(c) Any person, including a person classified as a water customer of the City of Midland, in apparent control of the property where a violation occurs or originates shall be presumed to be the violator, and proof that the violation occurred on the person's property shall constitute a rebuttable presumption that the person in apparent control of the property committed the violation, but any such person shall have the right to present evidence that he/she did not commit the violation.

(d) In any prosecution charging a violation of this Ordinance at a single-family residence, proof that the defendant named in the complaint was at the time of such violation shown in the City of Midland Customer Service Records to be the occupant or customer of the premises shall constitute in evidence a prima facie presumption that said person used or allowed the use of water in violation of this Ordinance.

(e) Any police officer of the City of Midland, or other employees of the City of Midland designated by the City Manager, may issue a citation to a person he/she reasonably believes to be in violation of this Ordinance. The citation shall be prepared in duplicate and shall contain the name and address of the alleged violator, if known, the offense charged, and shall provide direction as to how to respond or appeal. The alleged violator shall be served a copy of the citation. Service of the citation shall be complete upon delivery of the citation to the alleged violator, or an agent or employee of a violator. The alleged violator shall appear in municipal

court to enter a plea of guilty, not guilty or no contest for the violation of this Plan. If the alleged violator fails to appear in municipal court, a warrant for his/her arrest may be issued. A summons to appear may be issued in lieu of an arrest warrant.

Section XII: Variances

(a) The City Manager, or his/her designee, may, in writing, grant a temporary variance for existing water uses otherwise prohibited under this Plan if it is determined that failure to grant such variance would cause an emergency condition adversely affecting the health, sanitation, or fire protection for the public or the person requesting such variance and if one or more of the following conditions are met:

i. Compliance with this Plan cannot be technically accomplished during the duration of the water supply shortage or other conditions for which the Plan is in effect.
ii. Alternative methods can be implemented which will achieve the same level of reduction in water use.

(b) Persons requesting an exemption from the provisions of this Ordinance shall file a petition for variance with the City of Midland within 5 days after the Plan or a particular drought response stage has been invoked. All petitions for variances shall be reviewed by the City Manager, or his/her designee, and shall include the following:

i. Name and address of the petitioner(s).
ii. Purpose of water use.
iii. Specific provision(s) of the Plan from which the petitioner is requesting relief.
iv. Detailed statement as to how the specific provision of the Plan adversely affects the petitioner or what damage or harm will occur to the petitioner or others if petitioner complies with this Ordinance.
v. Description of the relief requested.
vi. Period of time for which the variance is sought.
vii. Alternative water use restrictions or other measures the petitioner is taking or proposes to take to meet the intent of this Plan and the compliance date.
viii. Other pertinent information.

(c) Variances granted by the City of Midland shall be subject to the following conditions unless waived or modified by the City Manager or his/her designee:

i. Variances granted shall include a timetable for compliance.
ii. Variances granted shall expire when the Plan is no longer in effect unless the petitioner has failed to meet specified requirements.
iii. A person who receives a variance shall file the variance with the City of Midland Municipal Court within 72 hours of the granting of said variance.

(d) No variance shall be retroactive or otherwise justify any violation of this Plan occurring before the issuance of the variance. Temporary variances may be granted by the same authority at any time during the execution of this plan upon submission of the information requested above. These variances will not exceed 30 days and must be approved before the deviation from the plan otherwise a violation will result.

Section XIII: Review and Update of Drought Contingency Plan

The City of Midland will review and update the Plan at least every five years and consistent with State law requirements. If the Plan is implemented during a water shortage, data obtained during the plan implementation will be used to make any necessary modifications. Additionally, the plan will be updated as appropriate based on new or updated information regarding the system's design and delivery capacity.

Section XIV: Judicial Notice

(a) The City of Midland Municipal Court upon its own motion may, or upon the motion of a party shall take judicial notice of this Ordinance.

(b) The City of Midland Municipal Court upon its own motion may, or upon the motion of a party shall take judicial notice of records in the City's Customer Service Division.

(c) The City of Midland Municipal Court upon its own motion may, or upon the motion of a party shall take judicial notice of the drought and emergency response stage in effect on the date of the alleged violation(s).

(d) The City of Midland Municipal Court upon its own motion may, or upon the motion of a party shall take judicial notice of the City of Midland wholesale water purchase contract with the Colorado River Municipal Water District and any notices received requesting initiation of the Drought Contingency Plan.

(e) The City of Midland Municipal Court upon its own motion may, or upon the motion of a party shall take judicial notice of the City Manager's designation of the drought and emergency response stage in effect on the date of the alleged violation(s).

XV: Affirmative Defenses

In any prosecution for the violation of any provision of this Ordinance, it shall not be required or necessary for the complaint to negate or for the state to prove any exception contained in this Ordinance concerning any prohibited act. Provided, however, that any such exception made in this Ordinance is an affirmative defense to prosecution under this Ordinance, and may be urged as an affirmative defense by the person charged by such complaint as authorized by Section 2.04 of the Texas Penal Code. It is an affirmative defense to prosecution under this Ordinance that the water used is not produced by the City of Midland

Section XVI: Authority of Municipal Court

Nothing in this Ordinance shall be construed to limit the City of Midland Municipal Court's authority and remedies.

Appendix A

Definitions:

For the purposes of this Plan, the following definitions shall apply:

Aesthetic water use: water use for ornamental or decorative purposes such as fountains, reflecting pools, and water gardens.

Alternative water sources: Alternative water source(s) for the City of Midland is the Paul Davis Well Field. This field is used on an emergency basis and can provide up to 10 MGD.

Commercial and institutional water use: water use which is integral to the operations of commercial and non-profit establishments and governmental entities such as retail establishments, hotels and motels, restaurants, and office buildings.

Conservation: those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water or increase the recycling and reuse of water so that a supply is conserved and made available for future or alternative uses.

CRMWD: The Colorado River Municipal Water District. They supply surface water wholesale to the City of Midland.

Customer: any person, company, or organization using water supplied by the City of Midland.

Domestic water use: water use for personal needs or for household or sanitary purposes such as drinking, bathing, heating, cooking, sanitation, or for cleaning a residence, business, industry, or institution.

Even number address: street addresses, box numbers, or rural postal route numbers ending in 0, 2, 4, 6, or 8 and locations without addresses.

Industrial water use: the use of water in processes designed to convert materials of lower value into forms having greater usability and value.

Landscape irrigation use: Water used for the irrigation and maintenance of landscaped areas, whether publicly or privately owned, including residential and commercial lawns, gardens, golf courses, parks, and rights-of-way and medians.

Non-essential water use: water uses that are not essential nor required for the protection of public, health, safety, and welfare, including:

Irrigation of landscaped areas, including parks, athletic fields, and golf courses, except otherwise provided under this Plan; Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicles. Use of water to wash down any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas. Use of water to wash down buildings or structures for purposes other than immediate fire protection. Flushing gutters or permitting water to run or accumulate in any gutter or street. Use of water to fill, refill or add to any indoor or outdoor swimming pools or Jacuzzi-type pool. Use of water in a fountain or pond for aesthetic or scenic purposes except where necessary to support aquatic life. Failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s). Use of water from hydrants for construction purposes or any other purpose other than firefighting.

Odd-numbered address: street addresses, box numbers, or rural postal route numbers ending in 1, 3, 5, 7, or 9.

Water: For the purposes of this Drought Contingency Plan, the term “water” shall mean water from the City of Midland used for residential, commercial, industrial, agricultural or governmental purposes. The term water shall not include water from a private well.

Appendix B

ENVIRONMENTAL QUALITY

PART 1 CHAPTER 288	TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
SUBCHAPTER B	WATER CONSERVATION PLANS, DROUGHT CONTINGENCY PLANS, GUIDELINES AND REQUIREMENTS DROUGHT CONTINGENCY PLANS
RULE '288.20	**Drought Contingency Plans for Municipal Uses by Public Water Suppliers**

(a) A drought contingency plan for a retail public water supplier, where applicable, must include the following minimum elements.
(1) Minimum requirements. Drought contingency plans must include the following minimum elements.
(A) Preparation of the plan shall include provisions to actively inform the public and affirmatively provide opportunity for public input. Such acts may include, but are not limited to, having a public meeting at a time and location convenient to the public and providing written notice to the public concerning the proposed plan and meeting.
(B) Provisions shall be made for a program of continuing public education and information regarding the drought contingency plan.
(C) The drought contingency plan must document coordination with the regional water planning groups for the service area of the retail public water supplier to ensure consistency with the appropriate approved regional water plans.
(D) The drought contingency plan must include a description of the information to be monitored by the water supplier, and specific criteria for the initiation and termination of drought response stages, accompanied by an explanation of the rationale or basis for such triggering criteria.
(E) The drought contingency plan must include drought or emergency response stages providing for the implementation of measures in response to at least the following situations:
(i) reduction in available water supply up to a repeat of the drought of record;
(ii) water production or distribution system limitations;
(iii) supply source contamination; or
(iv) system outage due to the failure or damage of major water system components (e.g., pumps).
(F) The drought contingency plan must include specific, quantified targets for water use reductions to be achieved during periods of water shortage and drought. The entity preparing the plan shall establish the targets. The goals established by the entity under this subparagraph are not enforceable.
(G) The drought contingency plan must include the specific water supply or water demand management measures to be implemented during each stage of the plan including, but not limited to, the following:
(i) curtailment of non-essential water uses; and
(ii) utilization of alternative water sources and/or alternative delivery mechanisms with the

prior approval of the executive director as appropriate (e.g., interconnection with another water system, temporary use of a non-municipal water supply, use of reclaimed water for non-potable purposes, etc.).
(H) The drought contingency plan must include the procedures to be followed for the initiation or termination of each drought response stage, including procedures for notification of the public.
(I) The drought contingency plan must include procedures for granting variances to the plan.
(J) The drought contingency plan must include procedures for the enforcement of mandatory water use restrictions, including specification of penalties (e.g., fines, water rate surcharges, discontinuation of service) for violations of such restrictions.
(2) Privately-owned water utilities. Privately-owned water utilities shall prepare a drought contingency plan in accordance with this section and incorporate such plan into their tariff.
(3) Wholesale water customers. Any water supplier that receives all or a portion of its water supply from another water supplier shall consult with that supplier and shall include in the drought contingency plan appropriate provisions for responding to reductions in that water supply.
(b) A wholesale or retail water supplier shall notify the executive director within five business days of the implementation of any mandatory provisions of the drought contingency plan.
(c) The retail public water supplier shall review and update, as appropriate, the drought contingency plan, at least every five years, based on new or updated information, such as the adoption or revision of the regional water plan.

ENVIRONMENTAL QUALITY

PART 1 CHAPTER 288	TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
SUBCHAPTER B	WATER CONSERVATION PLANS, DROUGHT CONTINGENCY PLANS, GUIDELINES AND REQUIREMENTS DROUGHT CONTINGENCY PLANS
RULE 288.22	**Drought Contingency Plans for Wholesale Water Suppliers**

(a) A drought contingency plan for a wholesale water supplier must include the following minimum elements.
(1) Preparation of the plan shall include provisions to actively inform the public and to affirmatively provide opportunity for user input in the preparation of the plan and for informing wholesale customers about the plan. Such acts may include, but are not limited to, having a public meeting at a time and location convenient to the public and providing written notice to the public concerning the proposed plan and meeting.
(2) The drought contingency plan must document coordination with the regional water planning groups for the service area of the wholesale public water supplier to ensure consistency with the appropriate approved regional water plans.
(3) The drought contingency plan must include a description of the information to be monitored by the water supplier and specific criteria for the initiation and termination of drought response stages, accompanied by an explanation of the rationale or basis for such triggering criteria.
(4) The drought contingency plan must include a minimum of three drought or emergency response stages providing for the implementation of measures in response to water supply conditions during a repeat of the drought-of-record.
(5) The drought contingency plan must include the procedures to be followed for the initiation or termination of drought response stages, including procedures for notification of wholesale customers regarding the initiation or termination of drought response stages.
(6) The drought contingency plan must include specific, quantified targets for water use reductions to be achieved during periods of water shortage and drought. The entity preparing the plan shall establish the targets. The goals established by the entity under this paragraph are not enforceable.
(7) The drought contingency plan must include the specific water supply or water demand management measures to be implemented during each stage of the plan including, but not limited to, the following:
(A) pro rata curtailment of water deliveries to or diversions by wholesale water customers as provided in Texas Water Code, §11.039; and

(B) utilization of alternative water sources with the prior approval of the executive director as appropriate (e.g., interconnection with another water system, temporary use of a non-municipal water supply, use of reclaimed water for non-potable purposes, etc.).
(8) The drought contingency plan must include a provision in every wholesale water contract entered into or renewed after adoption of the plan, including contract extensions, that in case of a shortage of water resulting from drought, the water to be distributed shall be divided in accordance with Texas Water Code, §11.039.
(9) The drought contingency plan must include procedures for granting variances to the plan.
(10) The drought contingency plan must include procedures for the enforcement of any mandatory water use restrictions including specification of penalties (e.g., liquidated damages, water rate surcharges, discontinuation of service) for violations of such restrictions.
(b) The wholesale public water supplier shall notify the executive director within five business days of the implementation of any mandatory provisions of the drought contingency plan.
(c) The wholesale public water supplier shall review and update, as appropriate, the drought contingency plan, at least every five years, based on new or updated information, such as adoption or revision of the regional water plan

City Council Meeting

Item Number: 25

Meeting Date: September 28, 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 WITHOUT TERM FOR LOT 1, BLOCK 1, RUCKUS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF FAIRGROUNDS ROAD, APPROXIMATELY 1,899 FEET SOUTH OF EAST LOOP 250 NORTH), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR A KENNEL; 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, Barbara French, is requesting a Specific Use Designation without Term for a Kennel located at 4200 N. Fairgrounds Road.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the City.

Discussion:

Current Zoning:

TH, Townhouse (Attached) Dwelling District in part; SF-2, Single-Family Dwelling District in part; SF-3, Single-Family Dwelling District in part; MF-16, Multiple-Family Dwelling District in part; and PD, Planned District for a Housing Development in part.

This property is in the process of being rezoned to RR, Regional Retail District. Per City of Midland Zoning Land Use Regulations, Kennels are permitted by a Specific Use Designation permit in the RR, Regional Retail District.

Surrounding Zoning and Land Use:

The properties to the north are zoned MF-16, Multiple-Family Dwelling District, and the location of a residence, and PD, Planned District for a Housing Development, and the location of vacant land. The property to the east is zoned SF-2, Single-Family Dwelling District, and the location of vacant land. The properties to the south are zoned SF-2, Single-Family Dwelling District, and MF-16, Multiple-Family Dwelling District, and the location of vacant land. The property to the west across N. Fairgrounds Road is zoned SF-1, Single-Family Dwelling District, and the location of a golf course.

Analysis:

The applicant, Barbara French, is requesting a Specific Use Destination without Term, for the Lone Star Animal Sanctuary, located at 4200 N. Fairgrounds Road.

The Lone Star Animal Sanctuary is a non-profit animal rescue organization which provides short and long-term living quarters and care for rescued dogs and cats, as well as adoption services for the community. It is anticipating a future expansion, however, the current zoning districts on the property would not support a Kennel. The property is currently in the process of being rezoned to RR, Regional Retail District, to comply with the Midland City code (11-1-1-(B)-19), in where kennels are permitted by a specific use permit in the RR, Regional Retail District, or less restrictive districts. The floor plan provided, attached hereto as Exhibit A, shows the proposed overall square footage of Lone Star Animal Sanctuary.

All dogs must be in compliance with Section 6-2-7 of the City code before they may be boarded at the Kennel. The applicant will also be responsible for properly maintaining the kennel, providing food, and properly disposing the pet waste.

This proposed project 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 objection.

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.

Building Code: (Approved)

No objection.

Oil and Gas: (Approved)

No comments.

Animal Services:

The site plans indicate dog and cat areas but do not specify capacity. What is the current dog and cat capacity and what is the proposed capacity after expansion? Also, how many parking spaces are available for off street parking?

Prior to this item going to Council, Animal Services would like to schedule an inspection of the current facility.

Response from Barbara French with the Lone Star Animal Sanctuary:

> The current capacity for cats is 25-40 (max), and dogs is 65-100 (max). Ms. French anticipates those numbers doubling as they expand facilities in the future.
>
> There are currently 22 off-street parking spaces.
>
> Animal Services performed an inspection of the facility on Monday, August 16, 2021, at 1:30 p.m.

Planning:

This proposed development fits with Chapter 3, An Integrated Land Use Vision, “Future Land Use Map” of the Tall City Tomorrow comprehensive plan as this area is called for Urban Low. This designation calls for a mix of relatively low-density housing and easily accessed neighborhood commercial services. Compatibility will be achieved through gradual increases of intensity transitioning from one land use to another. This allows for the property owner to continue to provide services of a non-profit animal rescue organization for Midlander’s.

This request was recommended for approval at the August 16, 2021 Planning and Zoning Commission Meeting.

This request meets all requirements of a specific use permit without term for a Kennel; therefore, staff recommends approval of the Specific Use Designation without Term for a kennel, subject to Conditions A through F.

Conditions:

A. That the use and development of this property as a kennel shall significantly conform to the site plan, which is attached hereto as Exhibit "A" and incorporated herein.

B. That all animals may be boarded every day, 24 hours per day.

C. That all pet waste generated on the premises shall be properly disposed of in a pet waste disposal system.

D. That the owner of the Property shall confirm that each dog, cat and ferret on the Property is being kept, harbored or maintained in compliance with Section 6-2-7 of the City Code. The owner of the Property shall not accept a dog, cat or ferret for boarding on the Property, or allow a dog, cat or ferret to be accepted for boarding on the Property, without first confirming that keeping, harboring or maintaining the dog, cat or ferret will be in compliance with Section 6-2-7 of the City Code.

E. That all necessary permits, inspections and approvals shall be obtained from the Building Official and the Fire Marshal prior to occupancy under the terms of this ordinance.

F. That the City Manager, in the City Manager's sole discretion, or the City Council, in the City Council's sole discretion, may revoke this permit if the owner of the property fails to comply with any provision of this ordinance.

Letters of Objection:

As of September 9, 2021, staff has not received any letters of objections.

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 GRANT A SPECIFIC USE DESIGNATION WITHOUT TERM FOR LOT 1, BLOCK 1, RUCKUS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF FAIRGROUNDS ROAD, APPROXIMATELY 1,899 FEET SOUTH OF EAST LOOP 250 NORTH), WHICH IS PRESENTLY ZONED RR, REGIONAL RETAIL DISTRICT, ALLOWING SAID PROPERTY TO BE USED FOR A KENNEL; 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, Ruckus Addition, 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 kennel, 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 use and development of this Property as a kennel shall significantly conform to the site plan, which is attached hereto as Exhibit "A" and

incorporated herein.

B. That animals may be boarded every day, 24 hours per day.

C. That the owner of the Property shall confirm that each dog, cat and ferret on the Property is being kept, harbored or maintained in compliance with Section 6-2-7 of the City Code. The owner of the Property shall not accept a dog, cat or ferret for boarding on the Property, or allow a dog, cat or ferret to be accepted for boarding on the Property, without first confirming that keeping, harboring or maintaining the dog, cat or ferret will be in compliance with Section 6-2-7 of the City Code.

D. That all pet waste generated on the premises shall be properly disposed of in a pet waste disposal system.

E. That all necessary permits, inspections and approvals shall be obtained from the Building Official and the Fire Marshal prior to occupancy under the terms of this ordinance.

F. That the City Manager, in the City Manager's sole discretion, or the City Council, in the City Council's sole discretion, may revoke this permit if the owner of the Property fails to comply with any provision 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

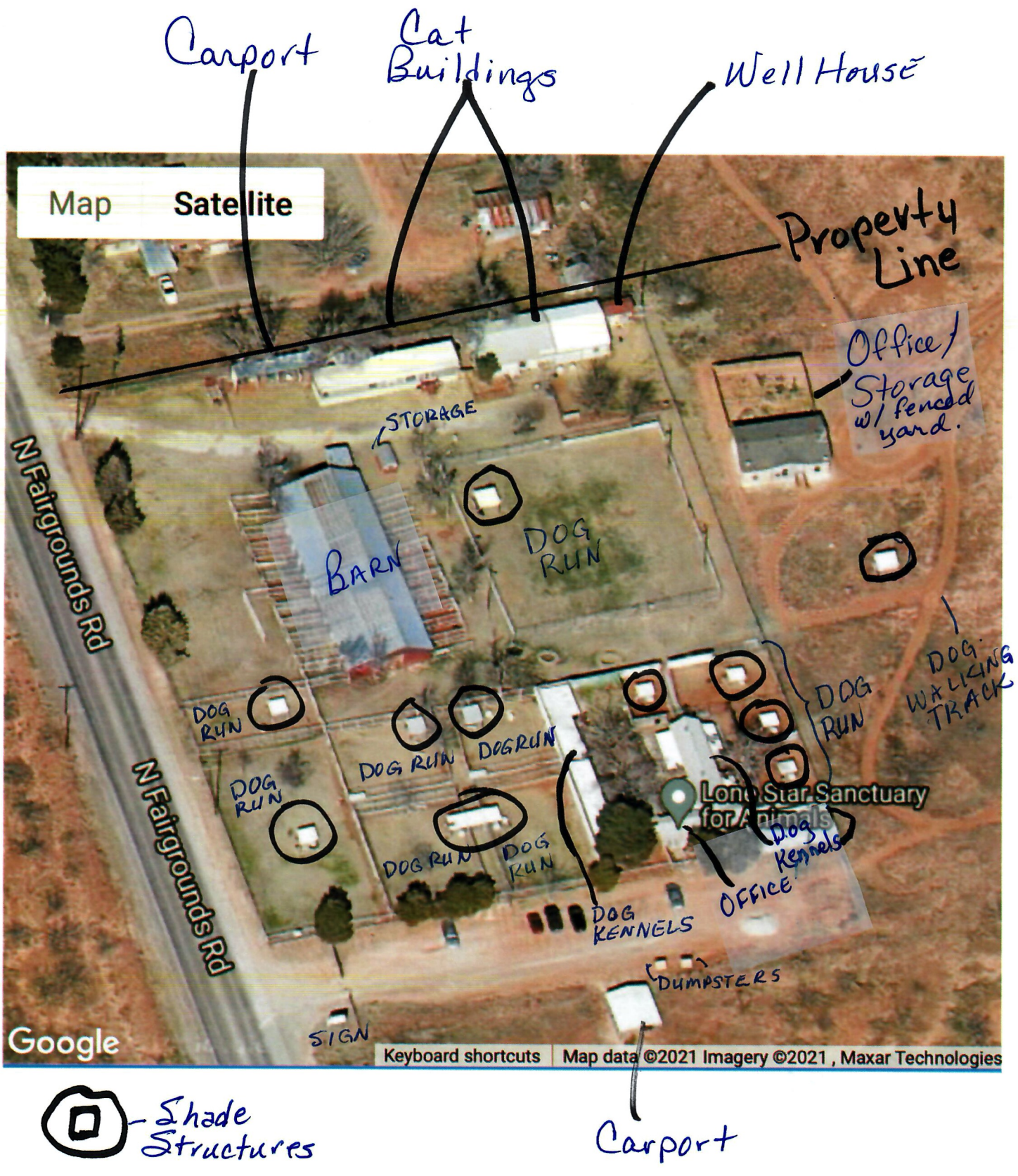
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney


Exhibit "A"
Lonestar Sanctuary for Animals
Vacant
N FAIRGROUNDS
SHANKS
CYNTHIA
<Null>


Carport
Cat Buildings
Well House
Map
Satellite
Property Line
Office/ Storage w/ fenced yard.
STORAGE
BARN
DOG RUN
N Fairgrounds Rd
DOG RUN
DOG RUN
DOGRUN
DOG RUN
DOG RUN
DOG RUN
DOG RUN
DOG WALKING TRACK
Lone Star Sanctuary for Animals
Dog Kennels
OFFICE
DOG KENNELS
DUMPSTERS
SIGN
Google
Keyboard shortcuts
Map data ©2021 Imagery ©2021 , Maxar Technologies
- Shade Structures
Carport

MIDLAND
Planning Division

Specific Use Designation Application (Non-Alcohol)

Case Number: _____

Ord. Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Barbara French		Phone (432) 352-8287 Email lssfa4200@gmail.com	
Address 5512 Carmel Ct	City Midland	State TX	Zip 79707

Property Owner Printed Name: Dolores McCall		Phone (432) 683-5662 Email doloresmccall@dlmccall.com	
Address 2608 W Dengar	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:	*For Office Use Only* ☐ with Term ☒ without Term

Is there any Code Enforcement action pending on property? ☐ Yes ☒ No

Street Address: 4200 N Fairgrounds Road, Midland, TX 79705

Legal Description
Lot: Block: Subdivision: Ruckus Addition

Current Zoning:

Maximum Floor Area: | **Maximum Occupancy:**

Proposed hours and days of use or operation: 8 a.m. til 5 p.m. 7 days per week.

Reason for request: In conjunction with rezoning application (Regional Retail), to build and improve facilities at Lone Star Sanctuary for Animals.

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: Lone Star Sanctuary has been in operation at this location for 22 years and it strives to improve the community through rescuing homeless dogs and cats and educating the community about proper animal care.

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): Barbara French	Date: 7-21-2021
Applicant (printed): Barbara French	
Property Owner (signature): Dolores McCall	Date: 7-21-2021
Property Owner (printed): Dolores McCall	

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 BARBARA FRENCH who, being by me duly sworn, upon oath says: That (s)he is authorized by Dolores McCall, 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.

Barbara French
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 21ST day of JULY, 20 21, to certify which witness my hand and seal of office.

NOTARY PUBLIC STATE OF TEXAS
Walter Chandler Tate
My Commission Expires
01/30/2023
ID No. 131872990

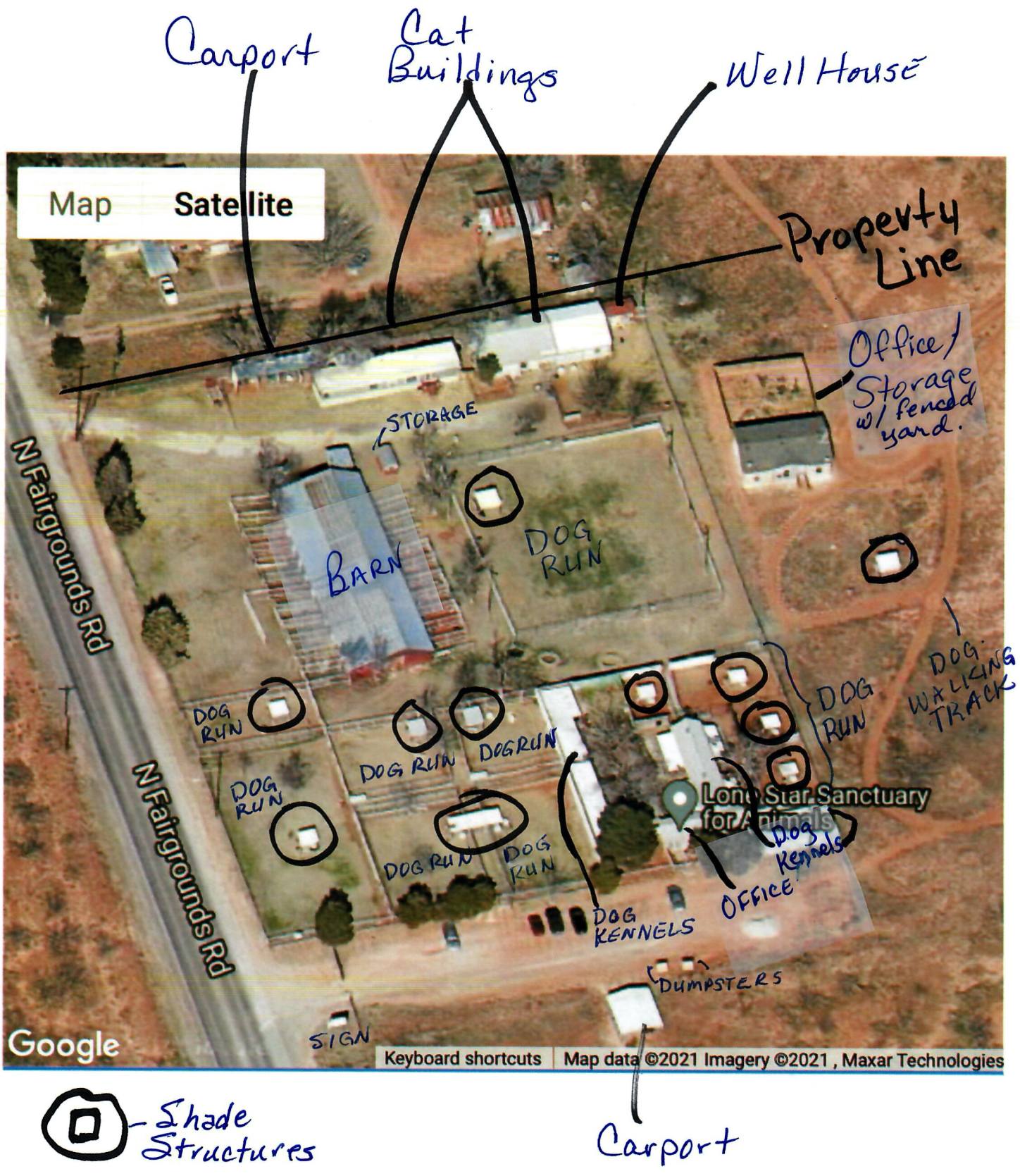
Walter Chandler Tate
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

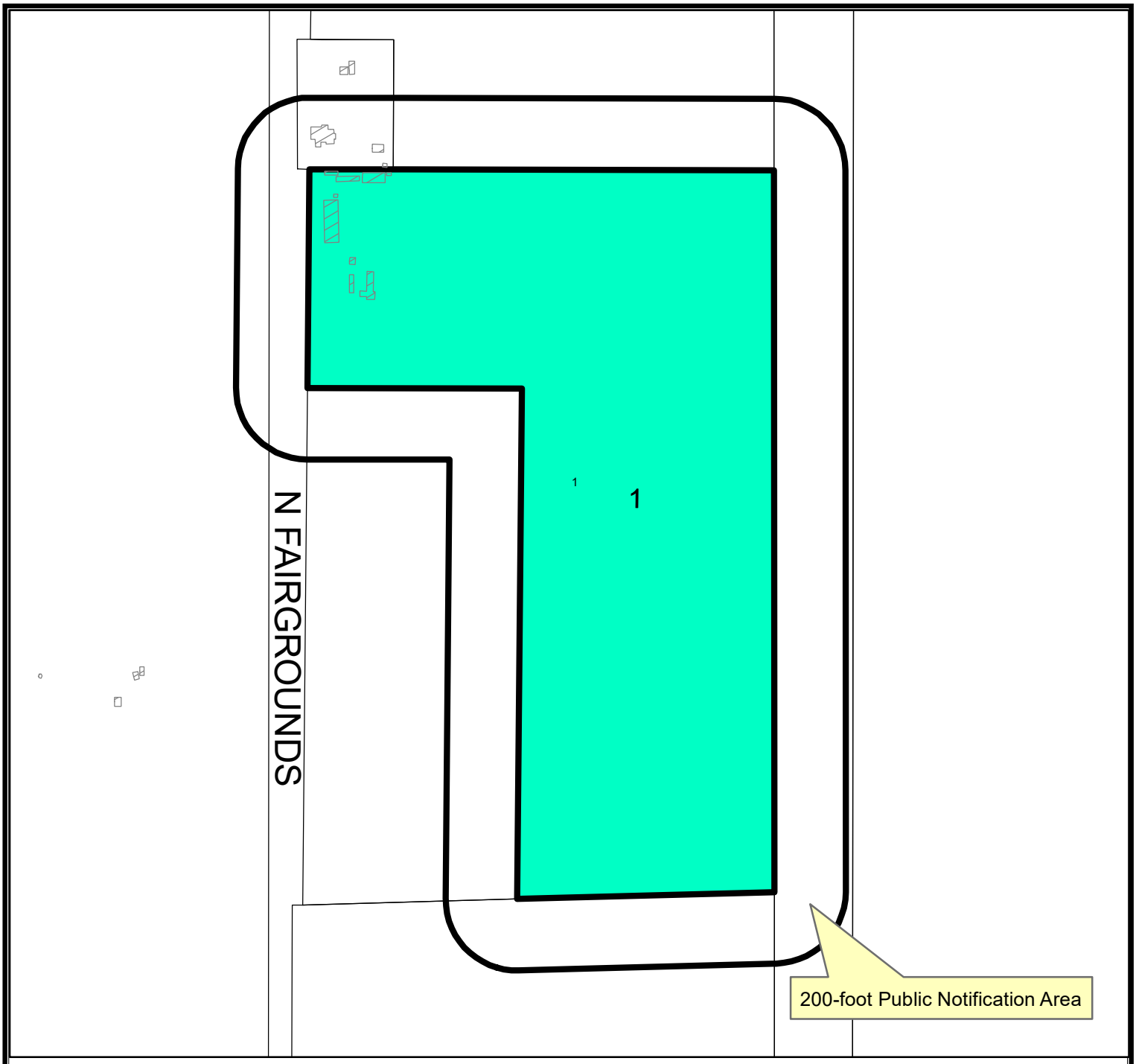
FOR OFFICE USE ONLY

☐ 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.****


Exhibit "A"
Lonestar Sanctuary for Animals
Vacant
N FAIRGROUNDS
SHANKS
CYNTHIA
<Null>


Carport
Cat Buildings
Well House
Map
Satellite
Property Line
Office/ Storage w/ fenced yard.
STORAGE
BARN
DOG RUN
N Fairgrounds Rd
N Fairgrounds Rd
DOG RUN
DOG RUN
DOGRUN
DOG RUN
DOG RUN
DOG RUN
DOG RUN
DOG WALKING TRACK
Lone Star Sanctuary for Animals
Dog Kennels
OFFICE
DOG KENNELS
DUMPSTERS
SIGN
Google
Keyboard shortcuts
Map data ©2021 Imagery ©2021 , Maxar Technologies
Shade Structures
Carport



LOCATION MAP

SUDwo-21-0023 **Scale: 1" = 400'**

Consider a request by Barbara French for a Specific Use Destination, without term, to allow for the construction of future animal sanctuary facilities, on Lot 1, Block 1, Ruckus Addition, City and County of Midland, Texas.

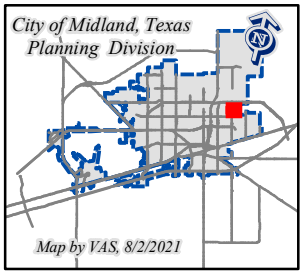
Generally located on the east side of Fairgrounds Road, approximately 1,899-feet south of E. Loop 250 North. (Council District 2)

LEGEND

CITY LIMITS

PARCEL

PRIVATE BLDGS



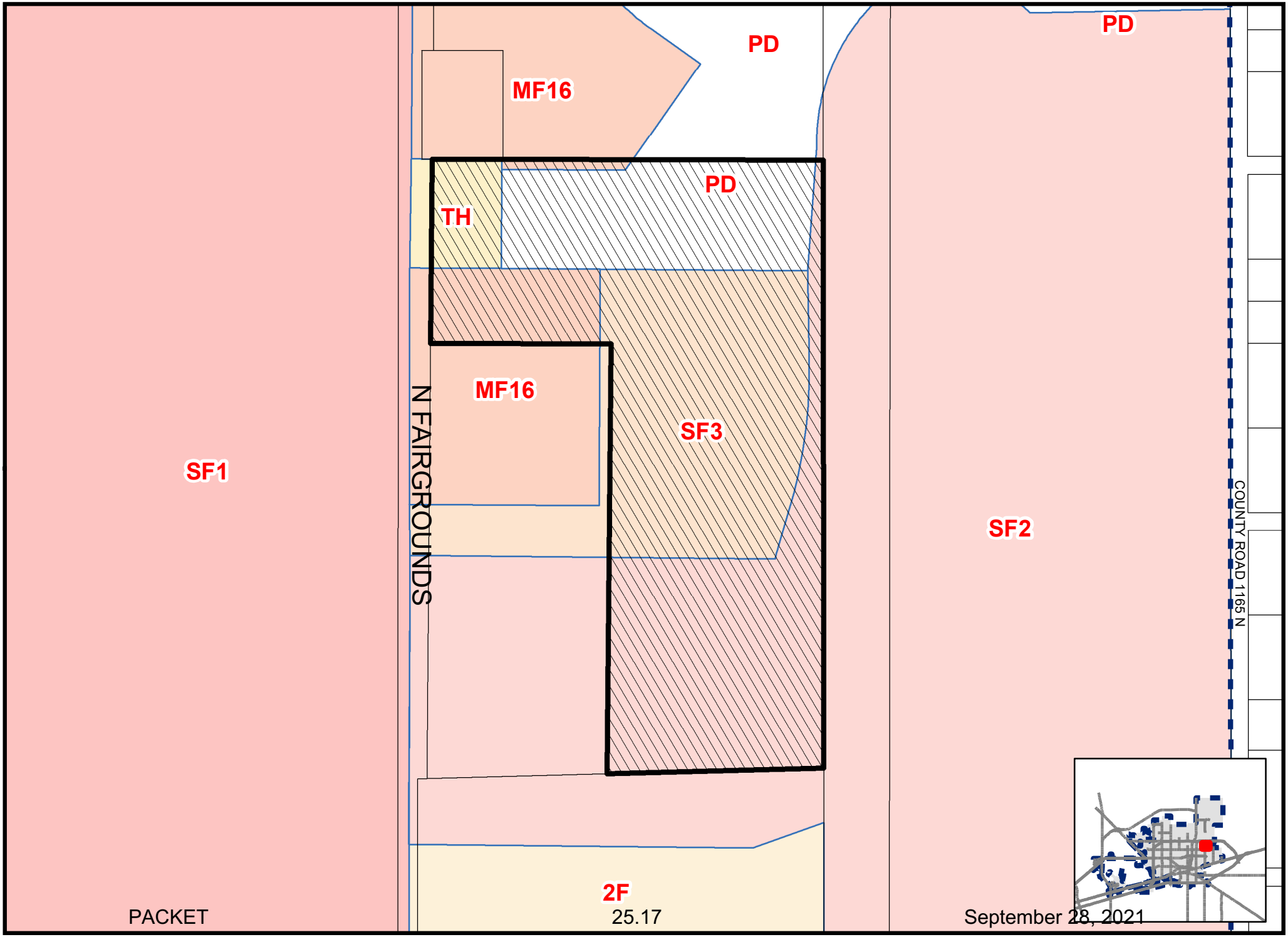
©THE CITY OF MIDLAND - 2021

THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ABSTRACTOR 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.

PACKET 25.16

September 28, 2021



Map By VAS, 8/2/2021

SUDwo-21-0023

Scale: 1" = 200'

ZONING MAP




WARNING


Lone Star Sanctuary For Animals
"Saving and Changing Lives"
4200 North Fairgrounds Road
(432) 563-7287



City Council Meeting

Item Number: 26

Meeting Date: September 28, 2021

To: City Council / City Manager

From: Ron Jenkins, Oil and Gas Coordinator

Subject: The proposed granting of oil and gas well permits to Permian Deep Rock Oil Co., LLC for the drilling of the following oil and gas wells: Mustang 115 MIPA Unit H115LS; Mustang 115 MIPA Unit H115WA; Mustang 120 MIPA Unit H120WB; Mustang 125 MIPA Unit H125WA; Mustang 130 MIPA Unit H130LS; Mustang 130 MIPA Unit H130WB; Mustang 135 MIPA Unit H135WA; and Mustang 140 MIPA Unit H140WB; said wells being generally located between 1,575 feet and 1,697 feet east of Rankin Highway and between 510 feet and 625 feet south of I-20 (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

Permian Deep Rock Oil Co., LLC for the drilling of oil gas wells, as listed prior. Council may consider this permit following a 30-day public comment period and at a regularly scheduled meeting. No notices of objection received.

Recommended City Council Action:

Directional / Informational

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. A 16 ft. sound wall will be used during drilling and fracing operations being located on the North side of location. The operator has a surface agreement with the surface owner. The tank battery is located in the county. 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 due to no city water is 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

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
08/02/2021	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

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: Mustang 115 MIPA Unit #H115LS

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: 260' FNL & 1,575' FWL, Section 11
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

SCALE: 1" = 300'

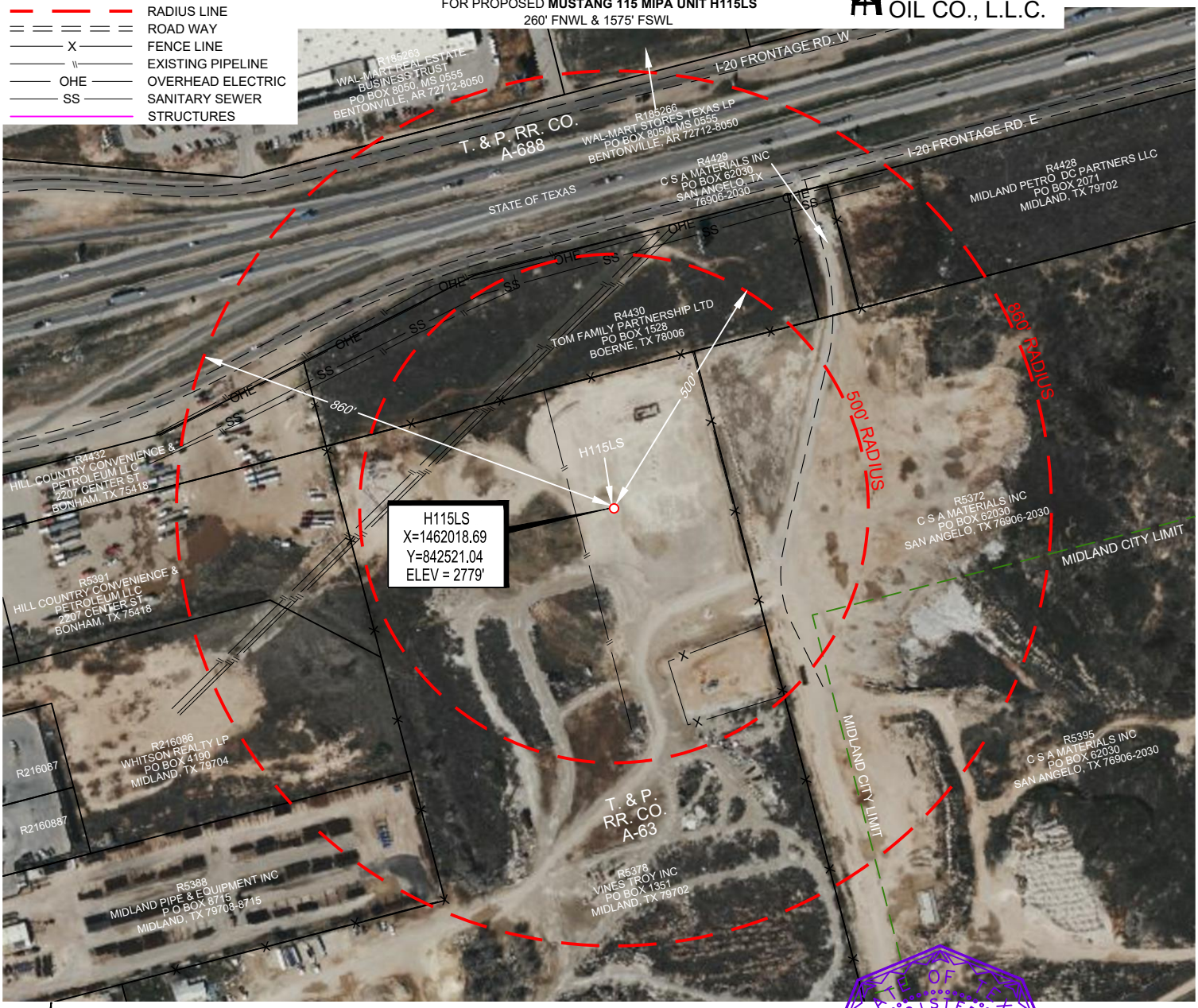
0' 150' 300'

LEGEND

- SURVEY/SECTION LINE
- RADIUS LINE
- ROAD WAY
- FENCE LINE
- EXISTING PIPELINE
- OVERHEAD ELECTRIC
- SANITARY SEWER
- STRUCTURES

SECTION 11, BLOCK 39, T-2-S
T. & P. RR. CO. SURVEY, A-63
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS
SHOWING STRUCTURES WITHIN 500' RADIUS
AND PROPERTY OWNERS WITHIN 860' RADIUS
FOR PROPOSED **MUSTANG 115 MIPA UNIT H115LS**
260' FNWL & 1575' FSWL

PERMIAN DEEP ROCK OIL CO., L.L.C.



N

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

STATE OF TEXAS
REGISTERED
JEFFREY N. LUEDERS
6512
PROFESSIONAL
LAND SURVEYOR

Jeffrey N. Lueders, R.P.L.S. No. 6512
JUNE 11, 2021

MUSTANG 115 MIPA UNIT H115LS	REVISION:	
	INT	DATE
DATE: 07/07/2021		
FILE: CD_MUSTANG_115LS		
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.

S:\SURVEY\ARRINGTON\MUSTANG_UNIT\FINAL_PRODUCTS\CITY_PERMITS\NAD27\CD_MUSTANG_115LS.DWG 7/9/2021 6:33:22 AM dharris

EXHIBIT "G"

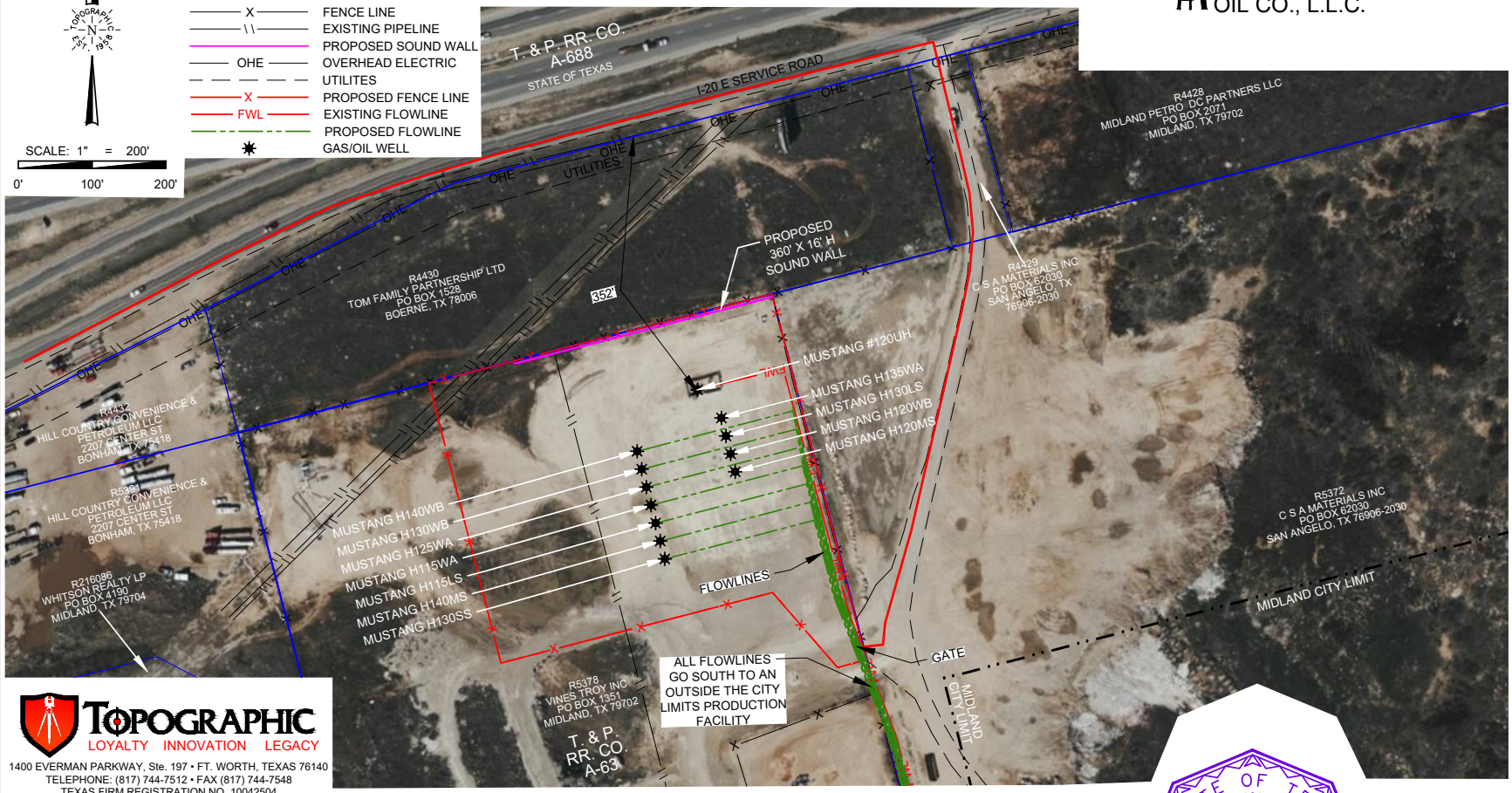
SECTION 11, BLOCK 39, T2S, T. & P. R. R. CO. SURVEY, A-63
MIDLAND COUNTY, TEXAS

PERMIAN DEEP ROCK OIL CO., L.L.C.

LEGEND

- CITY LIMIT LINE
- SURVEY LINE
- TRACT BORDER
- ROAD WAY
- FENCE LINE
- EXISTING PIPELINE
- PROPOSED SOUND WALL
- OVERHEAD ELECTRIC
- UTILITES
- PROPOSED FENCE LINE
- EXISTING FLOWLINE
- PROPOSED FLOWLINE
- GAS/OIL WELL

SCALE: 1" = 200'
0' 100' 200'



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LOYALTY INNOVATION LEGACY
1400 EVERMAN PARKWAY, Ste. 197 • FT. WORTH, TEXAS 76140
TELEPHONE: (817) 744-7512 • FAX (817) 744-7548
TEXAS FIRM REGISTRATION NO. 10042504
WWW.TOPOGRAPHIC.COM

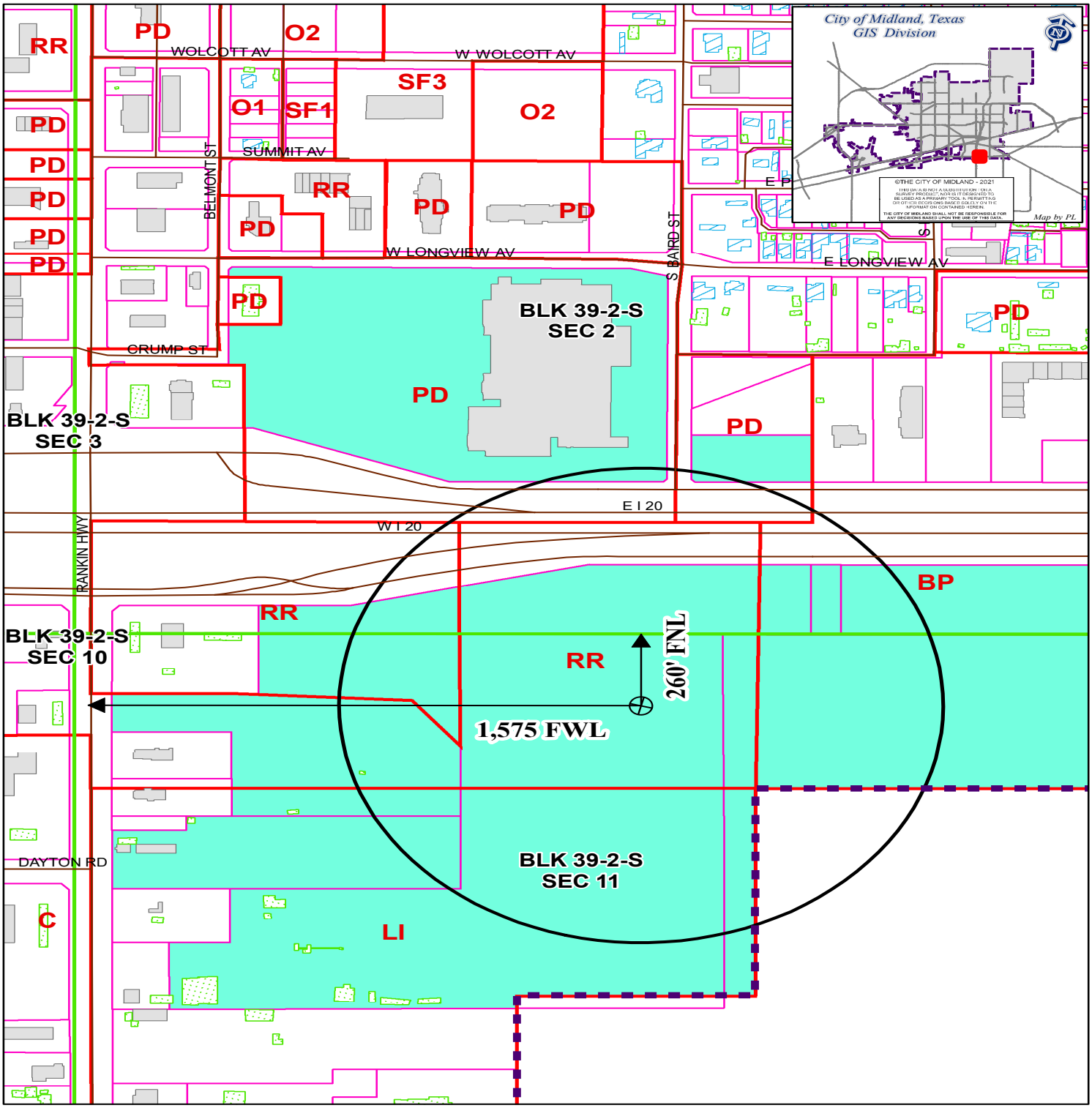
MUSTANG EAST PAD CITY PERMIT	REVISION:	
	AMD	1/18/2018
	AMD	1/19/2018
	AMD	1/30/2018
DATE: 01/08/2018	DRH	7/13/2021
FILE: SK_MUSTANG_H120UH_CL_PERMIT_REV5	DRH	7/14/2021
DRAWN BY: AMD		
SHEET : 3 OF 7		

NOTES:
1. ORIGINAL DOCUMENT SIZE: 11" X 8.5"
2. ALL BEARINGS, DISTANCES, AND COORDINATE VALUES CONTAINED HEREIN ARE GRID BASED UPON THE TEXAS COORDINATE SYSTEM OF 1927, CENTRAL ZONE, U.S. SURVEY FEET.
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: JUNE 11, 2021

S:\SURVEY\ARRINGTON\MUSTANG_UNIT\FINAL_PRODUCTS\SKETCH\SK_MUSTANG_H120UH_CL_PERMIT_REV5.DWG 7/14/2021 9:25:22 AM dharris



LOCATION AND ZONING MAP

Oil - 036965 - 2021 **Scale: 1" = 400'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 260' FNL and 1,575' FWL, Section 11, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 1,575 feet east of Rankin Highway and 625 feet south of I-20.

Mustang 115 MIPA Unit #H115LS

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
RR, SF1, SF2, 1F3	ONE-FAMILY DWELLING	RC	COMMUNITY 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
08/02/2021	Permian Deep Rock Oil Co., LLC	P.O. Box 11405 Midland, TX 79702

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele.
Keith E. Bucy	500 W. Wall St. Ste 300 Midland, TX 79701	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

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: Mustang 115 MIPA Unit #H115WA

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: 235' FNL & 1,575' FWL, Section 11
Block 39, T-2-S, T&PRR Co. Survey, Midland County, Texas

ATTACHED AS EXHIBIT G **is the Location Site Plan [See § J(9)].**

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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.

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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)

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V. Additional Required Exhibits

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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

SCALE: 1" = 300'

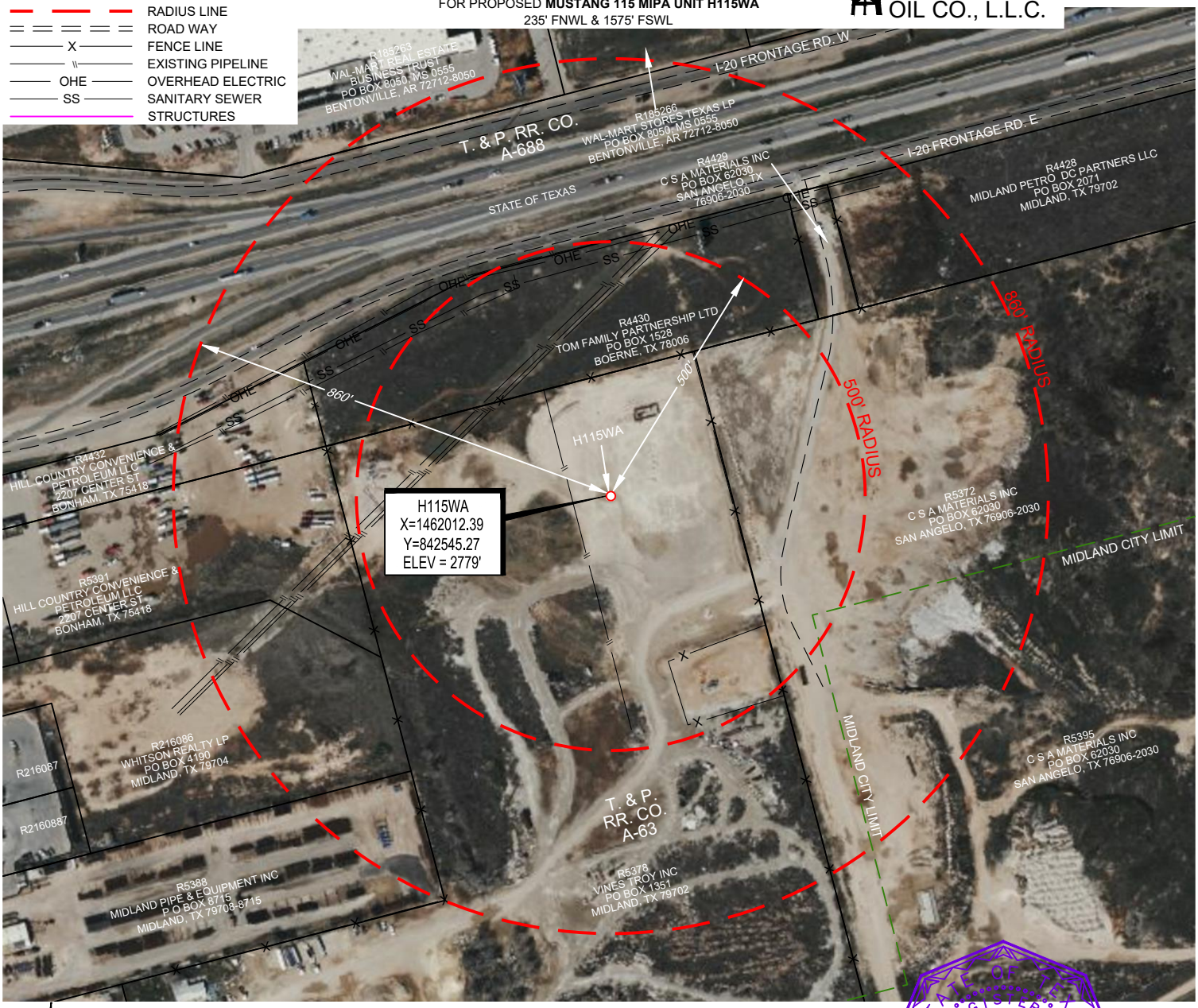
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LEGEND

- SURVEY/SECTION LINE
- RADIUS LINE
- ROAD WAY
- FENCE LINE
- EXISTING PIPELINE
- OHE — OVERHEAD ELECTRIC
- SS — SANITARY SEWER
- STRUCTURES

SECTION 11, BLOCK 39, T-2-S
T. & P. RR. CO. SURVEY, A-63
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS
SHOWING STRUCTURES WITHIN 500' RADIUS
AND PROPERTY OWNERS WITHIN 860' RADIUS
FOR PROPOSED **MUSTANG 115 MIPA UNIT H115WA**
235' FNWL & 1575' FSWL

PERMIAN DEEP ROCK OIL CO., L.L.C.



N

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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

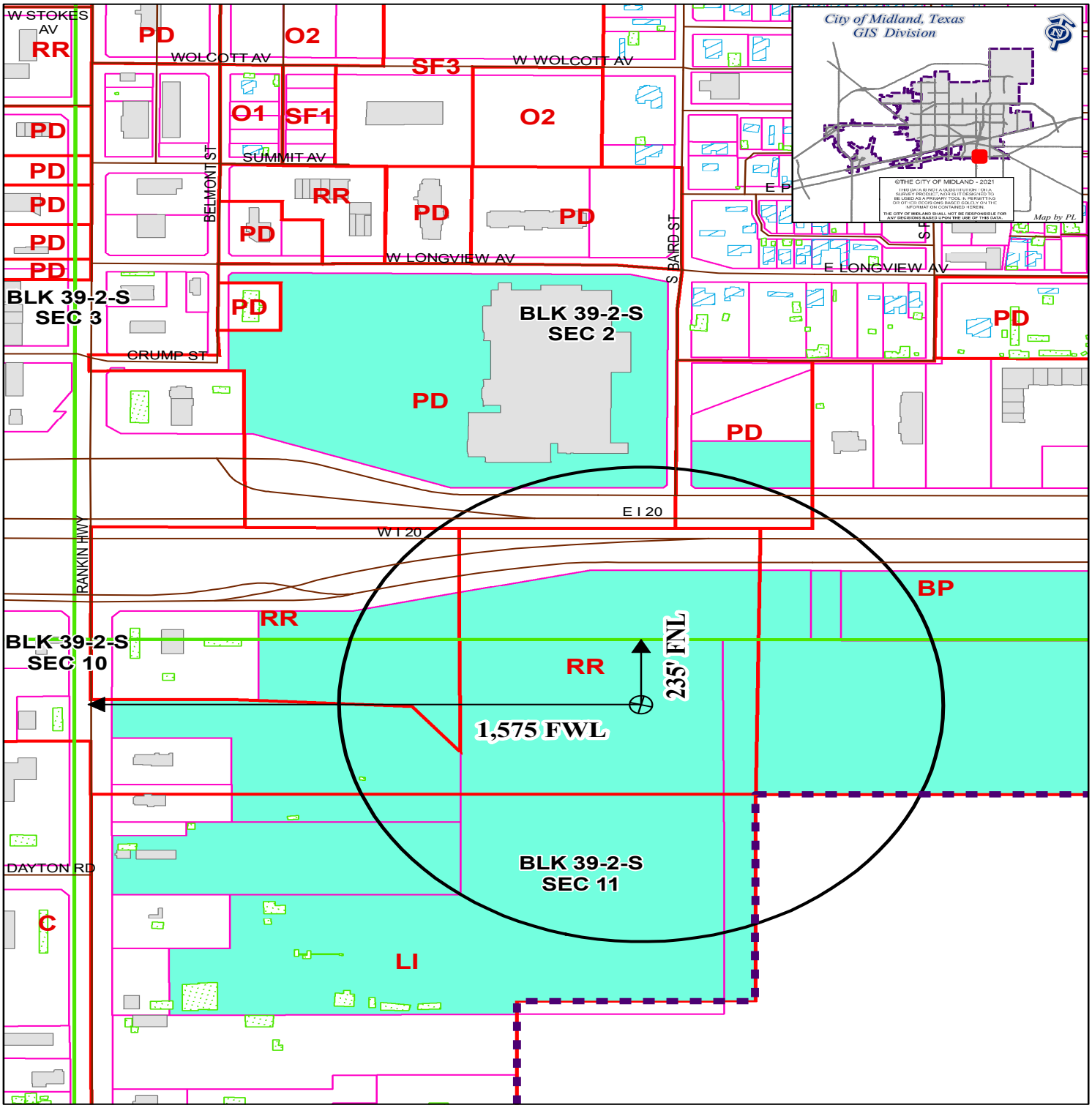
STATE OF TEXAS
REGISTERED
JEFFREY N. LUEDERS
6512
PROFESSIONAL
LAND SURVEYOR

Jeffrey N. Lueders, R.P.L.S. No. 6512
JUNE 11, 2021

MUSTANG 115 MIPA UNIT H115WA	REVISION:	
	INT	DATE
DATE: 07/08/2021		
FILE: CD_MUSTANG_115WA		
DRAWN BY: PAC		
SHEET : 1 OF 2		

NOTES:
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S:\SURVEY\ARRINGTON\MUSTANG_UNIT\FINAL_PRODUCTS\CITY_PERMITS\NAD27\CD_MUSTANG_115WA.DWG 7/9/2021 8:55:22 AM dharris



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Generally located 1,575 feet east of Rankin Highway and 600 feet south of I-20.

Mustang 115 MIPA Unit #H115WA

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
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ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

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CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
[illegible]	ONE-FAMILY DWELLING	[illegible]	[illegible]RETAIL
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MIDLAND
Planning Division

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(Pursuant to Midland City Ordinance No. 8769)

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Date	Operator Name (must match W-1)	Operator Address
08/02/2021	Permian Deep Rock Oil Co., LLC	P.O. Box 11405 Midland, TX 79702

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele.
Keith E. Bucy	500 W. Wall St. Ste 300 Midland, TX 79701	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.):**

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Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):*** See Exhibit "A"

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See Exhibit "C"

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General Description of Current Surface Use (within 860 feet of proposed surface location):
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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: Mustang 120 MIPA Unit #H120WB

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: 195' FNL & 1,697' FWL, Section 11
Block 39, T-2-S, T&PRR Co. Survey, Midland County, Texas

ATTACHED AS EXHIBIT G **is the Location Site Plan [See § J(9)].**

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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

SCALE: 1" = 300'

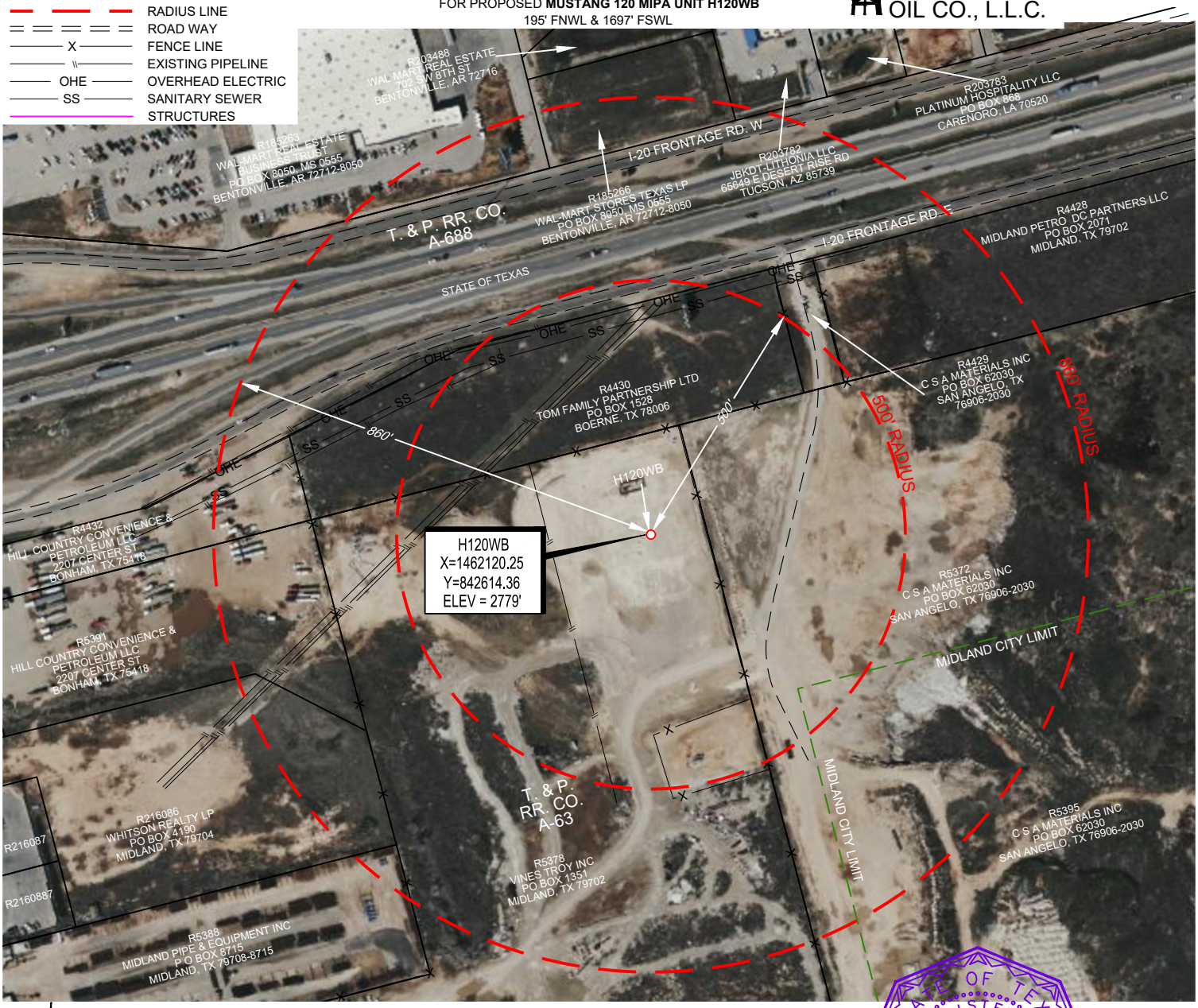
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LEGEND

- SURVEY/SECTION LINE
- RADIUS LINE
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SECTION 11, BLOCK 39, T-2-S
T. & P. RR. CO. SURVEY, A-63
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS
SHOWING STRUCTURES WITHIN 500' RADIUS
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FOR PROPOSED **MUSTANG 120 MIPA UNIT H120WB**
195' FNWL & 1697' FSWL

PERMIAN DEEP ROCK OIL CO., L.L.C.



N

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LOYALTY INNOVATION LEGACY
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TELEPHONE: (817) 744-7512 • FAX (817) 744-7548
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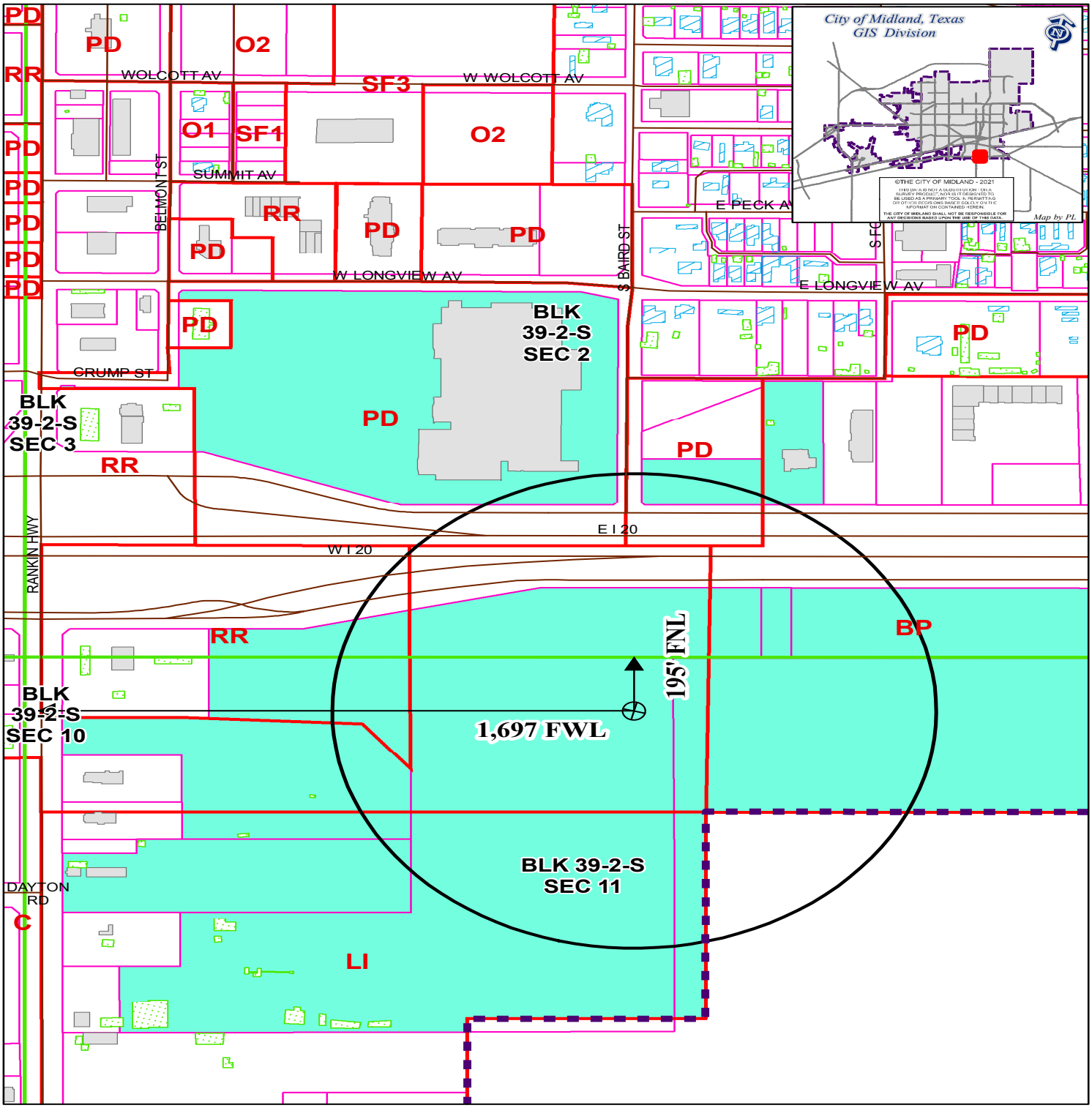
STATE OF TEXAS
REGISTERED
JEFFREY N. LUEDERS
6512
PROFESSIONAL
LAND SURVEYOR

Jeffrey N. Lueders, R.P.L.S. No. 6512
JUNE 11, 2021

MUSTANG 120 MIPA UNIT H120WB	REVISION:	
	INT	DATE
DATE: 07/09/2021		
FILE: CD_MUSTANG_120WB		
DRAWN BY: PAC		
SHEET : 1 OF 2		

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PACKET 26.20 September 28, 2021



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Mustang 120 MIPA Unit #H120WB

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IV. Well & Operations Information

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Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

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(2) Operations: Oncor

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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)

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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)].**

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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

SCALE: 1" = 300'

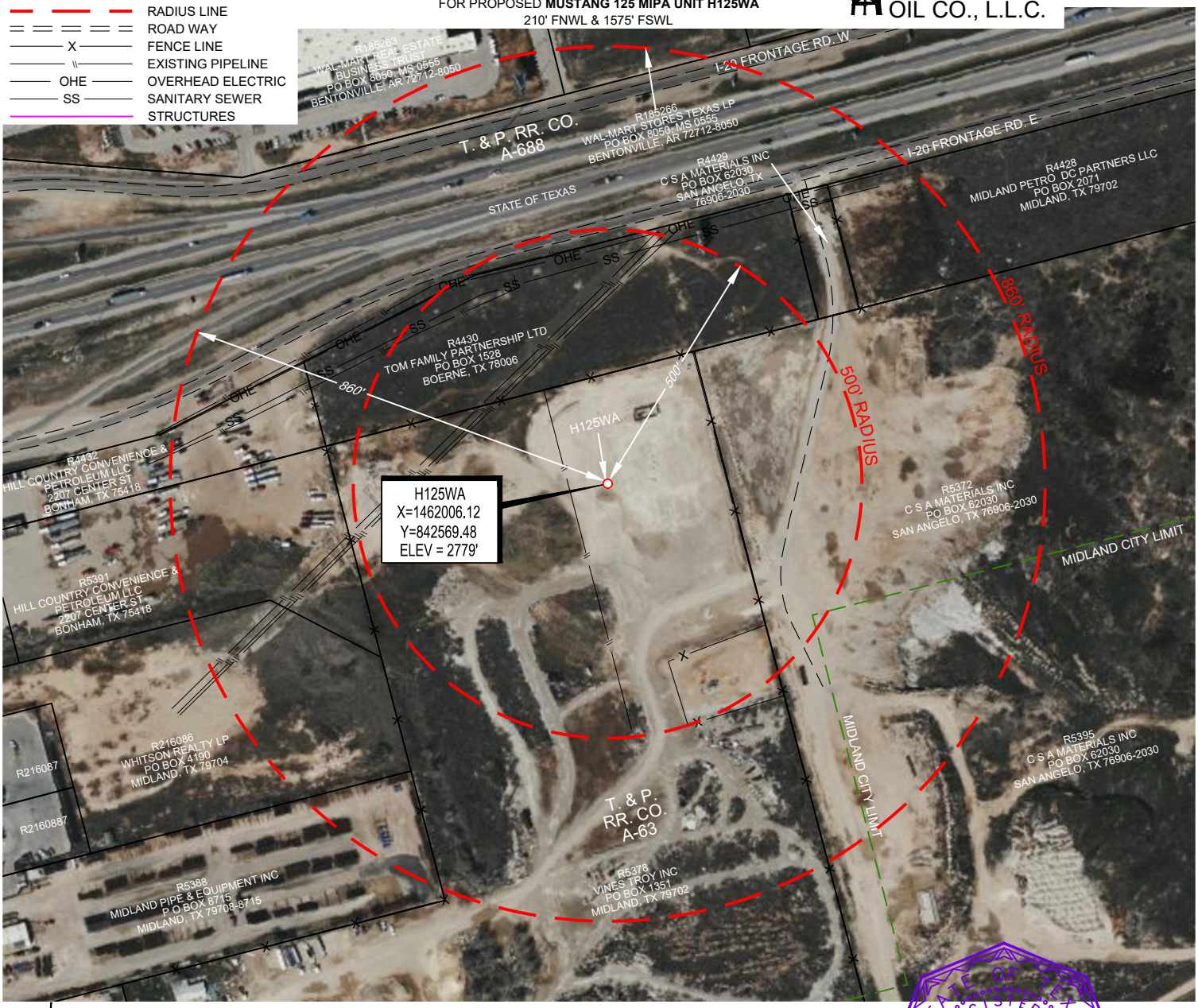
0' 150' 300'

LEGEND

- SURVEY/SECTION LINE
- RADIUS LINE
- ROAD WAY
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- SANITARY SEWER
- STRUCTURES

SECTION 11, BLOCK 39, T-2-S
T. & P. RR. CO. SURVEY, A-63
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS
SHOWING STRUCTURES WITHIN 500' RADIUS
AND PROPERTY OWNERS WITHIN 860' RADIUS
FOR PROPOSED **MUSTANG 125 MIPA UNIT H125WA**
210' FNWL & 1575' FSWL

PERMIAN DEEP ROCK OIL CO., L.L.C.



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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
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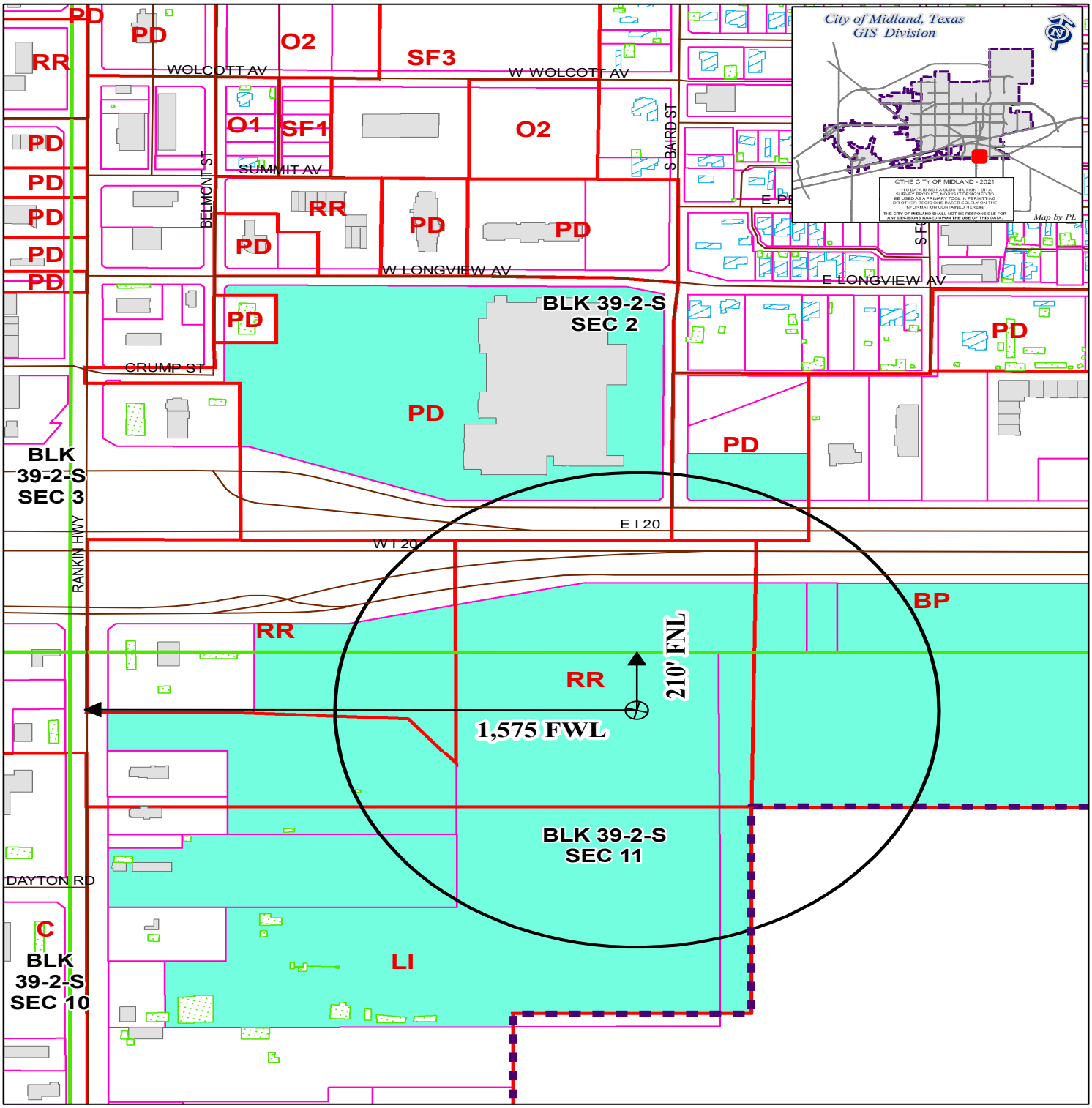
STATE OF TEXAS
REGISTERED
JEFFREY N. LUEDERS
6512
PROFESSIONAL
LAND SURVEYOR

Jeffrey N. Lueders, R.P.L.S. No. 6512
JUNE 11, 2021

MUSTANG 125 MIPA UNIT H125WA	REVISION:	
	INT	DATE
DATE: 07/08/2021		
FILE: CD_MUSTANG_125WA		
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 26.26 September 28, 2021



LOCATION AND ZONING MAP

Oil - 036970 - 2021 **Scale: 1" = 400'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 210' FNL and 1,575' FWL, Section 11, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 1,575 feet east of Rankin Highway and 575 feet south of I-20.

Mustang 125 MIPA Unit #H125WA

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, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
RR, 1F2, 1F3	ONE-FAMILY DWELLING	RC	COMMUNITY/REGIONAL 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
08/02/2021	Permian Deep Rock Oil Co., LLC	P.O. Box 11405 Midland, TX 79702

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele.
Keith E. Bucy	500 W. Wall St. Ste 300 Midland, TX 79701	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

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: Mustang 130 MIPA Unit #H130LS

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: 170' FNL & 1,697' FWL, Section 11
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)].**

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(1) Drilling: None

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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.

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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

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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

SCALE: 1" = 300'

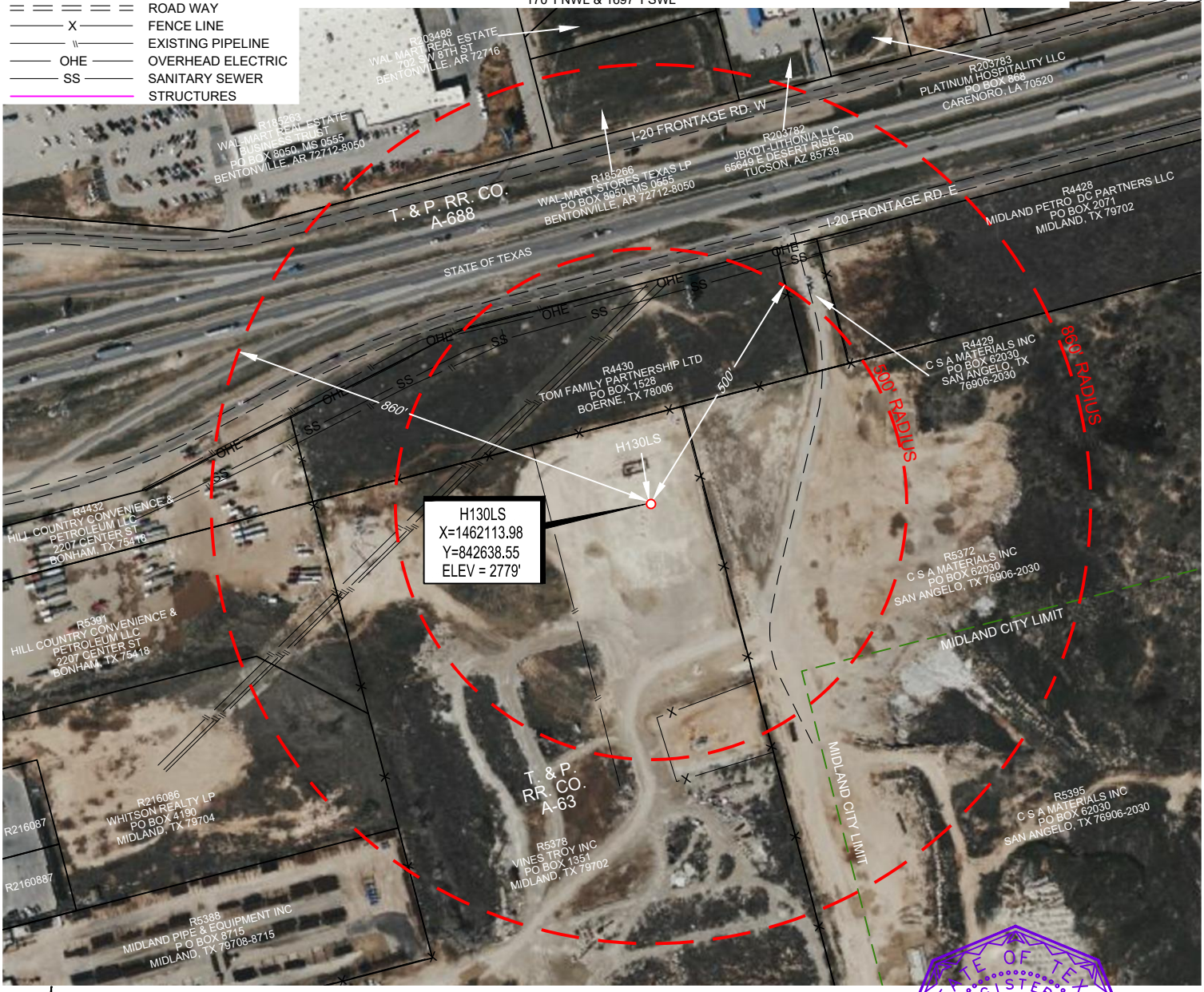
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LEGEND

- SURVEY/SECTION LINE
- RADIUS LINE
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SECTION 11, BLOCK 39, T-2-S
T. & P. RR. CO. SURVEY, A-63
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS
SHOWING STRUCTURES WITHIN 500' RADIUS
AND PROPERTY OWNERS WITHIN 860' RADIUS
FOR PROPOSED **MUSTANG 130 MIPA UNIT H130LS**
170' FNWL & 1697' FSWL

PERMIAN DEEP ROCK OIL CO., L.L.C.



N

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1400 EVERMAN PARKWAY, Ste. 146 • FT. WORTH, TEXAS 76140
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STATE OF TEXAS
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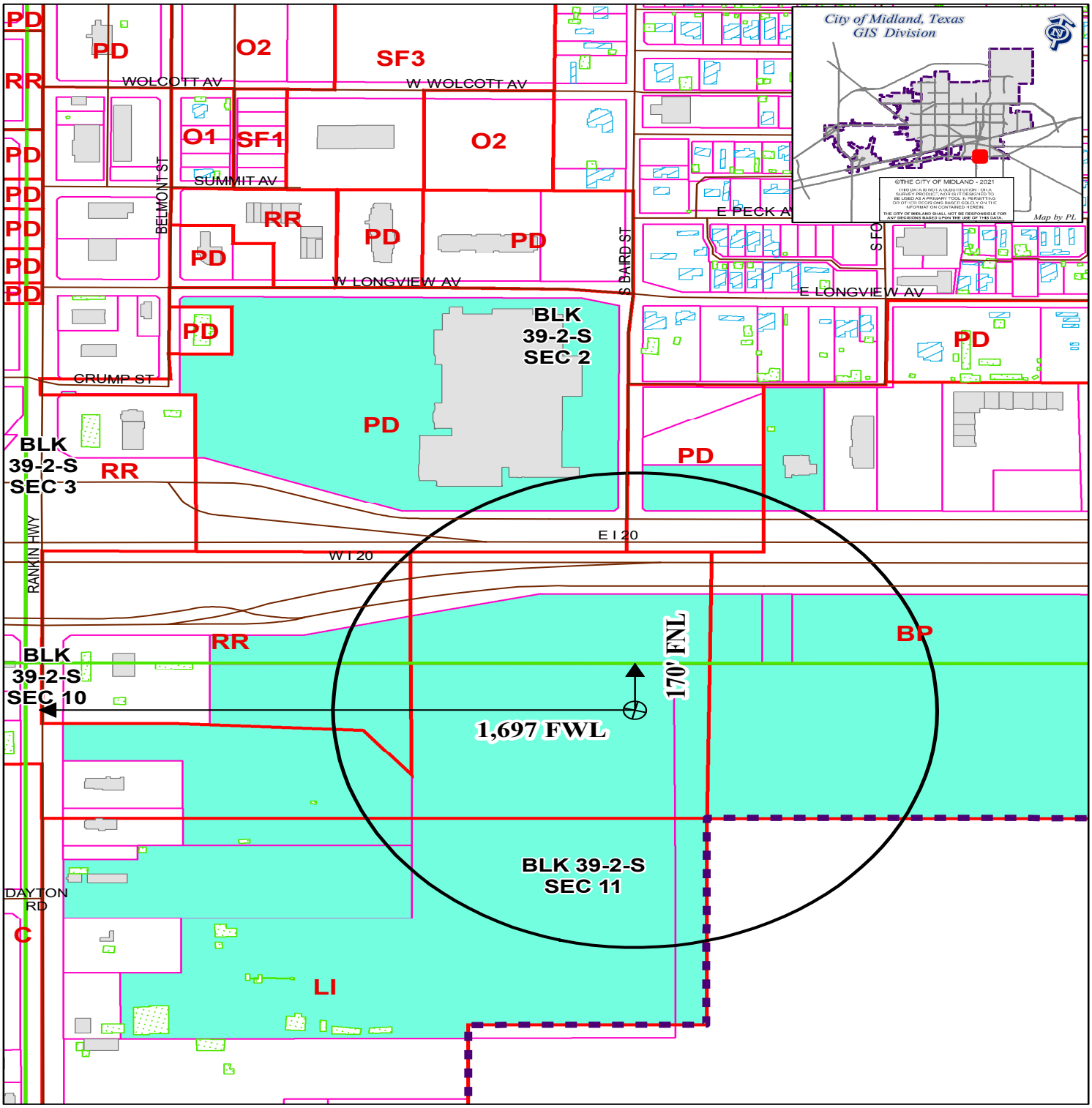
Jeffrey N. Lueders, R.P.L.S. No. 6512
JUNE 11, 2021

MUSTANG 130 MIPA UNIT H130LS	REVISION:	
	INT	DATE
DATE: 07/09/2021		
FILE: CD_MUSTANG_130LS		
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SHEET : 1 OF 2		

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PACKET 26.32 September 28, 2021

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LOCATION AND ZONING MAP

Oil - 036972 - 2021 **Scale: 1" = 400'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 170' FNL and 1,697' FWL, Section 11, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 1,697 feet east of Rankin Highway and 535 feet south of I-20.

Mustang 130 MIPA Unit #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, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
SF1, SF2, 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
08/02/2021	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.):**

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Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):*** See Exhibit "A"

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IV. Well & Operations Information

Proposed Well Name: Mustang 130 MIPA Unit #H130WB

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: 185' FNL & 1,575' FWL, Section 11
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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

SCALE: 1" = 300'

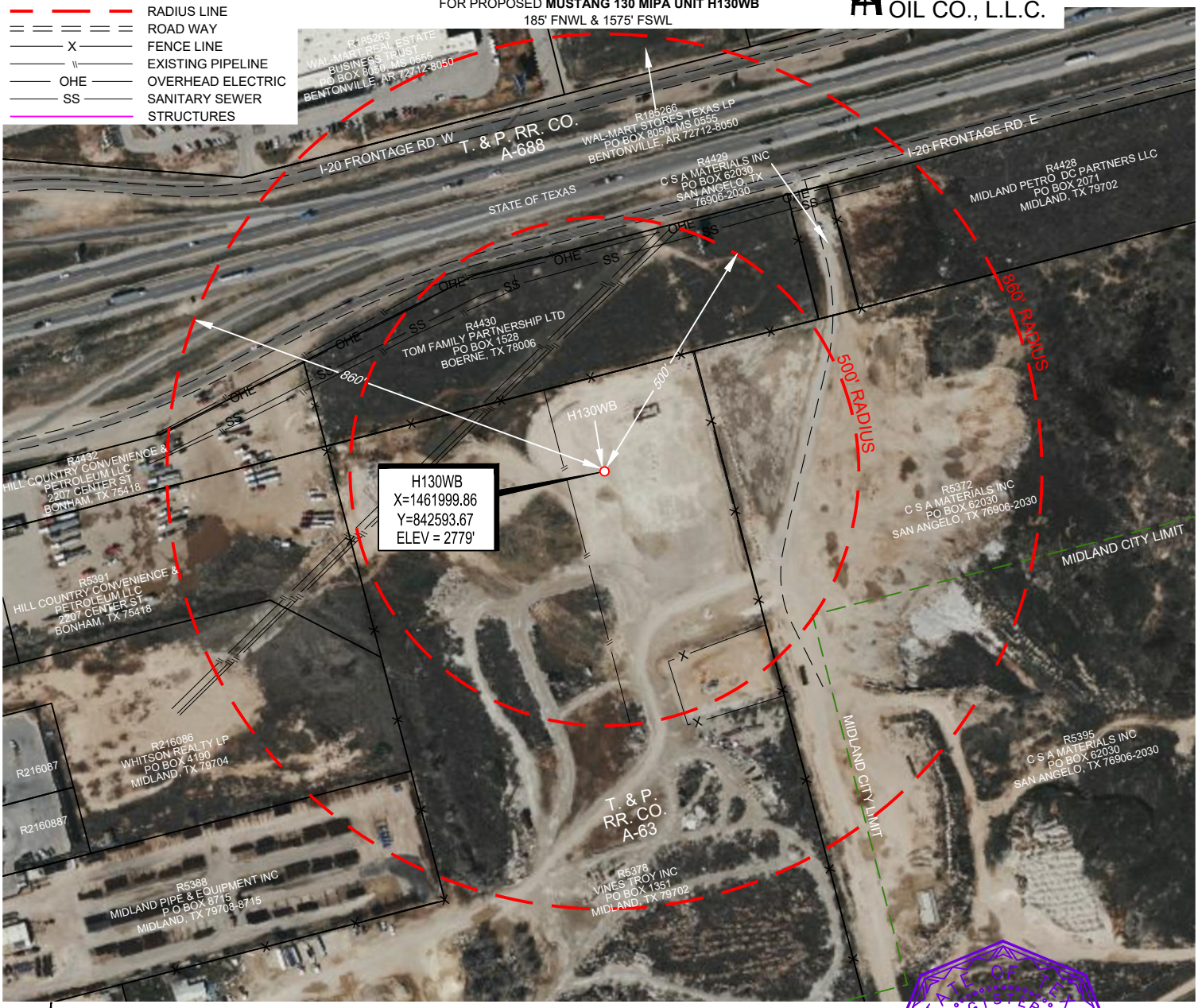
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LEGEND

- SURVEY/SECTION LINE
- RADIUS LINE
- ROAD WAY
- FENCE LINE
- EXISTING PIPELINE
- OVERHEAD ELECTRIC
- SANITARY SEWER
- STRUCTURES

SECTION 11, BLOCK 39, T-2-S
T. & P. RR. CO. SURVEY, A-63
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS
SHOWING STRUCTURES WITHIN 500' RADIUS
AND PROPERTY OWNERS WITHIN 860' RADIUS
FOR PROPOSED **MUSTANG 130 MIPA UNIT H130WB**
185' FNWL & 1575' FSWL

PERMIAN DEEP ROCK OIL CO., L.L.C.



STATE OF TEXAS
REGISTERED
JEFFREY N. LUEDERS
6512
PROFESSIONAL
LAND SURVEYOR

N

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LOYALTY INNOVATION LEGACY

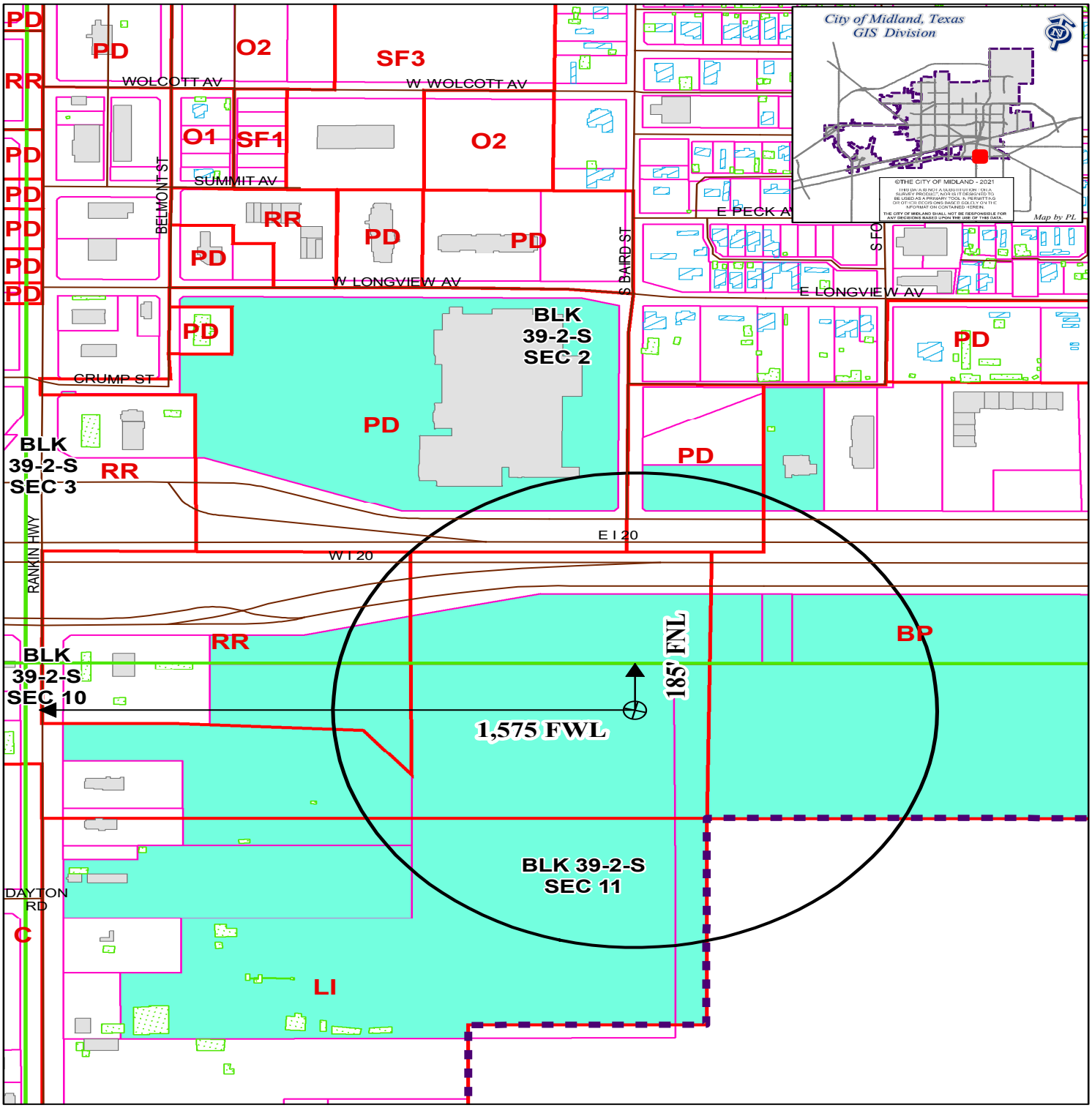
1400 EVERMAN PARKWAY, Ste. 146 • FT. WORTH, TEXAS 76140
TELEPHONE: (817) 744-7512 • FAX (817) 744-7548
TEXAS FIRM REGISTRATION NO. 10042504
WWW.TOPOGRAPHIC.COM

Jeffrey N. Lueders, R.P.L.S. No. 6512
JUNE 11, 2021

MUSTANG 130 MIPA UNIT H130WB	REVISION:	
	INT	DATE
DATE: 07/08/2021		
FILE: CD_MUSTANG_130WB		
DRAWN BY: PAC		
SHEET : 1 OF 2		

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S:\SURVEY\ARRINGTON\MUSTANG_UNIT\FINAL_PRODUCTS\CITY_PERMITS\NAD27\CD_MUSTANG_130WB.DWG 7/9/2021 8:53:25 AM dharris



LOCATION AND ZONING MAP

Oil - 036973 - 2021 **Scale: 1" = 400'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 185' FNL and 1,575' FWL, Section 11, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 1,575 feet east of Rankin Highway and 550 feet south of I-20.

Mustang 130 MIPA Unit #H130WB

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, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
SF1, SF2, 1F3	ONE-FAMILY DWELLING	C1	LOW INTENSITY 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
08/02/2021	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

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: Mustang 135 MIPA Unit #H135WA

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: 145' FNL & 1,697' FWL, Section 11
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

SCALE: 1" = 300'

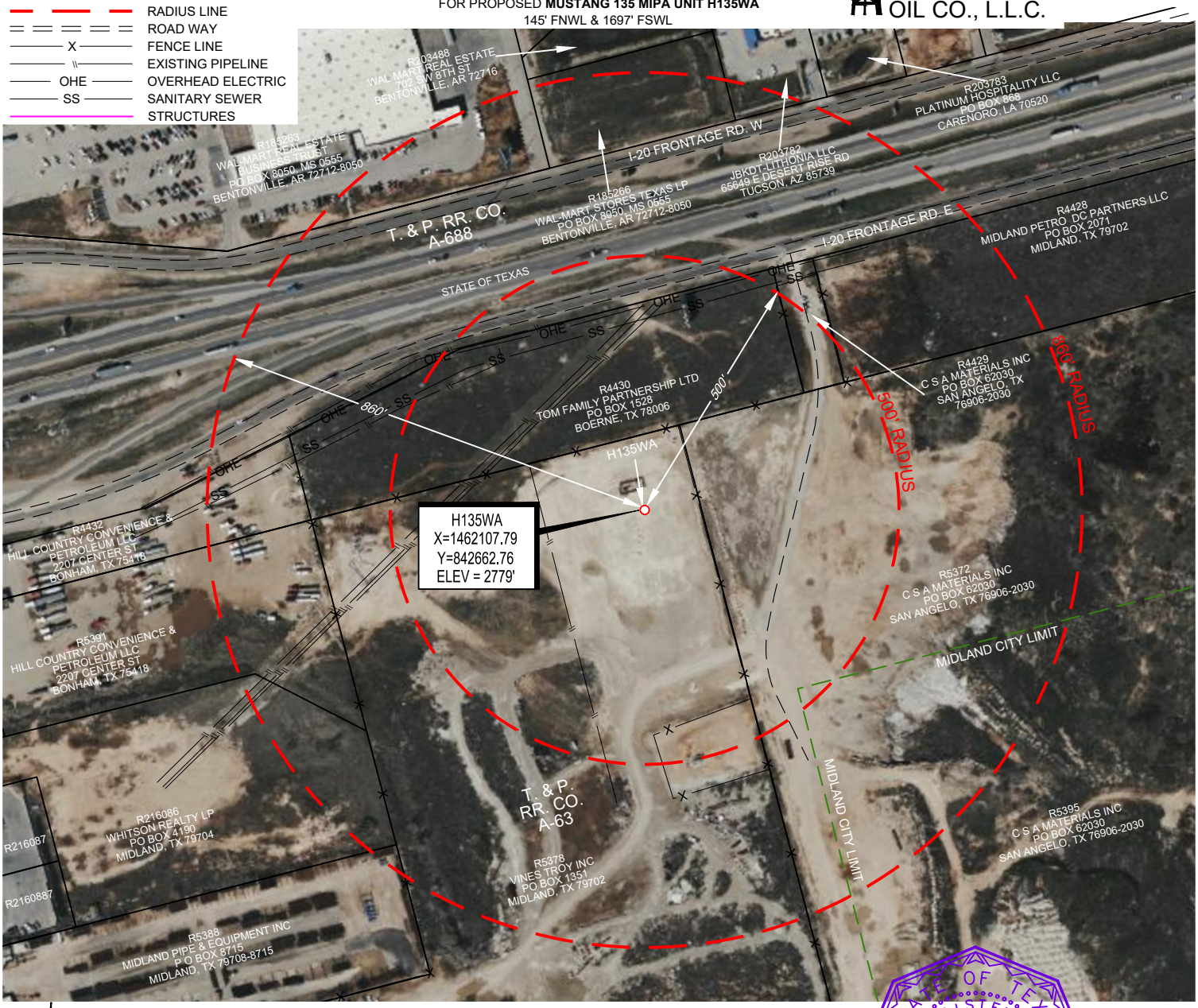
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LEGEND

- SURVEY/SECTION LINE
- RADIUS LINE
- ROAD WAY
- FENCE LINE
- EXISTING PIPELINE
- OVERHEAD ELECTRIC
- SANITARY SEWER
- STRUCTURES

SECTION 11, BLOCK 39, T-2-S
T. & P. RR. CO. SURVEY, A-63
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS
SHOWING STRUCTURES WITHIN 500' RADIUS
AND PROPERTY OWNERS WITHIN 860' RADIUS
FOR PROPOSED **MUSTANG 135 MIPA UNIT H135WA**
145' FNWL & 1697' FSWL

PERMIAN DEEP ROCK OIL CO., L.L.C.



N

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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

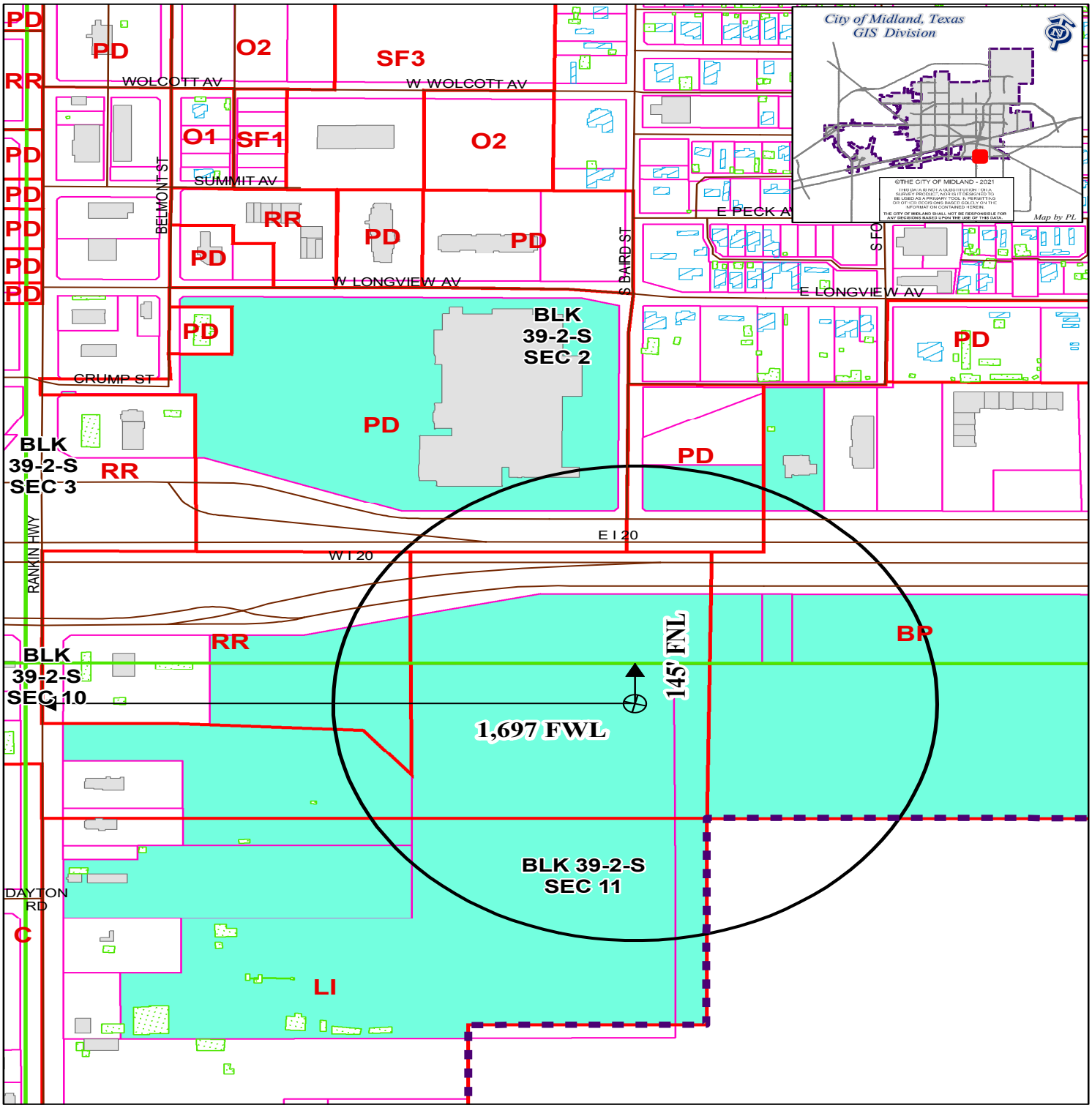
STATE OF TEXAS
REGISTERED
JEFFREY N. LUEDERS
6512
PROFESSIONAL
LAND SURVEYOR

Jeffrey N. Lueders, R.P.L.S. No. 6512
JUNE 11, 2021

MUSTANG 135 MIPA UNIT H135WA	REVISION:	
	INT	DATE
DATE: 07/09/2021		
FILE: CD_MUSTANG_135WA		
DRAWN BY: PAC		
SHEET : 1 OF 2		

NOTES:
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PACKET 26.44 September 28, 2021



LOCATION AND ZONING MAP

Oil - 036974 - 2021 **Scale: 1" = 400'**

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Generally located 1,697 feet east of Rankin Highway and 510 feet south of I-20.

Mustang 135 MIPA Unit #H135WA

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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2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
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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
08/02/2021	Permian Deep Rock Oil Co., LLC	P.O. Box 11405 Midland, TX 79702

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele.
Keith E. Bucy	500 W. Wall St. Ste 300 Midland, TX 79701	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"

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Surface ownership: Two residences, apartment complex and service company yards:

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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)].**

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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: Mustang 140 MIPA Unit #H140WB

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

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Legal Description of Proposed Well Site: SHL: 160' FNL & 1,575' FWL, Section 11
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(2) **Operations: Oncor**

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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]

SCALE: 1" = 300'

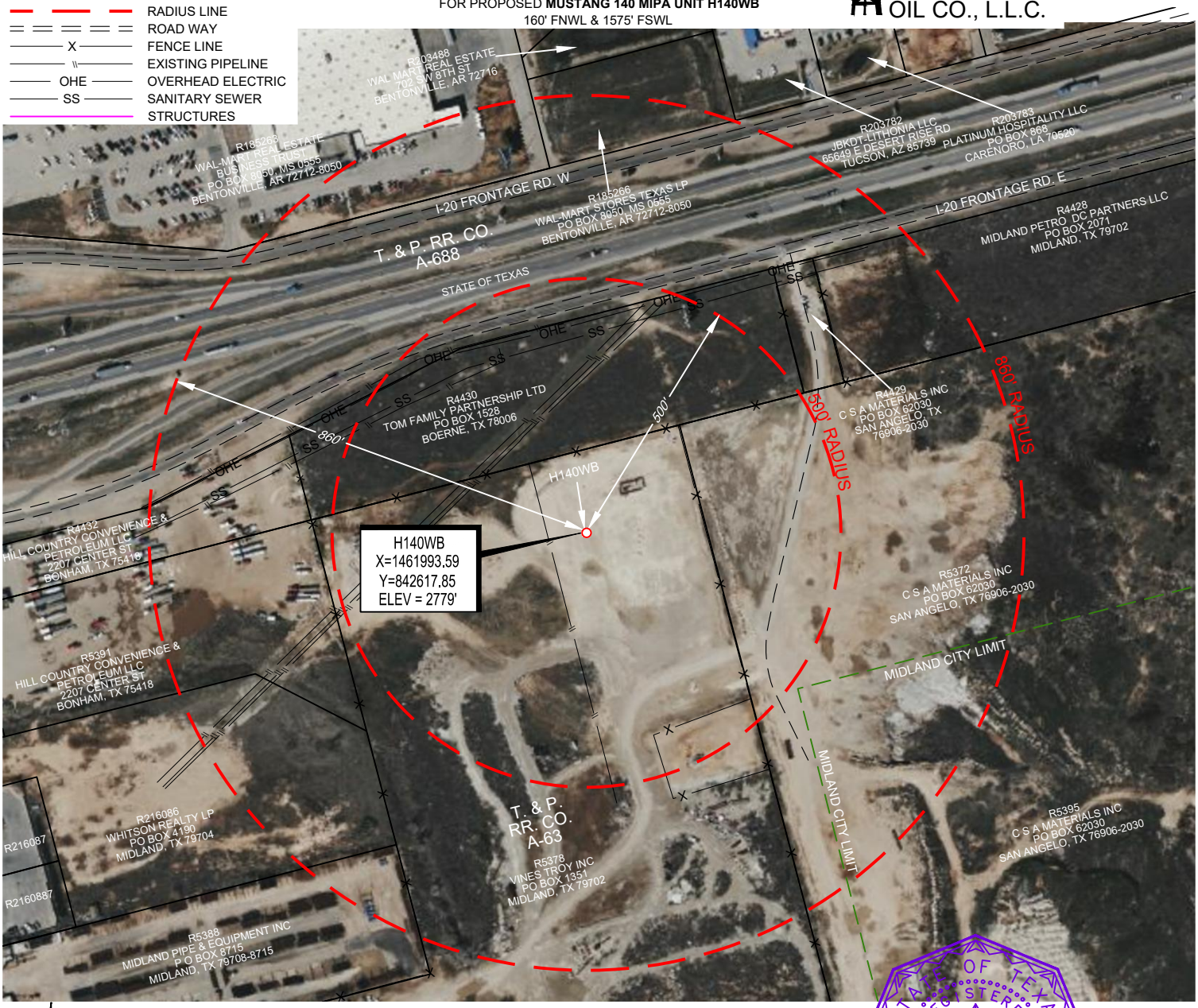
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LEGEND

- SURVEY/SECTION LINE
- RADIUS LINE
- ROAD WAY
- X FENCE LINE
- EXISTING PIPELINE
- OHE OVERHEAD ELECTRIC
- SS SANITARY SEWER
- STRUCTURES

SECTION 11, BLOCK 39, T-2-S
T. & P. RR. CO. SURVEY, A-63
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS
SHOWING STRUCTURES WITHIN 500' RADIUS
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FOR PROPOSED **MUSTANG 140 MIPA UNIT H140WB**
160' FNWL & 1575' FSWL

PERMIAN DEEP ROCK OIL CO., L.L.C.



N

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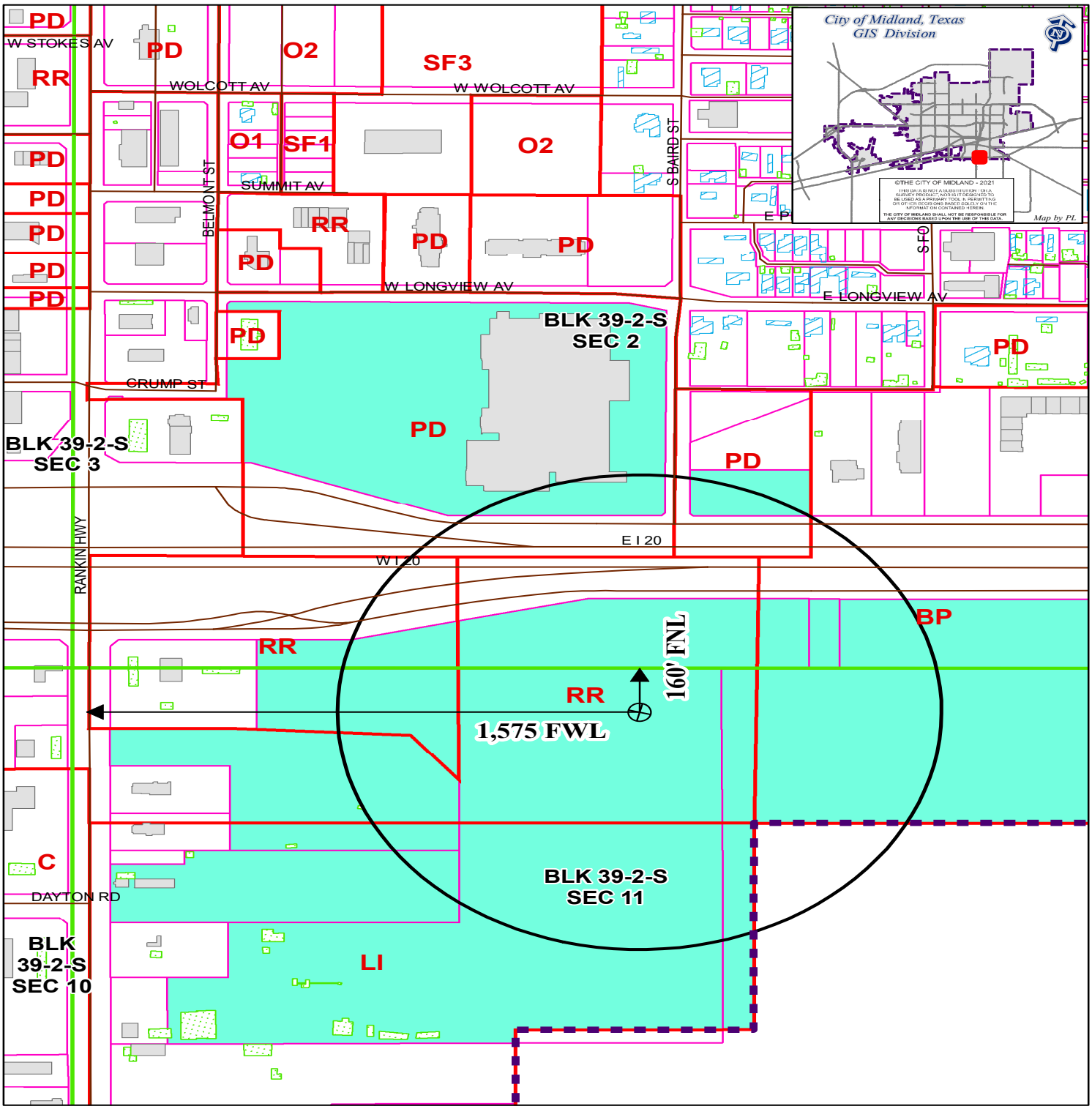
STATE OF TEXAS
REGISTERED
JEFFREY N. LUEDERS
6512
PROFESSIONAL
LAND SURVEYOR

Jeffrey N. Lueders, R.P.L.S. No. 6512
JUNE 11, 2021

MUSTANG 140 MIPA UNIT H140WB	REVISION:	
	INT	DATE
DATE: 07/09/2021		
FILE: CD_MUSTANG_140WB		
DRAWN BY: PAC		
SHEET : 1 OF 2		

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PACKET 26.50 September 28, 2021



LOCATION AND ZONING MAP

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Generally located 1,575 feet east of Rankin Highway and 525 feet south of I-20.

Mustang 140 MIPA Unit #H140WB

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
RE, 1F2, 1F3	ONE-FAMILY DWELLING	RR	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

City Council Meeting

Item Number: 27

Meeting Date: September 28, 2021

To: City Council / City Manager

From: Ron Jenkins, Oil and Gas Coordinator

Subject: THE PROPOSED GRANTING OF OIL AND GAS WELL PERMITS TO ENDEAVOR ENERGY RESOURCES, L.P. FOR THE DRILLING OF THE FOLLOWING OIL AND GAS WELLS: INTERSTATE 5-32 UNIT 2 #153; INTERSTATE 5-32 UNIT 2 #154; INTERSTATE 5-32 UNIT 2 #162; INTERSTATE 5-32 UNIT 2 #163; INTERSTATE 5-32 UNIT 2 #172; INTERSTATE 5-32 UNIT 2 #173; INTERSTATE 5-32 UNIT 2 #174; INTERSTATE 5-32 UNIT 2 #182; INTERSTATE 5-32 UNIT 2 #183; INTERSTATE 5-32 UNIT 2 #252; INTERSTATE 5-32 UNIT 2 #261; AND INTERSTATE 5-32 UNIT 2 #281; SAID WELLS BEING GENERALLY LOCATED BETWEEN 204 FEET AND 205 FEET SOUTH OF WEST I-20 SERVICE ROAD AND BETWEEN 415 FEET AND 994 FEET EAST OF SOUTH COUNTY ROAD 1220 EXTENSION (DISTRICT 2) (DEVELOPMENT SERVICES)

Purpose:

Endeavor Energy Resources, L.P., for the drilling of oil gas wells, as listed prior. This is an opportunity for the Council to receive public comment. Council may consider these permits following a 30-day public comment period and at a regularly scheduled meeting. One notice of objection received for each well application from the same residence.

Recommended City Council Action:

Directional / Informational

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 with the attention to lighting be directed and update of Exhibit I. Will be using a closed loop system instead of reserve pits. A sound study has been completed and a 900' long and 24' high sound wall will be used during drilling and completions operation. Additionally, Endeavor has offered an industry standard per diem to the affected homeowners for alternative accommodations during drilling and completion operations. 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 a residence or commercial structure within 500 feet.
Interstate 5-32 Unit 2 #173- Variance of 386 feet.
Interstate 5-32 Unit 2 #174- Variance of 398 feet.
Interstate 5-32 Unit 2 #182- Variance of 371 feet.
Interstate 5-32 Unit 2 #183- Variance of 357 feet.
Interstate 5-32 Unit 2 #281- Variance of 344 feet.
2. Requesting a variance to have a perimeter fence around the well pad instead of individual wellheads.
3. Requesting a variance to the hours of operation for fracture stimulations and to allow for fracing and completions operations to occur during a 24-hour period.
4. Requesting a variance to the landscaping and irrigation due to wells will be placed on undeveloped land that does not currently have access to City Water.
5. Requesting a variance to remove drill cuttings from the surface location to be transported off site and processed in accordance with Railroad Commission regulations.

Attachments: Applications, Location map, Exhibit - Drill site map 500', Drill site map 860', Exhibit – Flow Line Location/Sound wall.

Robert Patrick

City Manager's Office

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date July 29, 2021	**Operator Name (must match W-1)** Endeavor Energy Resources, L.P.	**Operator Address** 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 Pasture, Commercial and Residential

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: Interstate 5-32 Unit 2 #173

ATTACHED AS EXHIBIT G is **Proposed Hole Size, Casing Program and Cementing Program [See § J(11) and § L(4)]:**

Legal Description of Proposed Well Site:

Surface Hole Location: 166' FNL 1372' FWL, Section 8, 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 Oncor: 1-888-313-6862

(2) **Operations:** Electricity Oncor: 1-888-313-6862

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**

CERTIFICATION OF APPLICATION

I, **Alex Bedford,** Reservoir Engineer for Endeavor Energy Resources, L.P., hereby certify that the information contained in this application is true and correct.

Alex Bedford

Reservoir Engineer

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

This instrument was acknowledged before me on the 27th day of July 2021, by Alex Bedford, Reservoir Engineer, ENDEAVOR ENERGY RESOURCES, L.P., a Texas limited partnership.

BARBARA TEAGUE
Notary Public, State of Texas
Notary ID 879241-6
My Commission Exp. 07-02-2024

Notary Public

Notary's Name (printed): BARBARA TEAGUE

My Commission Expires: 7-2-2024

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date July 29, 2021	**Operator Name (must match W-1)** Endeavor Energy Resources, L.P.	**Operator Address** 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

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Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):
Ryan Burrow, Production Foreman for Endeavor Energy Resources, L.P.: Cell: 432-813-3060
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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 Pasture, Commercial and Residential

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: Interstate 5-32 Unit 2 #153

ATTACHED AS EXHIBIT G is Proposed Hole Size, Casing Program and Cementing Program [See § J(11) and § L(4)]:

Legal Description of Proposed Well Site:

Surface Hole Location: 167' FNL 1851' FWL, Section 8, 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 Oncor: 1-888-313-6862

(2) **Operations:** Electricity Oncor: 1-888-313-6862

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)].

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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

CERTIFICATION OF APPLICATION

I, **Alex Bedford**, Reservoir Engineer for Endeavor Energy Resources, L.P., hereby certify that the information contained in this application is true and correct.

Alex Bedford

Reservoir Engineer

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

This instrument was acknowledged before me on the 27th day of July 2021, by Alex Bedford, Reservoir Engineer, ENDEAVOR ENERGY RESOURCES, L.P., a Texas limited partnership.

BARBARA TEAGUE
Notary Public, State of Texas
Notary ID 879241-6
My Commission Exp. 07-02-2024

Notary Public

Notary's Name (printed): BARBARA TEAGUE

My Commission Expires: 7-2-2024

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date July 29, 2021	**Operator Name (must match W-1)** Endeavor Energy Resources, L.P.	**Operator Address** 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**
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Midland Fire Department: 911
Ambulance: 911
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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 Pasture, Commercial and Residential

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: Interstate 5-32 Unit 2 #154

ATTACHED AS EXHIBIT G is Proposed Hole Size, Casing Program and Cementing Program [See § J(11) and § L(4)]:

Legal Description of Proposed Well Site:

Surface Hole Location: 167' FNL 1891' FWL, Section 8, 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 Oncor: 1-888-313-6862

(2) **Operations:** Electricity Oncor: 1-888-313-6862

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)].

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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

CERTIFICATION OF APPLICATION

I, **Alex Bedford**, Reservoir Engineer for Endeavor Energy Resources, L.P., hereby certify that the information contained in this application is true and correct.

Alex Bedford

Reservoir Engineer

STATE OF TEXAS §

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COUNTY OF MIDLAND §

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BARBARA TEAGUE
Notary Public, State of Texas
Notary ID 879241-6
My Commission Exp. 07-02-2024

Notary Public

Notary's Name (printed): BARBARA TEAGUE

My Commission Expires: 7-2-2024

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date July 29, 2021	**Operator Name (must match W-1)** Endeavor Energy Resources, L.P.	**Operator Address** 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
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Office: (432) 262-4271
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IV. Well & Operations Information

Proposed Well Name: Interstate 5-32 Unit 2 #162

ATTACHED AS EXHIBIT G is **Proposed Hole Size, Casing Program and Cementing Program [See § J(11) and § L(4)]:**

Legal Description of Proposed Well Site:

Surface Hole Location: 167' FNL 1811' FWL, Section 8, Block 39, T-2-S, T&P RR Co Survey, Midland County, Texas

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Description of Public Utilities required during (1) drilling and (2) operations:

(1) **Drilling:** Electricity Oncor: 1-888-313-6862

(2) **Operations:** Electricity Oncor: 1-888-313-6862

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ATTACHED AS EXHIBIT V is Applicant's Summary List of Variances

ATTACHED AS EXHIBIT W is Acoustic Impact Study and Noise Mitigation Plan

CERTIFICATION OF APPLICATION

I, **Alex Bedford**, Reservoir Engineer for Endeavor Energy Resources, L.P., hereby certify that the information contained in this application is true and correct.

Alex Bedford

Reservoir Engineer

STATE OF TEXAS §

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BARBARA TEAGUE
Notary Public, State of Texas
Notary ID 879241-6
My Commission Exp. 07-02-2024

Notary Public

Notary's Name (printed): BARBARA TEAGUE

My Commission Expires: 7-2-2024

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date July 29, 2021	**Operator Name (must match W-1)** Endeavor Energy Resources, L.P.	**Operator Address** 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 Pasture, Commercial and Residential

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: Interstate 5-32 Unit 2 #163

ATTACHED AS EXHIBIT G is **Proposed Hole Size, Casing Program and Cementing Program [See § J(11) and § L(4)]:**

Legal Description of Proposed Well Site:

Surface Hole Location: 167' FNL 1831' FWL, Section 8, 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 Oncor: 1-888-313-6862

(2) Operations: Electricity Oncor: 1-888-313-6862

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

CERTIFICATION OF APPLICATION

I, **Alex Bedford**, Reservoir Engineer for Endeavor Energy Resources, L.P., hereby certify that the information contained in this application is true and correct.

Alex Bedford

Reservoir Engineer

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

This instrument was acknowledged before me on the 27th day of July 2021, by Alex Bedford, Reservoir Engineer, ENDEAVOR ENERGY RESOURCES, L.P., a Texas limited partnership.

BARBARA TEAGUE
Notary Public, State of Texas
Notary ID 879241-6
My Commission Exp. 07-02-2024

Notary Public

Notary's Name (printed): BARBARA TEAGUE

My Commission Expires: 7-2-2024

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date July 29, 2021	**Operator Name (must match W-1)** Endeavor Energy Resources, L.P.	**Operator Address** 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):***

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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 Pasture, Commercial and Residential

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: Interstate 5-32 Unit 2 #172

ATTACHED AS EXHIBIT G is **Proposed Hole Size, Casing Program and Cementing Program [See § J(11) and § L(4)]:**

Legal Description of Proposed Well Site:

Surface Hole Location: 167' FNL 1770' FWL, Section 8, 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 Oncor: 1-888-313-6862

(2) **Operations:** Electricity Oncor: 1-888-313-6862

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

CERTIFICATION OF APPLICATION

I, **Alex Bedford**, Reservoir Engineer for Endeavor Energy Resources, L.P., hereby certify that the information contained in this application is true and correct.

Alex Bedford

Reservoir Engineer

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

This instrument was acknowledged before me on the 27th day of July 2021, by Alex Bedford, Reservoir Engineer, ENDEAVOR ENERGY RESOURCES, L.P., a Texas limited partnership.

BARBARA TEAGUE
Notary Public, State of Texas
Notary ID 879241-6
My Commission Exp. 07-02-2024

Notary Public

Notary's Name (printed): BARBARA TEAGUE

My Commission Expires: 7-2-2024

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date July 29, 2021	**Operator Name (must match W-1)** Endeavor Energy Resources, L.P.	**Operator Address** 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**
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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 Pasture, Commercial and Residential

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: Interstate 5-32 Unit 2 #261

ATTACHED AS EXHIBIT G is **Proposed Hole Size, Casing Program and Cementing Program [See § J(11) and § L(4)]:**

Legal Description of Proposed Well Site:

Surface Hole Location: 167' FNL 1791' FWL, Section 8, 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 Oncor: 1-888-313-6862

(2) **Operations:** Electricity Oncor: 1-888-313-6862

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)
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V. Additional Required Exhibits

ATTACHED AS EXHIBIT P **is the *Blanket Bond and Rider* in accordance with Subsection (K)(2). [See § J(18)].**

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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**

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CERTIFICATION OF APPLICATION

I, **Alex Bedford,** Reservoir Engineer for Endeavor Energy Resources, L.P., hereby certify that the information contained in this application is true and correct.

Alex Bedford

Reservoir Engineer

STATE OF TEXAS §

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COUNTY OF MIDLAND §

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BARBARA TEAGUE
Notary Public, State of Texas
Notary ID 879241-6
My Commission Exp. 07-02-2024

Notary Public

Notary's Name (printed): BARBARA TEAGUE

My Commission Expires: 7-2-2024

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date July 29, 2021	**Operator Name (must match W-1)** Endeavor Energy Resources, L.P.	**Operator Address** 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**

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Option B: Ryan Burrow
1700 ECR 115
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Office: (432) 262-4271
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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: Interstate 5-32 Unit 2 #183

ATTACHED AS EXHIBIT G is **Proposed Hole Size, Casing Program and Cementing Program [See § J(11) and § L(4)]:**

Legal Description of Proposed Well Site:

Surface Hole Location: 166' FNL 1332' FWL, Section 8, 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)].**

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(2) **Operations:** Electricity Oncor: 1-888-313-6862

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ATTACHED AS EXHIBIT W is Acoustic Impact Study and Noise Mitigation Plan

CERTIFICATION OF APPLICATION

I, **Alex Bedford**, Reservoir Engineer for Endeavor Energy Resources, L.P., hereby certify that the information contained in this application is true and correct.

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Reservoir Engineer

STATE OF TEXAS §

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Notary ID 879241-6
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Notary Public

Notary's Name (printed): BARBARA TEAGUE

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MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date July 29, 2021	**Operator Name (must match W-1)** Endeavor Energy Resources, L.P.	**Operator Address** 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 Pasture, Commercial and Residential

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: Interstate 5-32 Unit 2 #252

ATTACHED AS EXHIBIT G is **Proposed Hole Size, Casing Program and Cementing Program [See § J(11) and § L(4)]:**

Legal Description of Proposed Well Site:

Surface Hole Location: 167' FNL 1871' FWL, Section 8, 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 Oncor: 1-888-313-6862

(2) **Operations:** Electricity Oncor: 1-888-313-6862

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)
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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

CERTIFICATION OF APPLICATION

I, **Alex Bedford**, Reservoir Engineer for Endeavor Energy Resources, L.P., hereby certify that the information contained in this application is true and correct.

Alex Bedford

Reservoir Engineer

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

This instrument was acknowledged before me on the 27th day of July 2021, by Alex Bedford, Reservoir Engineer, ENDEAVOR ENERGY RESOURCES, L.P., a Texas limited partnership.

BARBARA TEAGUE
Notary Public, State of Texas
Notary ID 879241-6
My Commission Exp. 07-02-2024

Notary Public

Notary's Name (printed): BARBARA TEAGUE

My Commission Expires: 7-2-2024

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date July 29, 2021	**Operator Name (must match W-1)** Endeavor Energy Resources, L.P.	**Operator Address** 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**

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Midland, Texas 79706
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Cell: (432) 813-3060

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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 Pasture, Commercial and Residential

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: Interstate 5-32 Unit 2 #182

ATTACHED AS EXHIBIT G is **Proposed Hole Size, Casing Program and Cementing Program [See § J(11) and § L(4)]:**

Legal Description of Proposed Well Site:

Surface Hole Location: 166' FNL 1352' FWL, Section 8, 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 Oncor: 1-888-313-6862

(2) **Operations:** Electricity Oncor: 1-888-313-6862

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**

CERTIFICATION OF APPLICATION

I, **Alex Bedford,** Reservoir Engineer for Endeavor Energy Resources, L.P., hereby certify that the information contained in this application is true and correct.

Alex Bedford

Reservoir Engineer

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

This instrument was acknowledged before me on the 27th day of July 2021, by Alex Bedford, Reservoir Engineer, ENDEAVOR ENERGY RESOURCES, L.P., a Texas limited partnership.

BARBARA TEAGUE
Notary Public, State of Texas
Notary ID 879241-6
My Commission Exp. 07-02-2024

Notary Public

Notary's Name (printed): BARBARA TEAGUE

My Commission Expires: 7-2-2024

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date July 29, 2021	**Operator Name (must match W-1)** Endeavor Energy Resources, L.P.	**Operator Address** 110 N. Marienfeld, Suite 200 Midland, TX 79701
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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**

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General Description of Current Surface Use (within 860 feet of proposed surface location): Open Pasture, Commercial and Residential

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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: Interstate 5-32 Unit 2 #174

ATTACHED AS EXHIBIT G is **Proposed Hole Size, Casing Program and Cementing Program [See § J(11) and § L(4)]:**

Legal Description of Proposed Well Site:

Surface Hole Location: 166' FNL 1392' FWL, Section 8, 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)].**

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CERTIFICATION OF APPLICATION

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Notary Public

Notary's Name (printed): BARBARA TEAGUE

My Commission Expires: 7-2-2024

CASE NO. DIL-D310935-2021

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

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I. General Information

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IV. Well & Operations Information

Proposed Well Name: Interstate 5-32 Unit 2 #281

ATTACHED AS EXHIBIT G is **Proposed Hole Size, Casing Program and Cementing Program [See § J(11) and § L(4)]:**

Legal Description of Proposed Well Site:

Surface Hole Location: 166' FNL 1312' FWL, Section 8, Block 39, T-2-S, T&P RR Co Survey, Midland County, Texas

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STATE OF TEXAS §

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COUNTY OF MIDLAND §

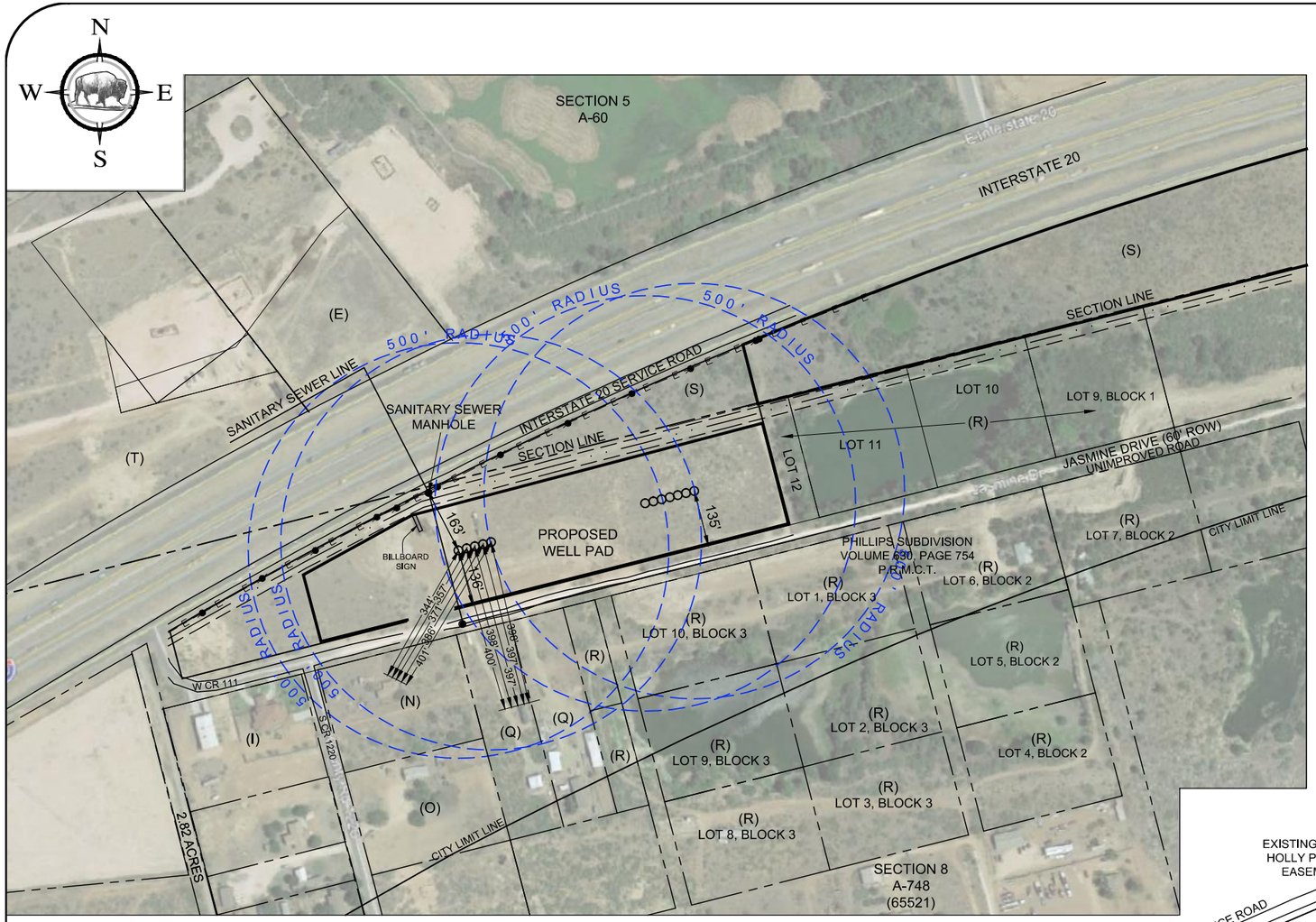
This instrument was acknowledged before me on the 27th day of July 2021, by Alex Bedford, Reservoir Engineer, ENDEAVOR ENERGY RESOURCES, L.P., a Texas limited partnership.

BARBARA TEAGUE
Notary Public, State of Texas
Notary ID 879241-6
My Commission Exp. 07-02-2024

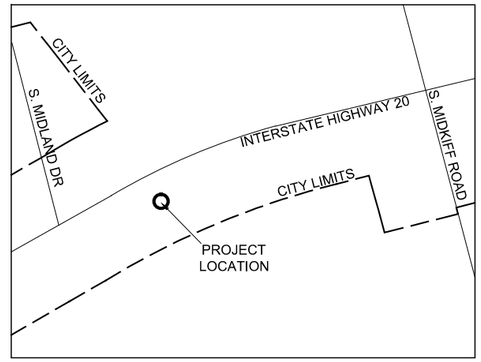
Notary Public

Notary's Name (printed): BARBARA TEAGUE

My Commission Expires: 7-2-2024



SITE PLAN
1" = 300'



VICINITY MAP
NOT TO SCALE

OWNERSHIP STRUCTURES WITHIN 500' RADIUS OF WELL HEADS
(N) CALLED LOT 10, BLOCK 5 CORPORATE PLACEMENT SOLUTIONS CORP DOC. NO. 2021-2835 D.R.M.C.T.
(Q) CALLED LOT 2, BLOCK 1 LAN R. POWERS

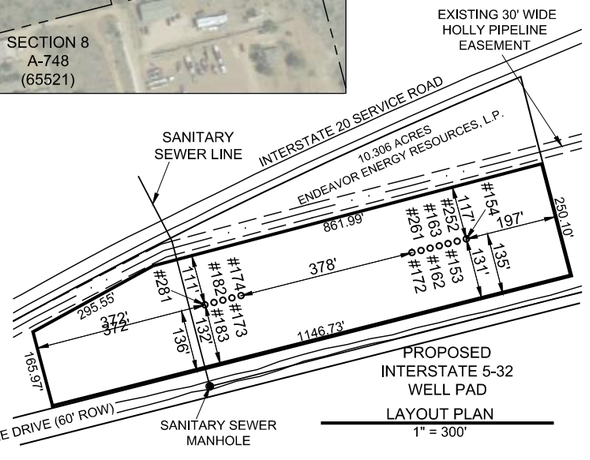
COORDINATES		
COORDINATES SHOWN ARE THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE NAD 83		
INTERSTATE 5-32 #281 (SHL) NORTHING: 10681102.3 EASTING: 1742654.4	CENTER OF INTERSTATE 5-32 WELL PAD NORTHING: 10681143.0 EASTING: 1742852.4	INTERSTATE 5-32 #154 (SHL) NORTHING: 10681245.1 EASTING: 1743214.9

SCALE: 1" = 300'

300 150 0 300 600

GRAPHIC SCALE

STATE OF TEXAS REGISTERED
JAMES P. KEENE
5100
PROFESSIONAL LAND SURVEYOR



LAYOUT PLAN
1" = 300'

DRIVING DIRECTIONS:

FROM THE INTERSECTION OF INTERSTATE 20 AND WEST LOOP 250 IN MIDLAND TRAVEL (EAST) ON THE SOUTH I-20 ACCESS ROAD FOR 1.64 MILES TO SITE ON RIGHT (SOUTH) AT APPROXIMATELY 200 FEET.

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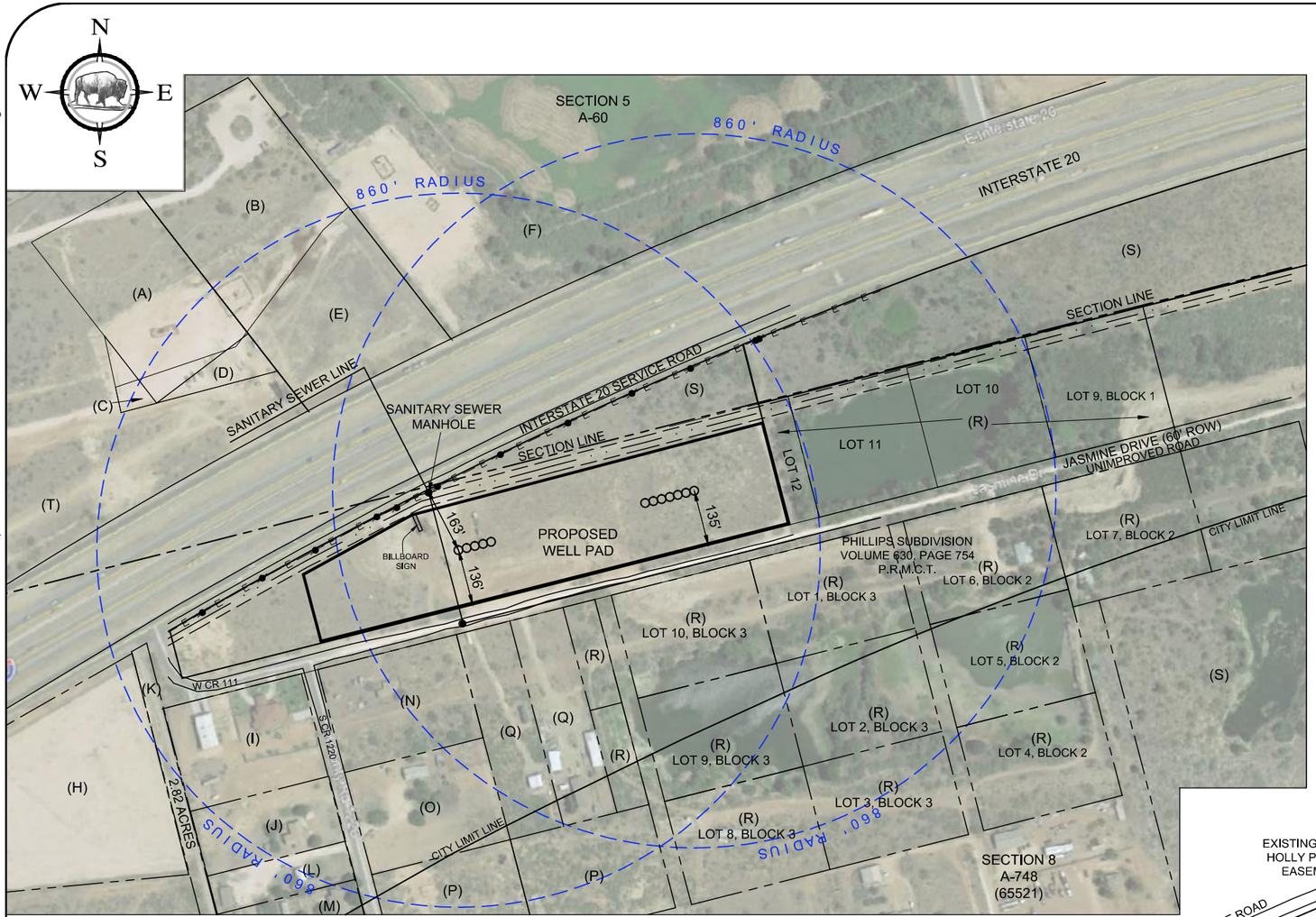
SITE PLAN
ENDEAVOR ENERGY RESOURCES, L.P.
(INTERSTATE 5-32)
PROPOSED WELL PAD
SITUATED IN THE
CITY OF MIDLAND, SECTION 8, BLOCK 39, T-2-S, T & P RR CO.
SURVEY, ABSTRACT NO. 748, MIDLAND COUNTY, TEXAS.

REVISED 7-13-21 MOVED WELLS 16' NORTH.	
REVISED 5-13-21 UPDATED WELLS AND RADIUS CIRCLES.	
SCALE: 1"= 300'	DATE: 02/24/21
DRAWN BY: CR	
APPROVED: JPK	
FIELD CREW: DC	
PROJECT NO. 16-02490-INTERSTATE 5-32 WELL PAD	

SHEET
1
OF 1

BISON CREEK LAND SERVICES, LLC 24443 I-20. BLDG. 9. WILLS POINT,TEXAS 75169

PACKET
27.51
September 28, 2021



(A) "TRACT FOUR (4)" CALLED 2.95 ACRES I-20 WILDLIFE PRESERVE AND JENNA WELCH NATURE STUDY CENTER, INC. VOLUME 2009, PAGE 7907 D.R.M.C.T.	(J) CALLED 2.00 ACRES MARTIN S. DOMINGUEZ DOC. NO. 2014-19619 D.R.M.C.T.
(B) "TRACT ONE (1)" CALLED 6.51 ACRES THE CITY OF MIDLAND, TEXAS, A TEXAS HOME RULE MUNICIPAL CORPORATION VOLUME 2011, PAGE 12022 D.R.M.C.T.	(K) CALLED 2.82 ACRES JAMES T. PERRY INSTRUMENT NO. 2018-18653 D.R.M.C.T.
(C) "TRACT FIVE (5)" CALLED 0.19 ACRES I-20 WILDLIFE PRESERVE AND JENNA WELCH NATURE STUDY CENTER, INC. VOLUME 2009, PAGE 7907 D.R.M.C.T.	(L) SOUTH 95' OF 2 ACRES SILVIA S. OLIVAS DOC. NO. 2010-18200 D.R.M.C.T.
(D) "TRACT SIX (6)" CALLED .36 ACRES I-20 WILDLIFE PRESERVE AND JENNA WELCH NATURE STUDY CENTER, INC. VOLUME 2009, PAGE 7907 D.R.M.C.T.	(M) CALLED 1.00 ACRES MARIO AGUIRRE VOLUME 2944, PAGE 477 D.R.M.C.T.
(E) "TRACT TWO (2)" CALLED 3.485 ACRES THE CITY OF MIDLAND, TEXAS, A TEXAS HOME RULE MUNICIPAL CORPORATION VOLUME 2011, PAGE 12022 D.R.M.C.T.	(N) CALLED LOT 10, BLOCK 5 CORPORATE PLACEMENT SOLUTIONS CORP DOC. NO. 2021-2835 D.R.M.C.T.
(F) CALLED 84.01 ACRES THE CITY OF MIDLAND VOLUME 2011, PAGE 2021 D.R.M.C.T.	(O) CALLED LOT 9, BLOCK 5 JESUS V. ZUBIA VOLUME 2383, PAGE 574 D.R.M.C.T.
(H) CALLED 5.00 ACRES CHRIS MCINTOSH VOLUME 2018, PAGE 1862 D.R.M.C.T.	(P) CALLED 2.00 ACRES AUTRY C. STEPHENS VOLUME 1391, PAGE 593 D.R.M.C.T.
(I) (REMAINDER) CALLED 4.001 ACRES MARTIN SILVA DOMINGUEZ VOLUME 2884, PAGE 803 D.R.M.C.T.	(Q) CALLED LOT 2, BLOCK 1 LAN R. POWERS
	(R) TRES LAGOS, LLC DOC.NO. 2021-6509 D.R.M.C.T.
	(S) ENDEAVOR ENERGY RESOURCES, L.P.
	(T) CALLED 20.64 ACRES DAVID HOFF AND WIFE, RUTH HOFF VOLUME 912, PAGE 680 D.R.M.C.T.

SITE PLAN
1" = 300'

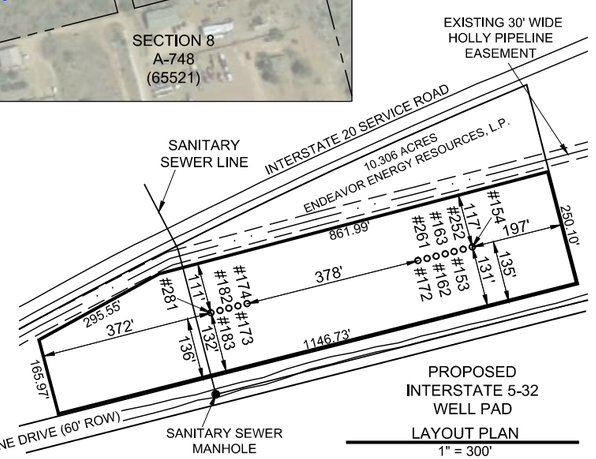
COORDINATES		
COORDINATES SHOWN ARE THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE NAD 83		
INTERSTATE 5-32 #281 (SHL) NORTHING: 10681102.3 EASTING: 1742654.4	CENTER OF INTERSTATE 5-32 WELL PAD NORTHING: 10681143.0 EASTING: 1742852.4	INTERSTATE 5-32 #154 (SHL) NORTHING: 10681245.1 EASTING: 1743214.9

SCALE: 1" = 300'

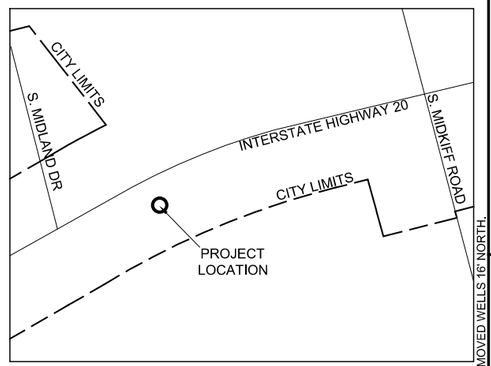
300 150 0 300 600

GRAPHIC SCALE

STATE OF TEXAS REGISTERED JAMES P. KEENE 5100 PROFESSIONAL LAND SURVEYOR



LAYOUT PLAN
1" = 300'



VICINITY MAP
NOT TO SCALE

DRIVING DIRECTIONS:

FROM THE INTERSECTION OF INTERSTATE 20 AND WEST LOOP 250 IN MIDLAND TRAVEL (EAST) ON THE SOUTH I-20 ACCESS ROAD FOR 1.64 MILES TO SITE ON RIGHT (SOUTH) AT APPROXIMATELY 200 FEET.

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PHONE: (903) 873 - 3600

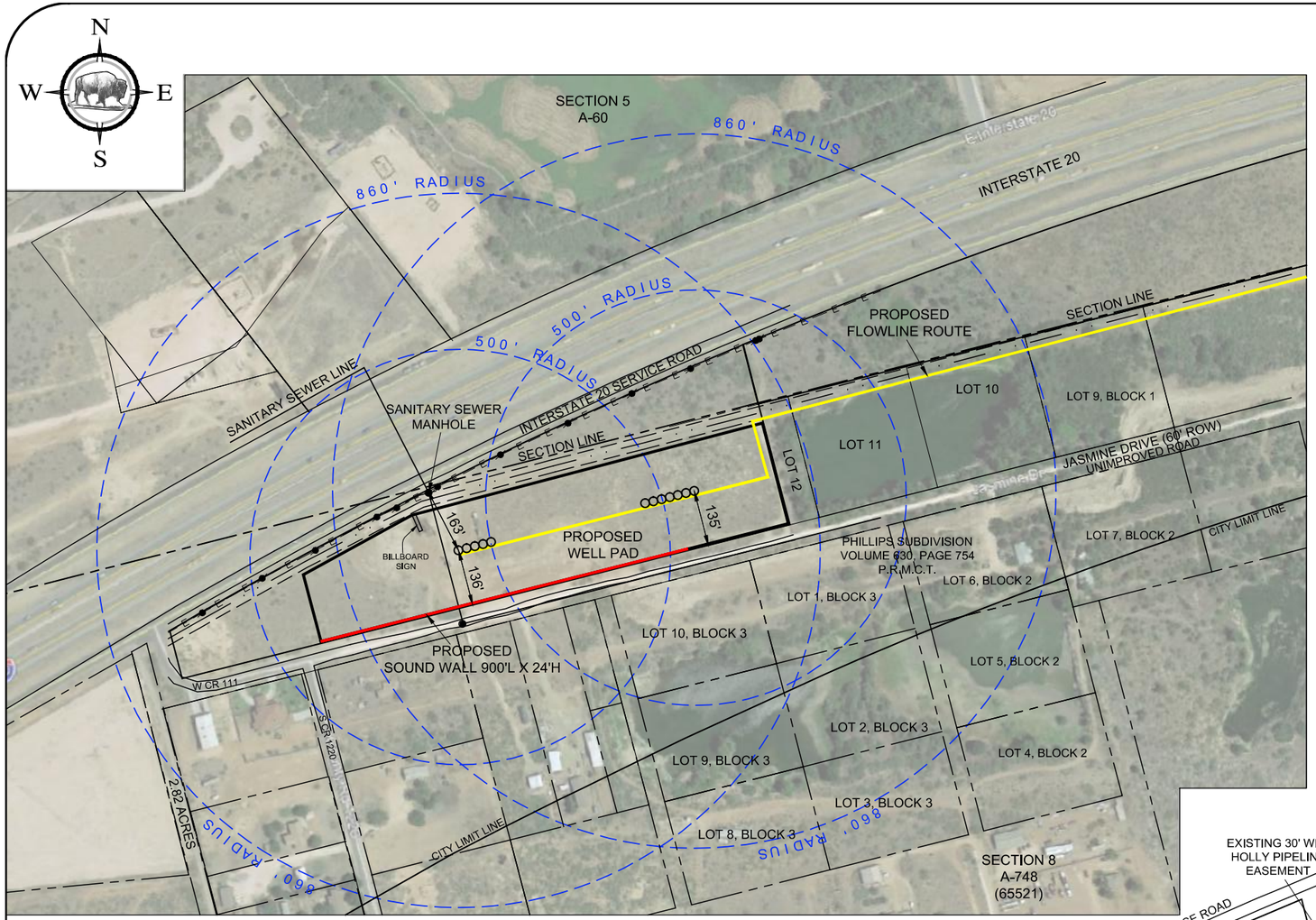
SITE PLAN
ENDEAVOR ENERGY RESOURCES, L.P.
(INTERSTATE 5-32)
PROPOSED WELL PAD
SITUATED IN THE
CITY OF MIDLAND, SECTION 8, BLOCK 39, T-2-S, T & P RR CO.
SURVEY, ABSTRACT NO. 748, MIDLAND COUNTY, TEXAS.
BISON CREEK LAND SERVICES, LLC 24443 I-20, BLDG. 9, WILLS POINT,TEXAS 75169

REVISED 7-13-21 MOVED WELLS 16' NORTH.
REVISED 5-13-21 UPDATED WELLS AND RADIUS CIRCLES.

SCALE: 1"= 300'	DATE: 02/24/21
DRAWN BY: CR	
APPROVED: JPK	
FIELD CREW: DC	
PROJECT NO. 16-02490-INTERSTATE 5-32 WELL PAD	

SHEET 1 OF 1

Z:\BISON CREEK, LLC\2016\16-02490-ENDEAVOR MIDLAND COUNTY\MIDLAND CO PROJECTS\BLOCK 39 T-2-S INTERSTATE 5-32\Proposed Pads\SITE PLANS\16-02490-PROPOSED WELL PAD SITE PLAN-INTERSTATE 5-32.dwg, 7/20/2021 1:19:28 PM



SITE PLAN
1" = 300'

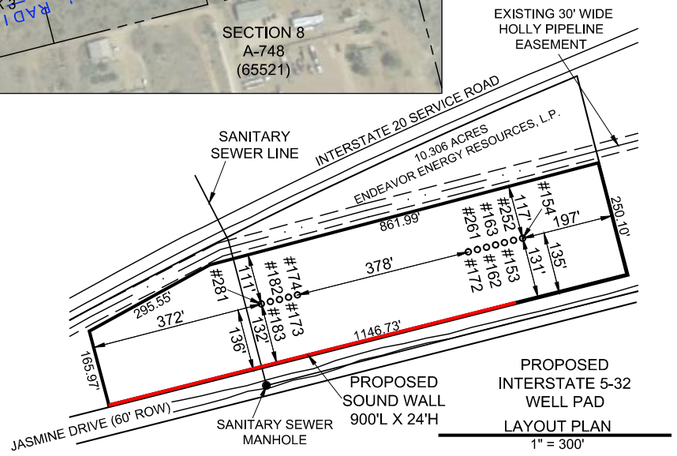
SCALE: 1" = 300'

300 150 0 300 600

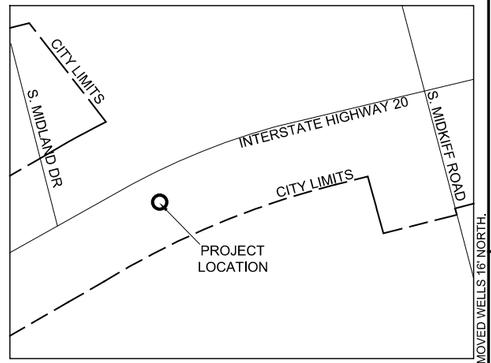
GRAPHIC SCALE

COORDINATES SHOWN ARE THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE NAD 83

WELL NAME	NAD 83 GRID: COORDINATE	NAD 83 GRID: GEODETIC
INTERSTATE 5-32 UNIT 2 #154	X:1743214.8 Y:10681245.1	N:31°57'37.809" W:102°07'03.262"
INTERSTATE 5-32 UNIT 2 #252	X:1743195.4 Y:10681240.2	N:31°57'37.758" W:102°07'03.487"
INTERSTATE 5-32 UNIT 2 #153	X:1743176.1 Y:10681235.3	N:31°57'37.706" W:102°07'03.711"
INTERSTATE 5-32 UNIT 2 #163	X:1743156.8 Y:10681230.4	N:31°57'37.654" W:102°07'03.933"
INTERSTATE 5-32 UNIT 2 #162	X:1743137.4 Y:10681225.4	N:31°57'37.602" W:102°07'04.158"
INTERSTATE 5-32 UNIT 2 #261	X:1743117.9 Y:10681220.4	N:31°57'37.549" W:102°07'04.382"
INTERSTATE 5-32 UNIT 2 #172	X:1743098.5 Y:10681215.5	N:31°57'37.498" W:102°07'04.607"
INTERSTATE 5-32 UNIT 2 #174	X:1742732.0 Y:10681122.1	N:31°57'36.515" W:102°07'08.843"
INTERSTATE 5-32 UNIT 2 #173	X:1742712.7 Y:10681117.2	N:31°57'36.464" W:102°07'09.067"
INTERSTATE 5-32 UNIT 2 #182	X:1742693.3 Y:10681112.2	N:31°57'36.411" W:102°07'09.291"
INTERSTATE 5-32 UNIT 2 #183	X:1742674.0 Y:10681107.2	N:31°57'36.359" W:102°07'09.514"
INTERSTATE 5-32 UNIT 2 #281	X:1742654.4 Y:10681102.3	N:31°57'36.307" W:102°07'09.739"



PROPOSED
INTERSTATE 5-32
WELL PAD
LAYOUT PLAN
1" = 300'



VICINITY MAP
NOT TO SCALE

DRIVING DIRECTIONS:

FROM THE INTERSECTION OF INTERSTATE 20 AND WEST LOOP 250 IN MIDLAND TRAVEL (EAST) ON THE SOUTH I-20 ACCESS ROAD FOR 1.64 MILES TO SITE ON RIGHT (SOUTH) AT APPROXIMATELY 200 FEET.

STATE OF TEXAS
REGISTERED
JAMES P. KEENE
5100
PROFESSIONAL
LAND SURVEYOR

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SITE PLAN

ENDEAVOR ENERGY RESOURCES, L.P.
(INTERSTATE 5-32)
PROPOSED WELL PAD
SITUATED IN THE
CITY OF MIDLAND, SECTION 8, BLOCK 39, T-2-S, T & P RR CO.
SURVEY, ABSTRACT NO. 748, MIDLAND COUNTY, TEXAS.

BISON CREEK LAND SERVICES, LLC 24443 I-20, BLDG. 9, WILLS POINT,TEXAS 75169

PROJECT NO. 16-02490-
INTERSTATE 5-32 WELL PAD

DRAWN BY: CR
APPROVED: JPK
FIELD CREW: DC

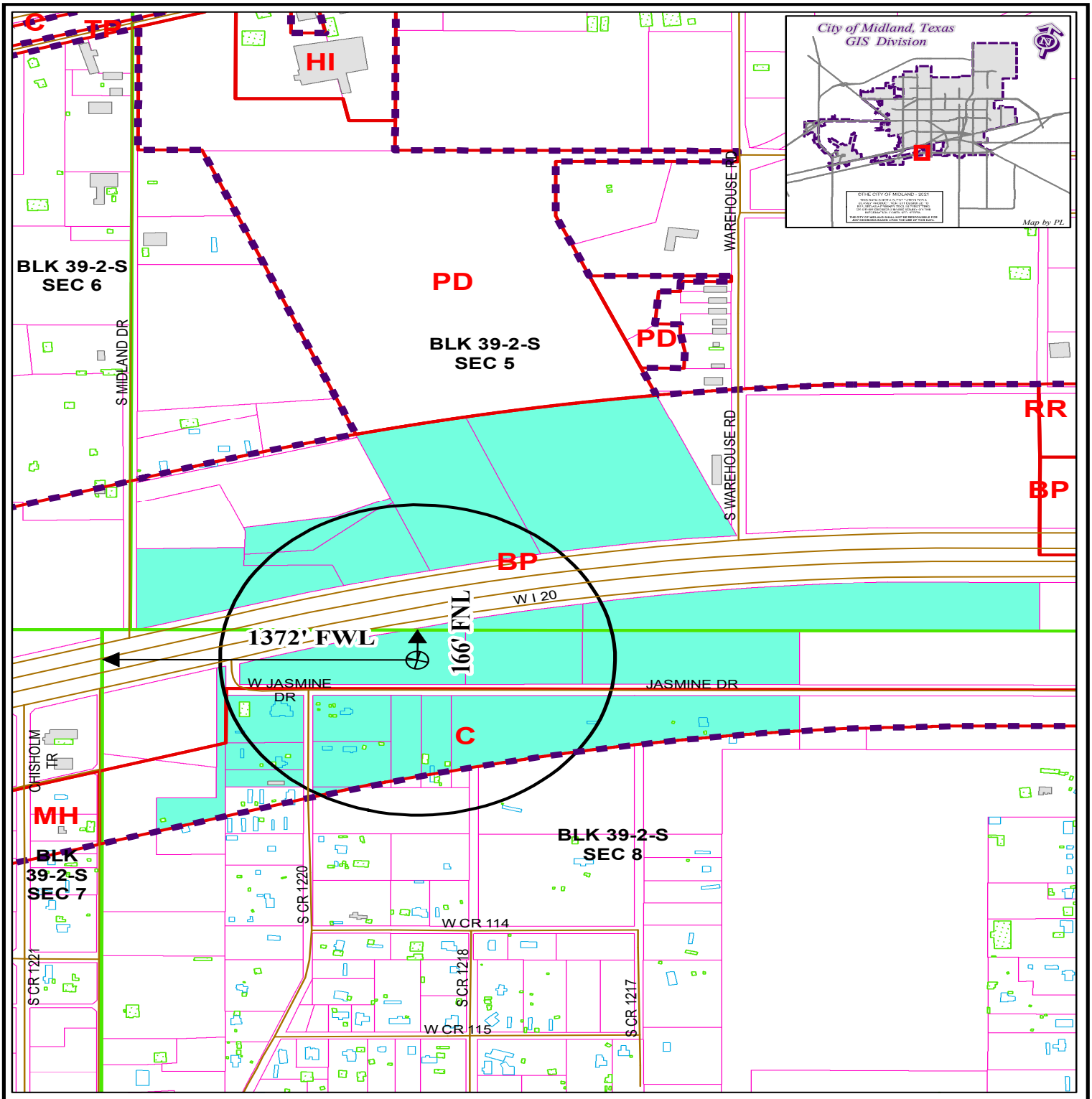
SCALE: 1"= 300'
DATE: 02/24/21

REVISED 5-13-21 UPDATED WELLS AND RADIUS CIRCLES.

REVISED 7-13-21 MOVED WELLS 16' NORTH.

SHEET
1
OF 1

PACKET
27.53
September 28, 2021



LOCATION AND ZONING MAP

Oil - 036944 - 2021 **Scale: 1" = 600'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 166' FNL and 1,372' FWL, Section 8, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 204 feet south of West I-20 Service Road and 475 feet east of South County Road 1220 extension.

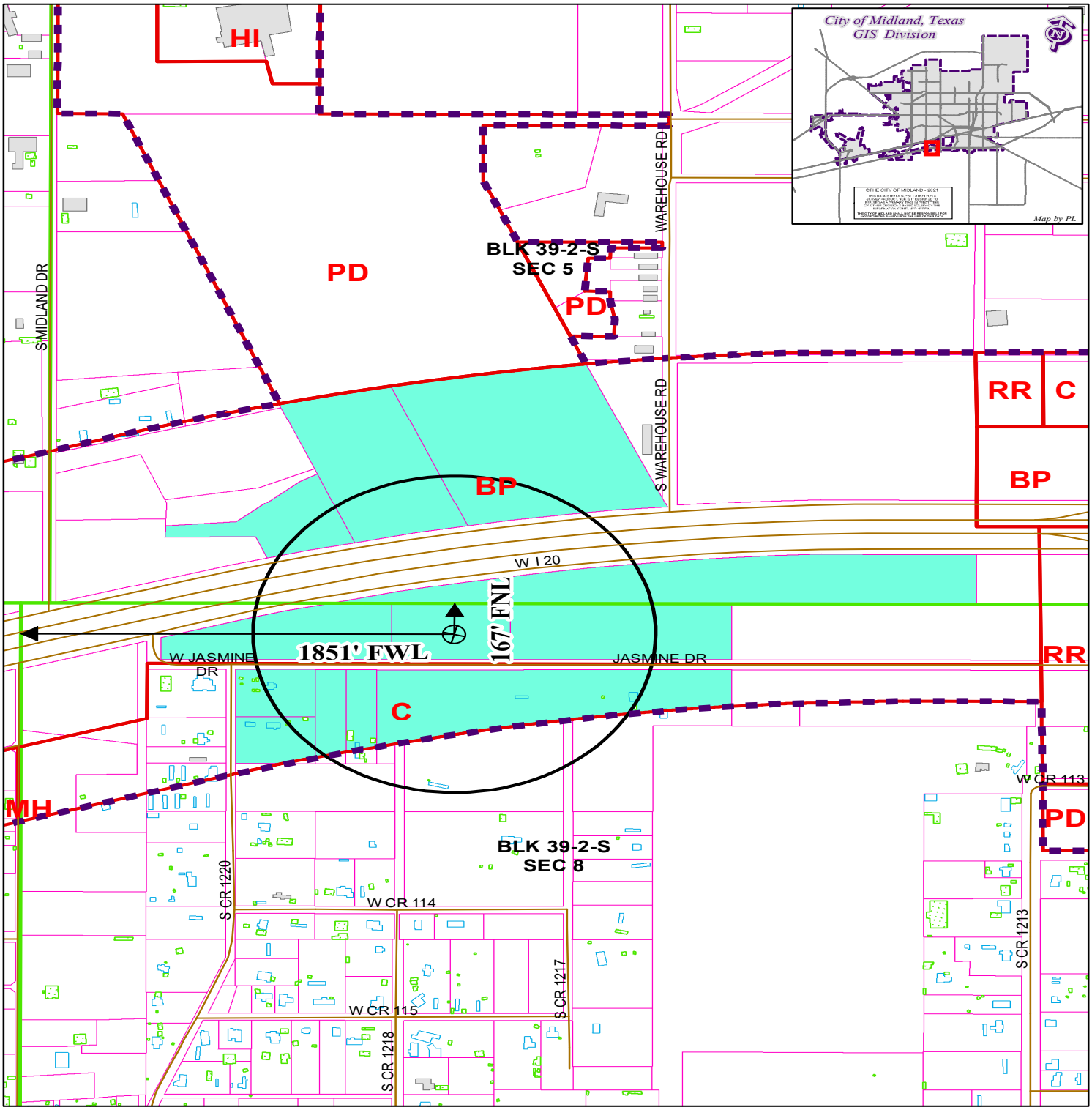
Interstate 5-32 Unit 2 #173

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	C1, C2	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



LOCATION AND ZONING MAP

Oil - 036957 - 2021 **Scale: 1" = 600'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 167' FNL and 1,851' FWL, Section 8, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 205 feet south of West I-20 Service Road and 954 feet east of South County Road 1220 extension.

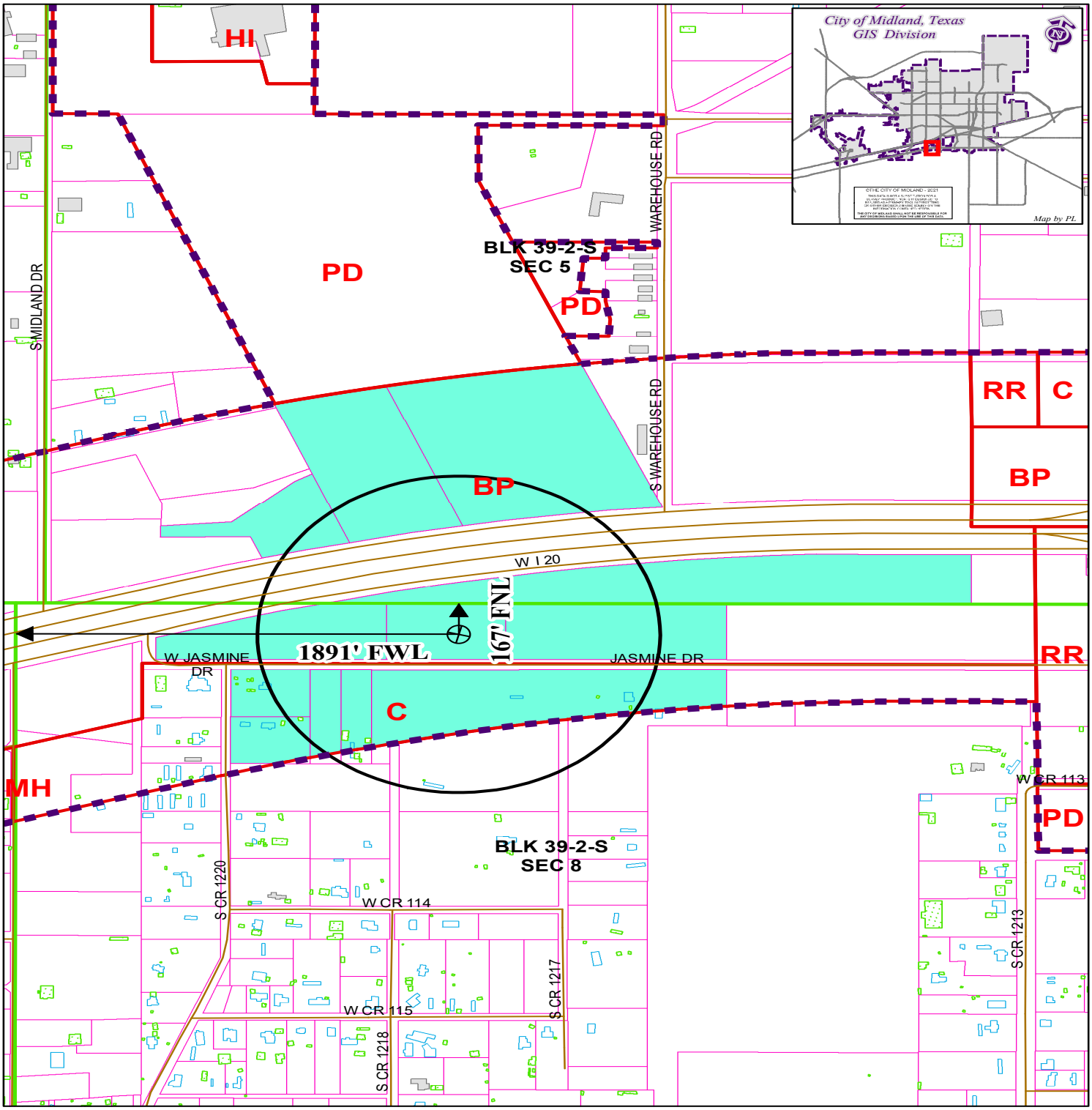
Interstate 5-32 Unit 2 #153

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
1F, 1F2, 1F3	ONE-FAMILY DWELLING	C1	LOCAL 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



LOCATION AND ZONING MAP

Oil - 036954 - 2021 **Scale: 1" = 600'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 167' FNL and 1,891' FWL, Section 8, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 205 feet south of West I-20 Service Road and 994 feet east of South County Road 1220 extension.

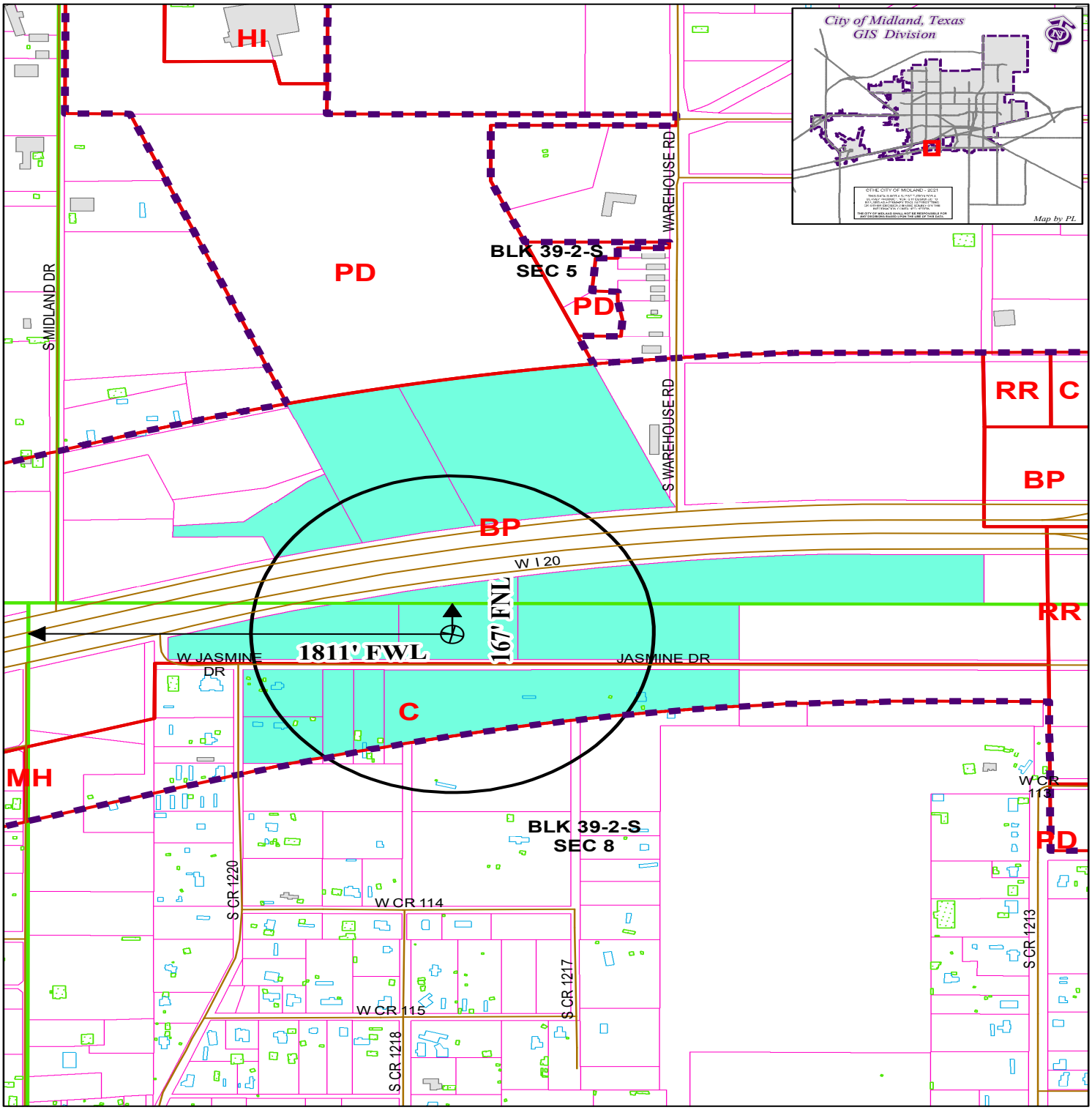
Interstate 5-32 Unit 2 #154

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	C1, C2	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



LOCATION AND ZONING MAP

Oil - 036953 - 2021 **Scale: 1" = 600'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 167' FNL and 1,811' FWL, Section 8, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 205 feet south of West I-20 Service Road and 914 feet east of South County Road 1220 extension.

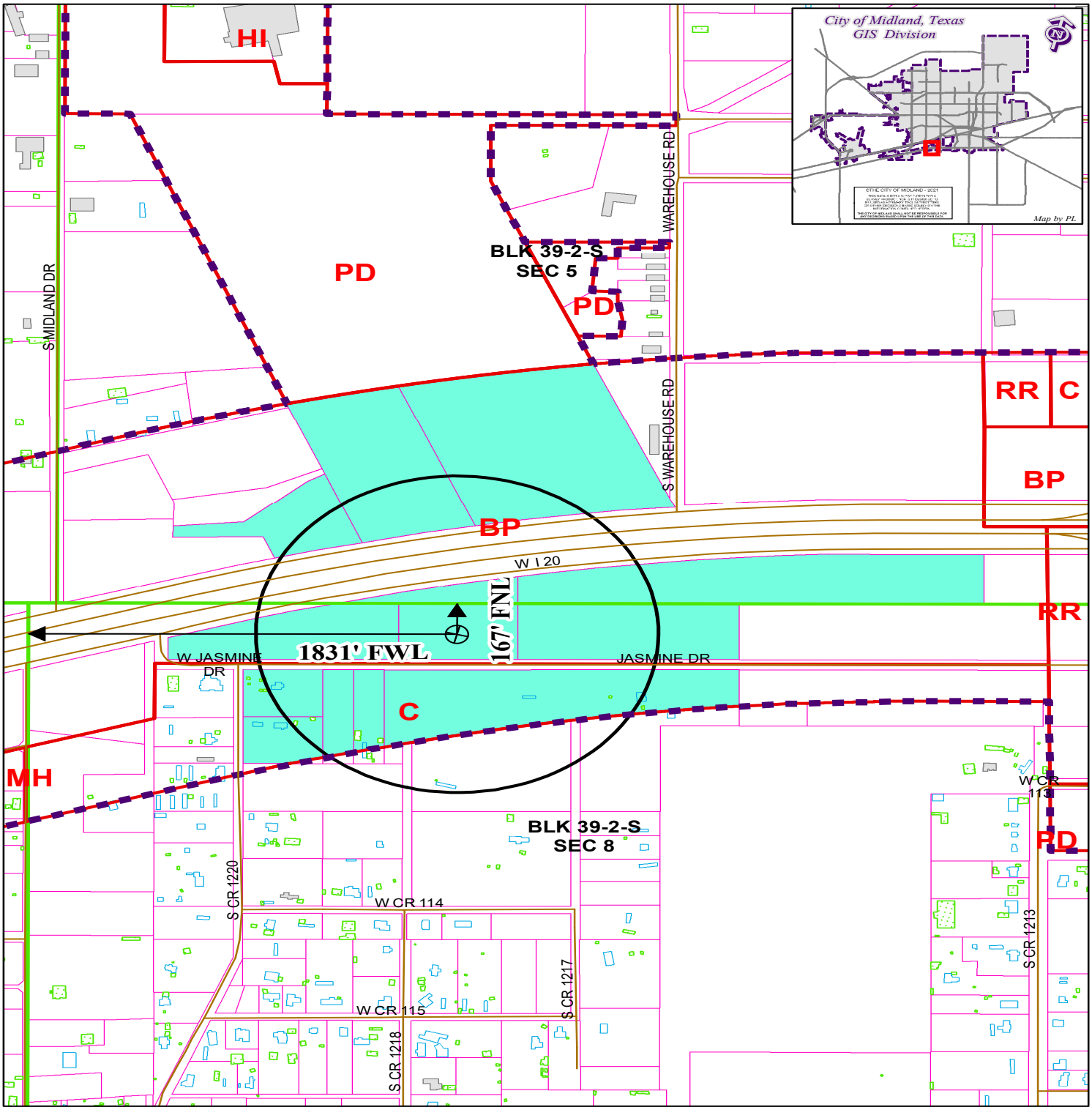
Interstate 5-32 Unit 2 #162

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	RR	LOW INTENSITY 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



LOCATION AND ZONING MAP

Oil - 036951 - 2021 **Scale: 1" = 600'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 167' FNL and 1,831' FWL, Section 8, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 205 feet south of West I-20 Service Road and 934 feet east of South County Road 1220 extension.

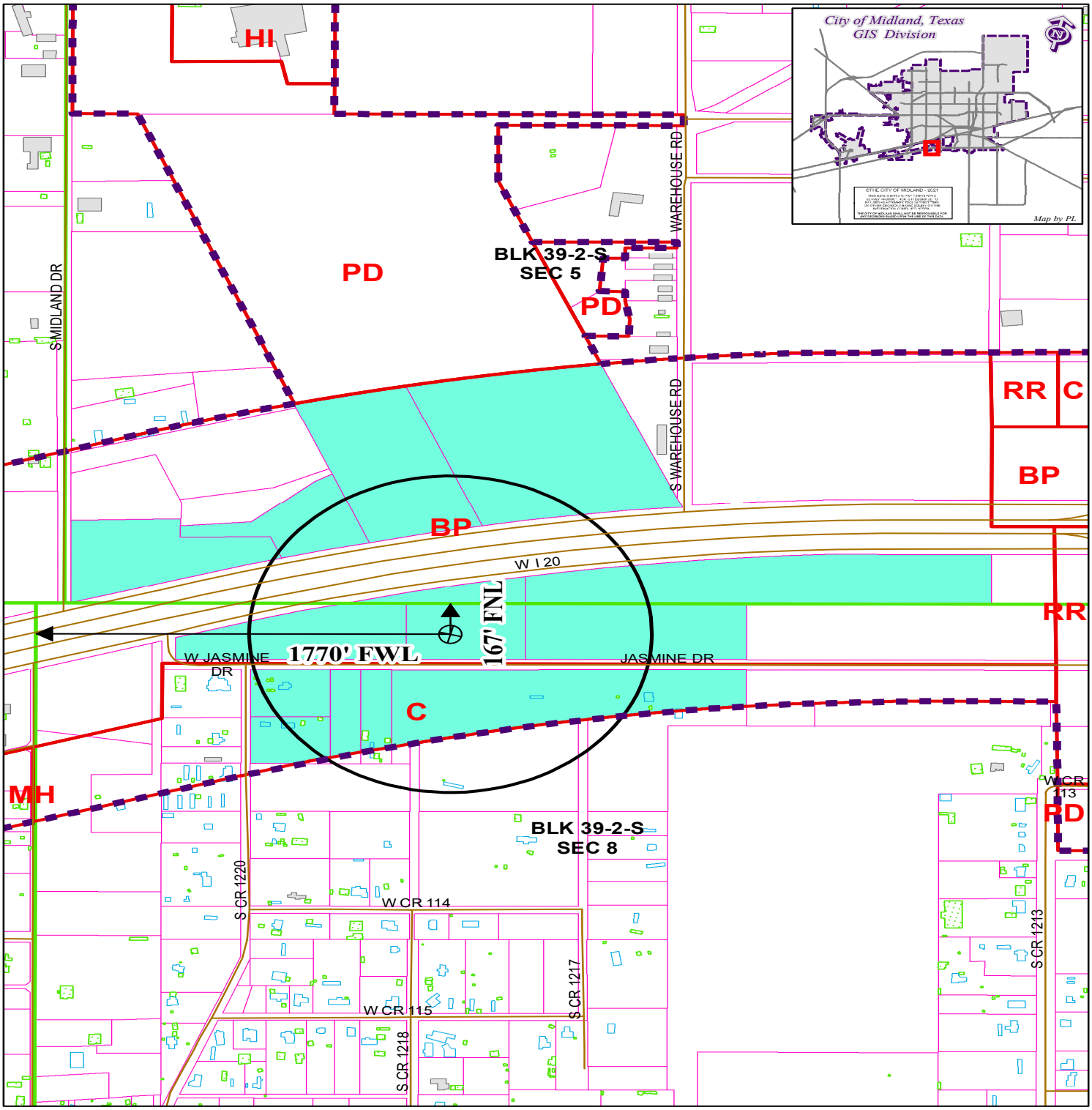
Interstate 5-32 Unit 2 #163

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	C1	LOW 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



LOCATION AND ZONING MAP

Oil - 036945 - 2021 **Scale: 1" = 600'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 167' FNL and 1,770' FWL, Section 8, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 205 feet south of West I-20 Service Road and 873 feet east of South County Road 1220 extension.

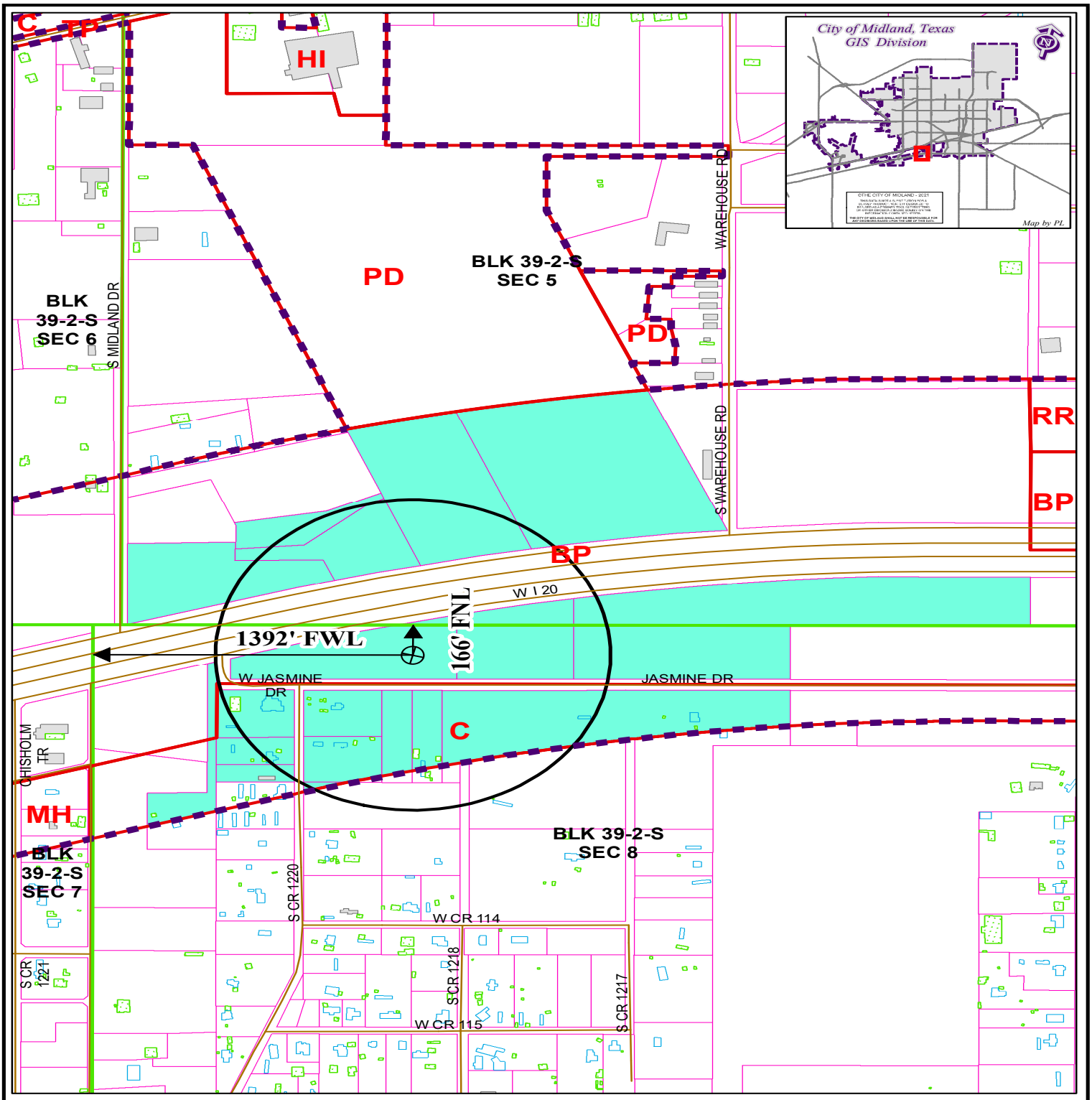
Interstate 5-32 Unit 2 #172

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
RE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	RR	RURAL 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



LOCATION AND ZONING MAP

Oil - 036942 - 2021 **Scale: 1" = 600'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 166' FNL and 1,392' FWL, Section 8, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 204 feet south of West I-20 Service Road and 495 feet east of South County Road 1220 extension.

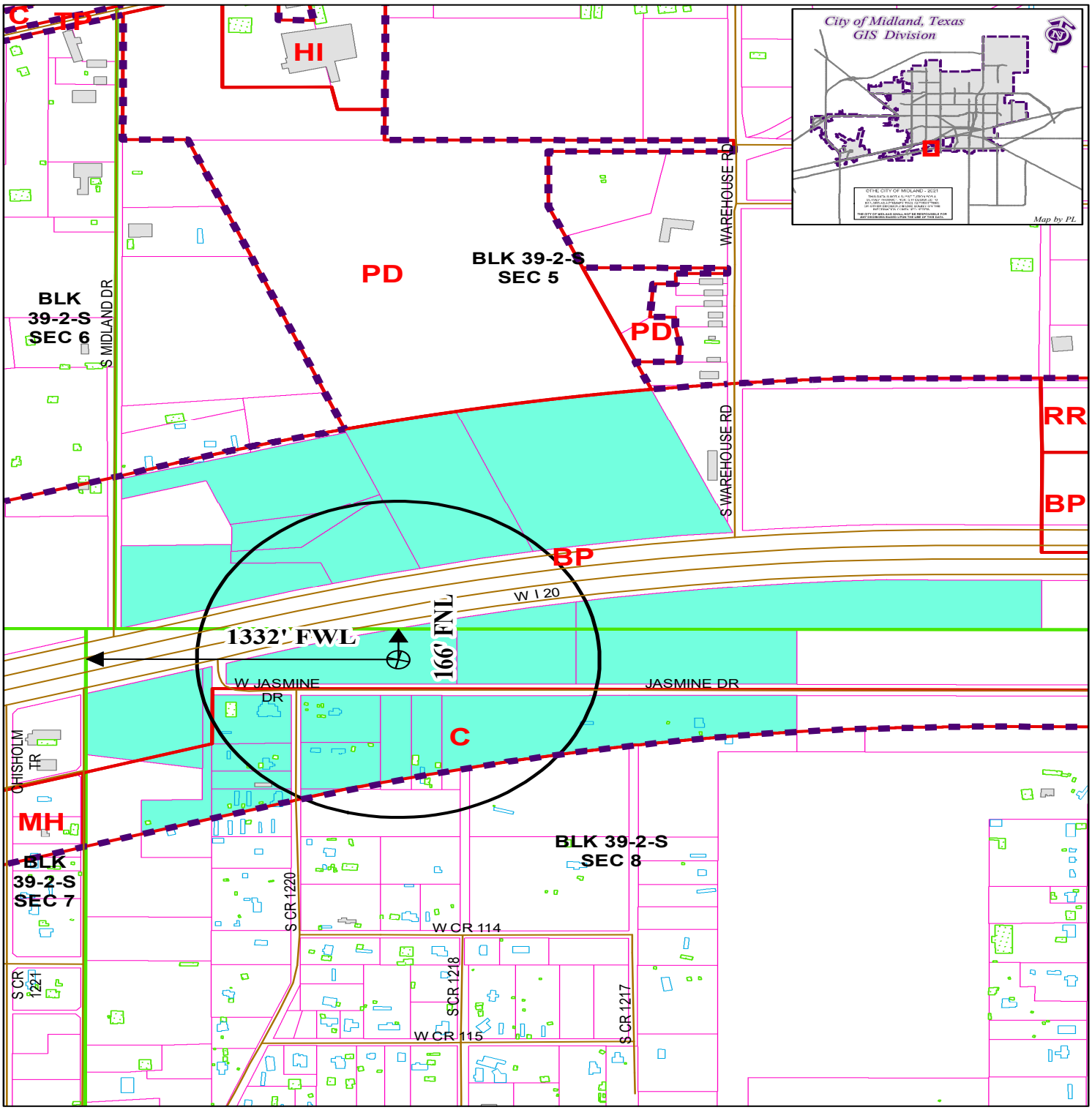
Interstate 5-32 Unit 2 #174

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
[illegible] 2, 1F3	ONE-FAMILY DWELLING	[illegible]	COMMUNITY 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



LOCATION AND ZONING MAP

Oil - 036940 - 2021 **Scale: 1" = 600'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 166' FNL and 1,332' FWL, Section 8, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 204 feet south of West I-20 Service Road and 435 feet east of South County Road 1220 extension.

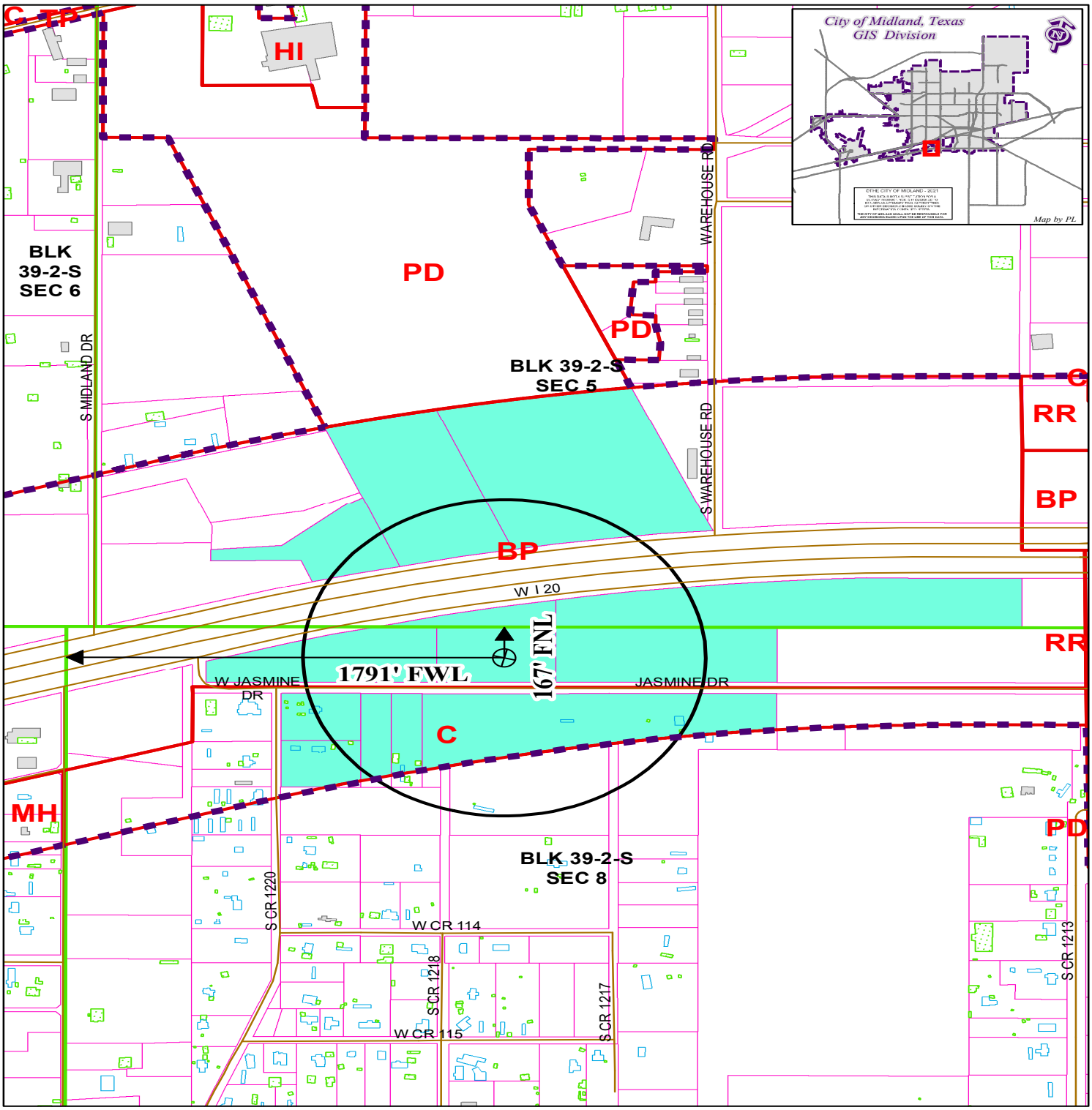
Interstate 5-32 Unit 2 #183

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	C1	LOW 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



LOCATION AND ZONING MAP

Oil - 036939 - 2021 **Scale: 1" = 600'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 167' FNL and 1,871' FWL, Section 8, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 205 feet south of West I-20 Service Road and 974 feet east of South County Road 1220 extension.

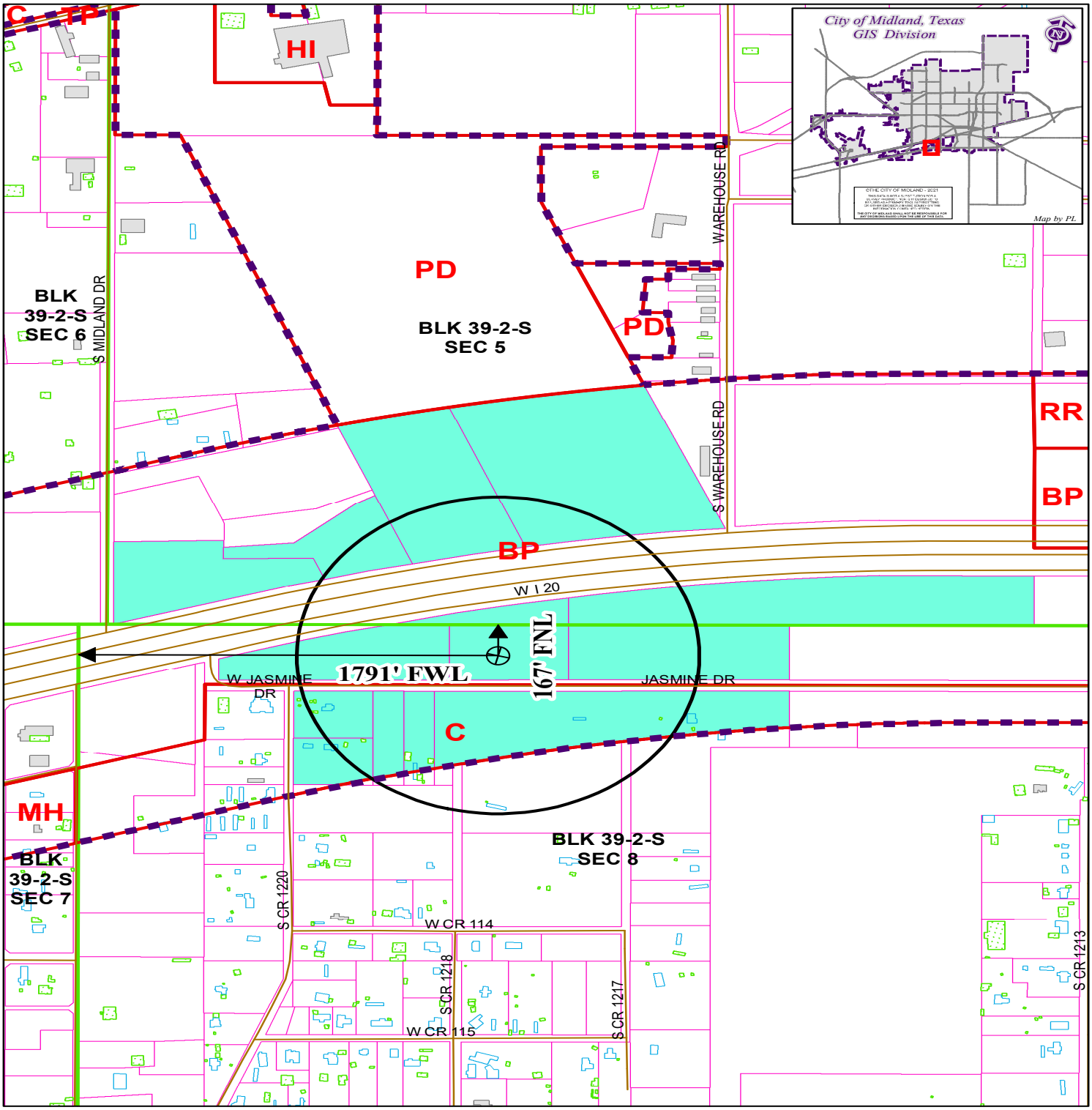
Interstate 5-32 Unit 2 #252

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	C1	LOCAL 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



LOCATION AND ZONING MAP

Oil - 036937 - 2021 **Scale: 1" = 600'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 167' FNL and 1,791' FWL, Section 8, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 205 feet south of West I-20 Service Road and 894 feet east of South County Road 1220 extension.

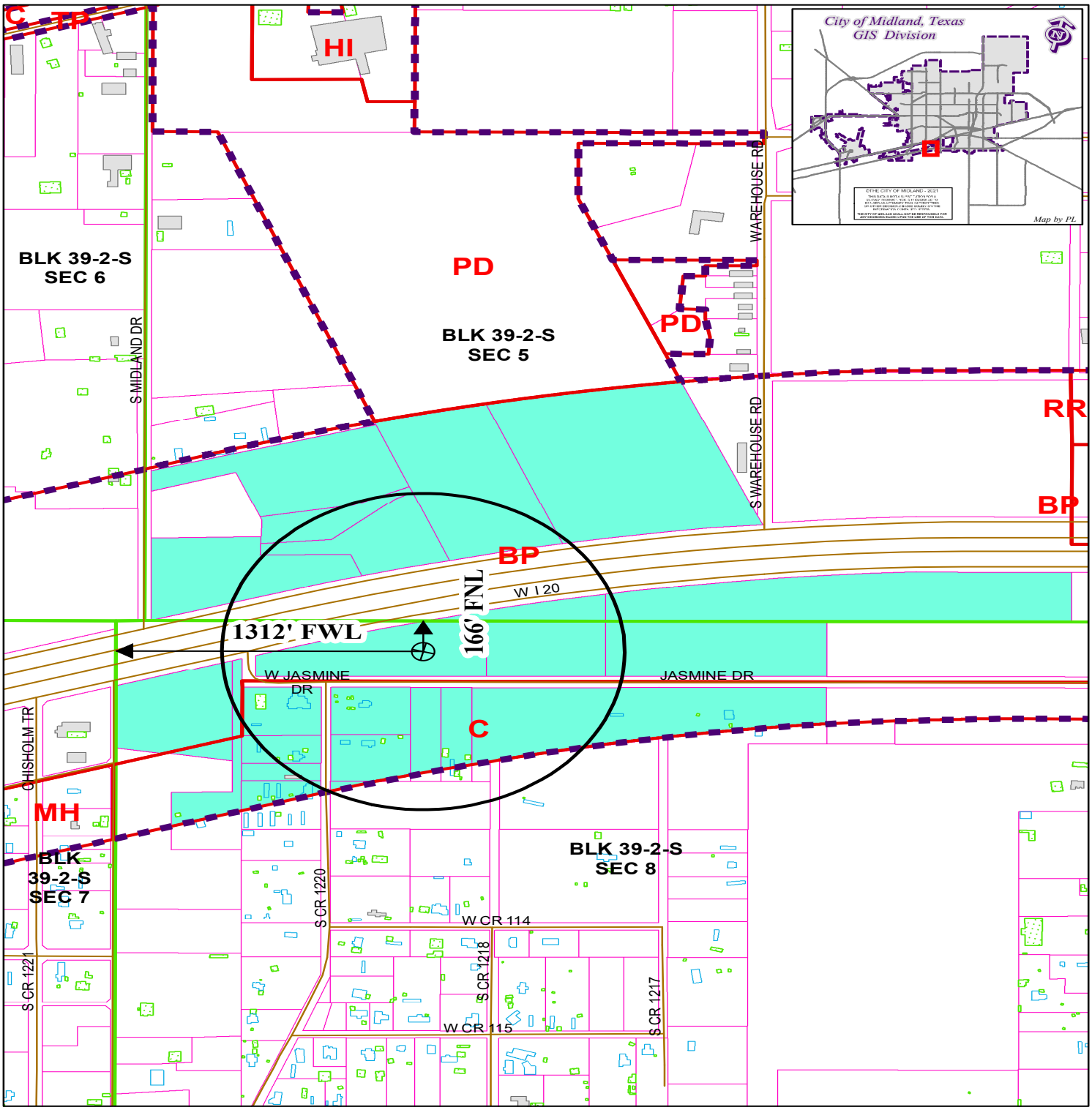
Interstate 5-32 Unit 2 #261

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	C1	LOW 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



LOCATION AND ZONING MAP

Oil - 036935 - 2021 **Scale: 1" = 600'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 166' FNL and 1,312' FWL, Section 8, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 204 feet south of West I-20 Service Road and 415 feet west of South County Road 1220 extension.

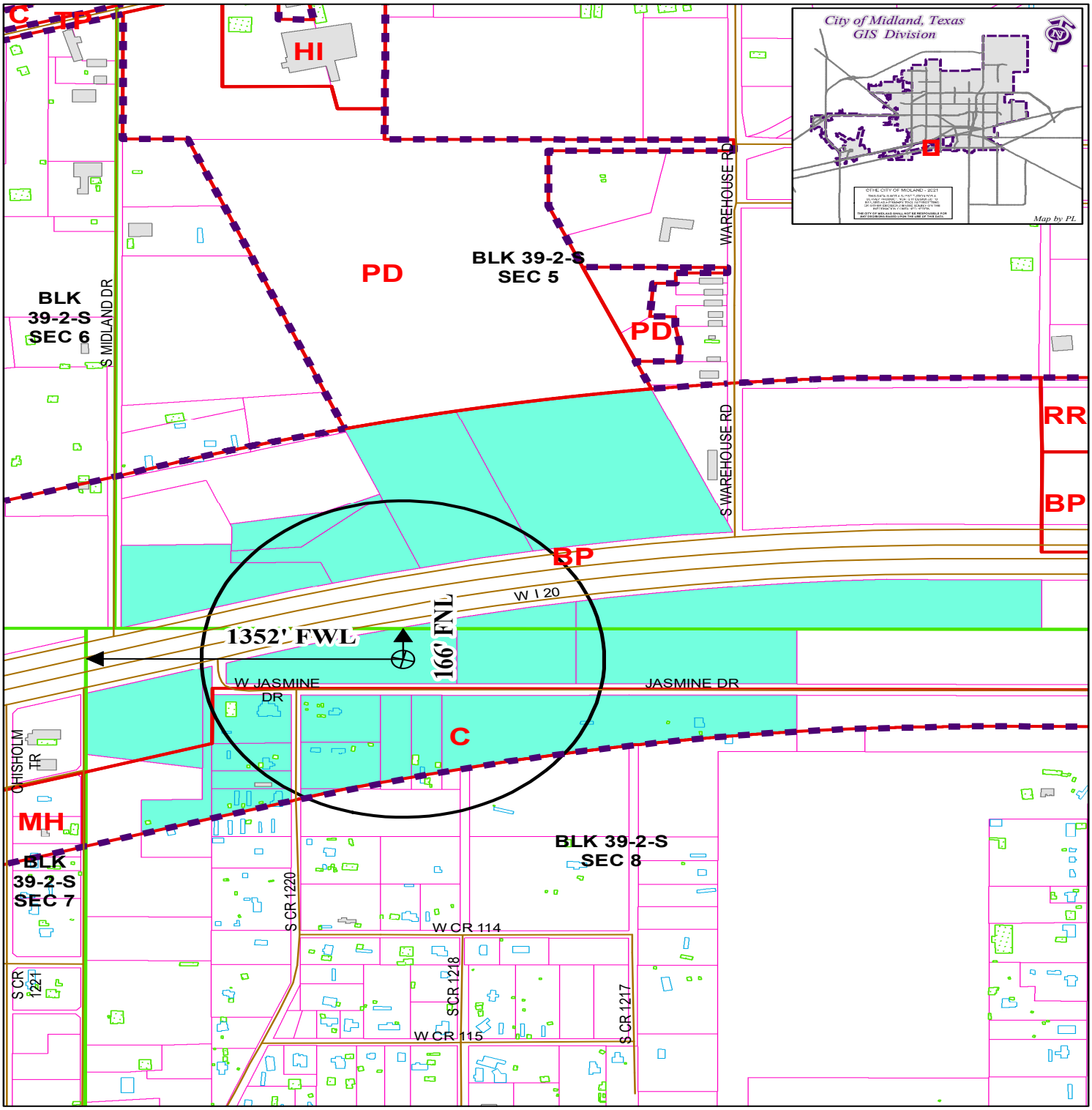
Interstate 5-32 Unit 2 #281

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
1F, 1F2, 1F3	ONE-FAMILY DWELLING	C1, C2, C3	COMMERCIAL
MH	MOBILE HOME DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
TH	TOWNHOUSE DWELLING	LI	LIGHT INDUSTRY
2F	TWO-FAMILY DWELLING	HI	HEAVY INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING		



LOCATION AND ZONING MAP

Oil - 036941 - 2021 **Scale: 1" = 600'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 166' FNL and 1,352' FWL, Section 8, Block 39, T-2-S, T&P RR CO Survey, Midland County, Texas.

Generally located 204 feet south of West I-20 Service Road and 455 feet east of South County Road 1220 extension.

Interstate 5-32 Unit 2 #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
RE, 1F2, 1F3	ONE-FAMILY DWELLING	C1, C2	LOW INTENSITY 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

City Council Meeting

Item Number: 28

Meeting Date: September 28, 2021

To: City Council / City Manager

From: Cole Furqueron,

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 9, BLOCK 25, GREENWOOD ADDITION, THIRD, FOURTH & FIFTH SECTIONS, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH WEBSTER STREET, APPROXIMATELY 192 FEET SOUTH OF EAST WASHINGTON AVE); 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, Cruz Marquez, is requesting to rezone the property located at 507 S. Webster Street to allow for the construction of a new residential home.

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 properties to the north, west, and south are zoned MF-22, Multiple-Family Dwelling District, and the locations of vacant land, and residential homes. The properties to the east are zoned C, Commercial District and the location of residential homes.

Analysis:

The applicant, Cruz Marquez, is requesting to rezone the property from MF-22 Multiple-Family , Single-Family Dwelling District, to allow for the construction of a residential home. The property meets the minimum lot size requirements for the SF-3, Single-Family Dwelling District. 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.

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 comments.

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 loca 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. Please note if oil & gas wells are not identified or left off of plat, this could prevent receiving city permits for structures.

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 serves to connect commercial, office, and mixed-use areas with residential uses. Therefore, the construction of single-family housing at this location is in conformance with the recommendations of the Tall City Tomorrow plan as it provides for the integration of uses. It would also support the existing neighborhood characteristics and uses of the area.

This request was approved at the September 7, 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 September 22, 2021.

Attachments:

Application
Plat (Exhibit A)
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 9, BLOCK 25, GREENWOOD ADDITION, THIRD, FOURTH & FIFTH SECTIONS, CITY AND COUNTY OF MIDLAND, TEXAS, FROM MF-22, MULTIPLE-FAMILY DWELLING DISTRICT TO SF-3, SINGLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH WEBSTER STREET, APPROXIMATELY 192 FEET SOUTH OF EAST WASHINGTON AVE); 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 9, Block 25, Greenwood Addition, Third, Fourth & Fifth Sections, 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: Z-21-0258

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Cruz A. Marquez		Phone (432) 631-4616 Email CruzMarquez1972@Hotmail.com	
Address 914 Canyon dr.	City Midland	State Tx	Zip 79703
Property Owner Printed Name: Cruz A. Marquez		Phone (432) 631-4616 Email CruzMarquez1972@Hotmail.com	
Address 914 Canyon dr.	City Midland	State Tx	Zip 79703
Representative *(if different from Applicant or Property Owner)* Firm: Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 507 S. Webster

Legal Description
Lot: 9 Block: 25 Subdivision: Greenwood Addition

Current Zoning: MF22

Proposed Zone: SF-3
(List by tracts if more than one district is requested)

Reason for Zone Change Request: New Construction

Present Use of Property: Vacant

Proposed Use of Property: New Construction

How would this zone change affect the public health, safety and welfare? N/A

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)

RECEIVED
AUG 11 2021
BY: .....

Signature *(by property owner only – authorized agent must sign affidavit below)*	
Applicant (signature):	Date:
Applicant (printed):	
Property Owner (signature): Cruz A Marquez	Date:
Property Owner (printed) : Cruz A. Marquez	

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.

_____

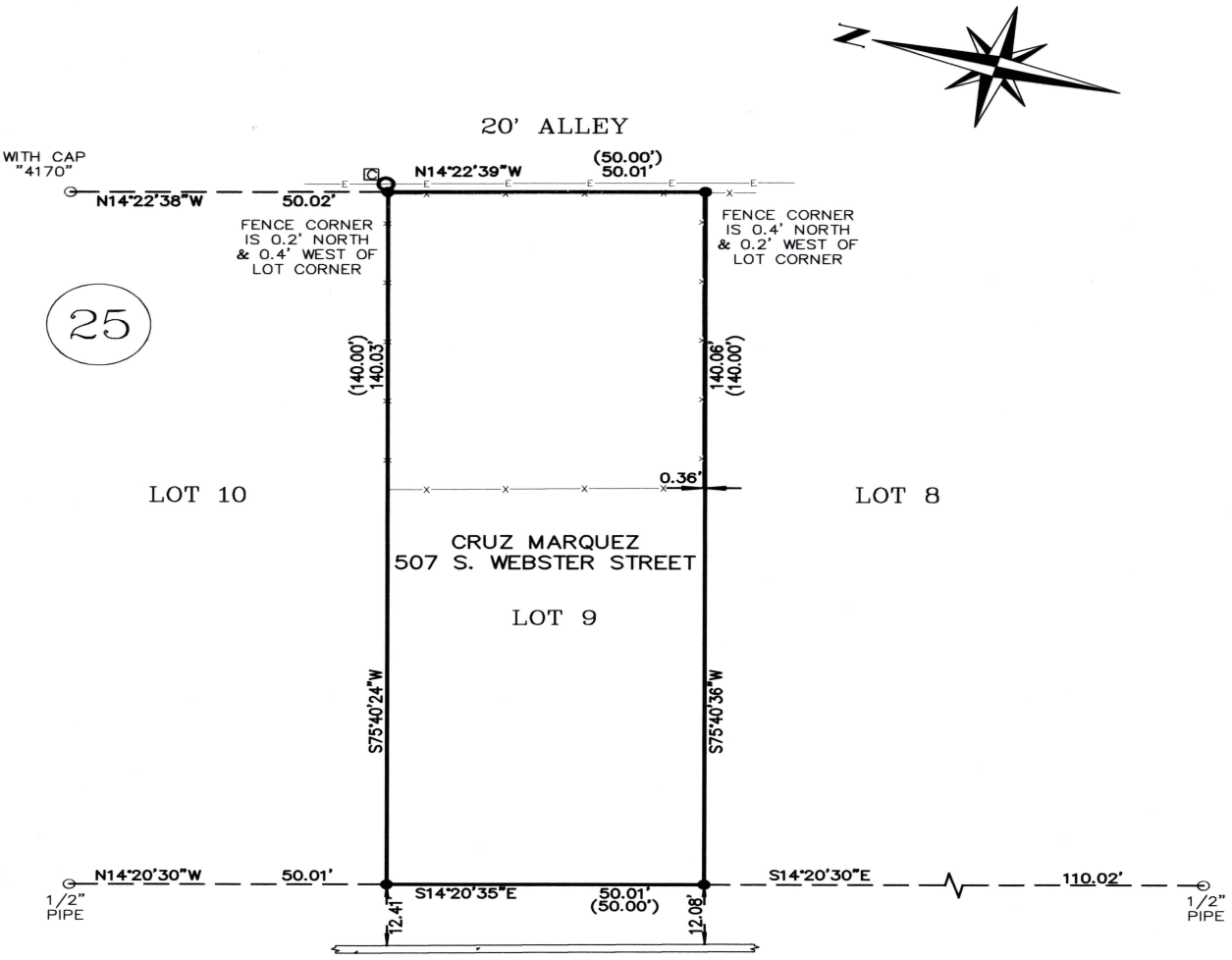
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☐ Property Owner Authorization	☐ Dimensioned Site Plan
☐ Application Fee	☐ Plans in Digital Format (PDF/JPEG)
Check #_____	
Received By:	Date: 8/11/21

Application will not be considered for scheduling until reviewed by a planner.

COPYRIGHT 2021
This survey plat is being provided solely for the use of: Cruz Marquez, and that no license has been created, express or implied, to copy the survey plat except as is necessary in conjunction with the original transaction dated August 16, 2021, which shall take place within 90 days after the survey was provided.



SURVEY OF
LOT NINE (9), BLOCK TWENTY FIVE (25), GREENWOOD ADDITION (THIRD, FOURTH & FIFTH SECTIONS), AN ADDITION TO THE CITY OF MIDLAND MIDLAND COUNTY, TEXAS

ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN CABINET B, PAGE 56, PLAT RECORDS, MIDLAND COUNTY, TEXAS

This survey was prepared without benefit of a title commitment. Not all easements or matters of title may be shown.

Census Tract: 15

This tract is in Flood Zone "X" as shown on the Flood Insurance Rate Map, Dated September 16, 2005 provided by the Federal Emergency Management Agency Flood Map Number: 48329C0206 F

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 visible discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, easements or rights-of-way, except as shown hereon, and that said property has access to and from a dedicated roadway.

Dated this the 16th day of August 2021.

Bruce R Pennell

Registered Professional Land Surveyor No. 4170
Date: 08/16/2021

(IF SURVEYORS SIGNATURE IS NOT SIGNED IN RED INK, THIS IS NOT AN ORIGINAL DOCUMENT)

LEGEND

- ● Set 1/2" I.R. W/Cap "RPLS 4170"
- ○ Fnd. 1/2" I.R.
- O Power Pole
- ——E——E—— Overhead Electric Line
- ⊡ Cable TV Junct. Box
- ——X——X—— Chain Link Fence Line

Basis of Bearings:
NAD 83 Lambert Grid

Bearings and Distances Shown
Inside ( ) Indicate Record Information

20 10 0 20

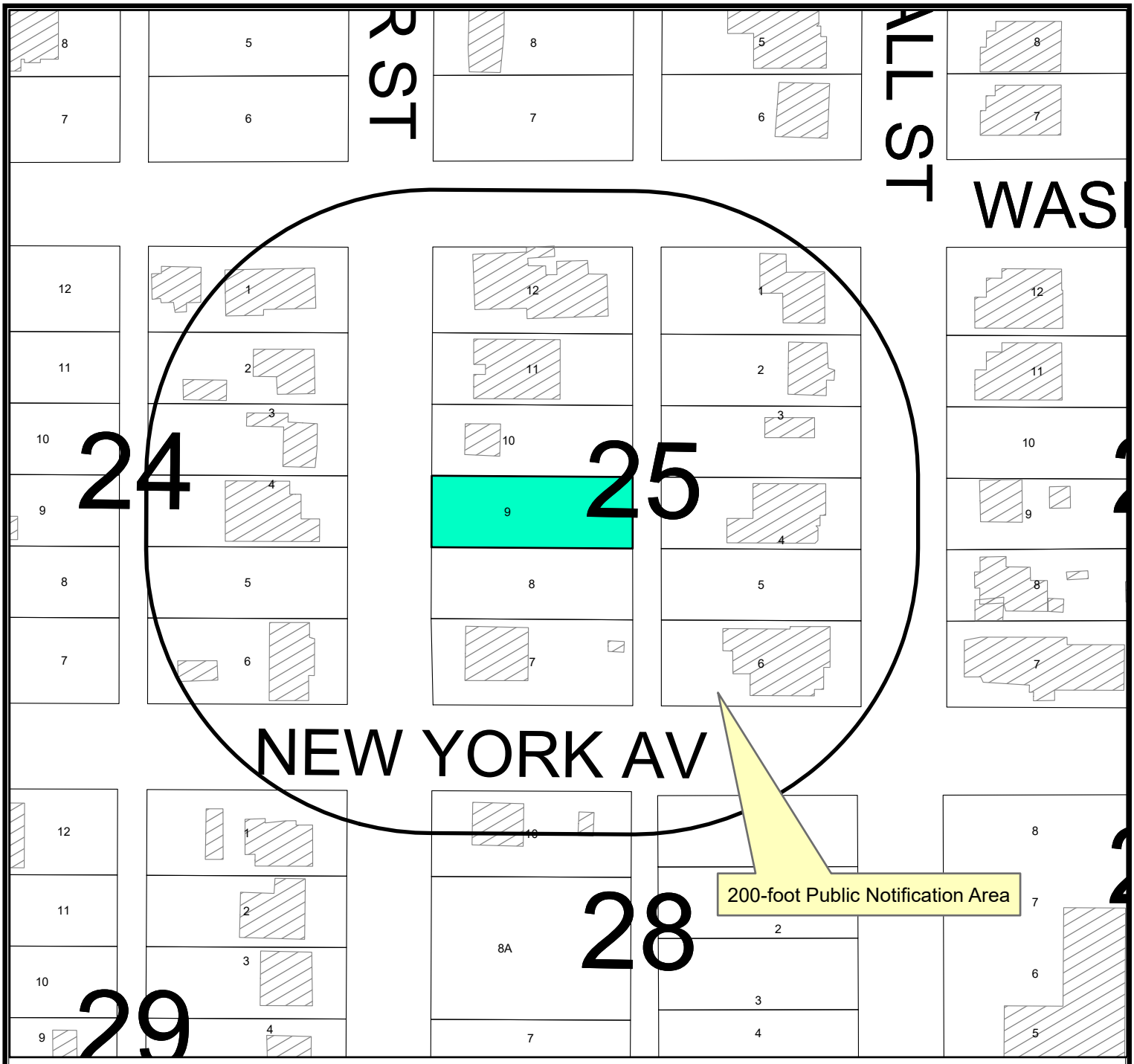
SCALE: 1" = 20'

STATE OF TEXAS
REGISTERED
BRUCE R. PENNELL
4170
PROFESSIONAL
LAND SURVEYOR

PENNELL LAND SURVEYING
PROFESSIONAL LAND SURVEYING
P.O. BOX 51622, MIDLAND, TEXAS 79710
VOICE:(432)570-6256 FAX: (432)682-3262 MOBILE: (432)528-1027

ABSTRACT OFFICE: N/A	G.F. #: N/A	COMMITMENT EFFECTIVE DATE: N/A	
CAD FILE: BRP22587	DATA FILE: 507WEBSTER	DRAWN BY: MARCY N.	FIRM NO.: 10193978


Development Services
with ArcGIS Web AppBuilder
507 s webster
Show search results for 507 s webster
500
501
502
503
505
506
508
509
S WEBSTER
Search result
507 South WEBSTER Street, 79701
Zoom to
40ft
-102.048 31.997 Degrees



LOCATION MAP

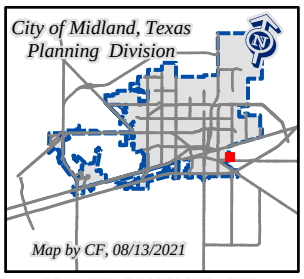
Z-21-0258 **Scale: 1" = 200'**

Consider a request by Cruz Marquez for a zone change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District on Lot 9, Block 25, Greenwood 3rd, 4th, &5th, City and County of Midland, Texas.

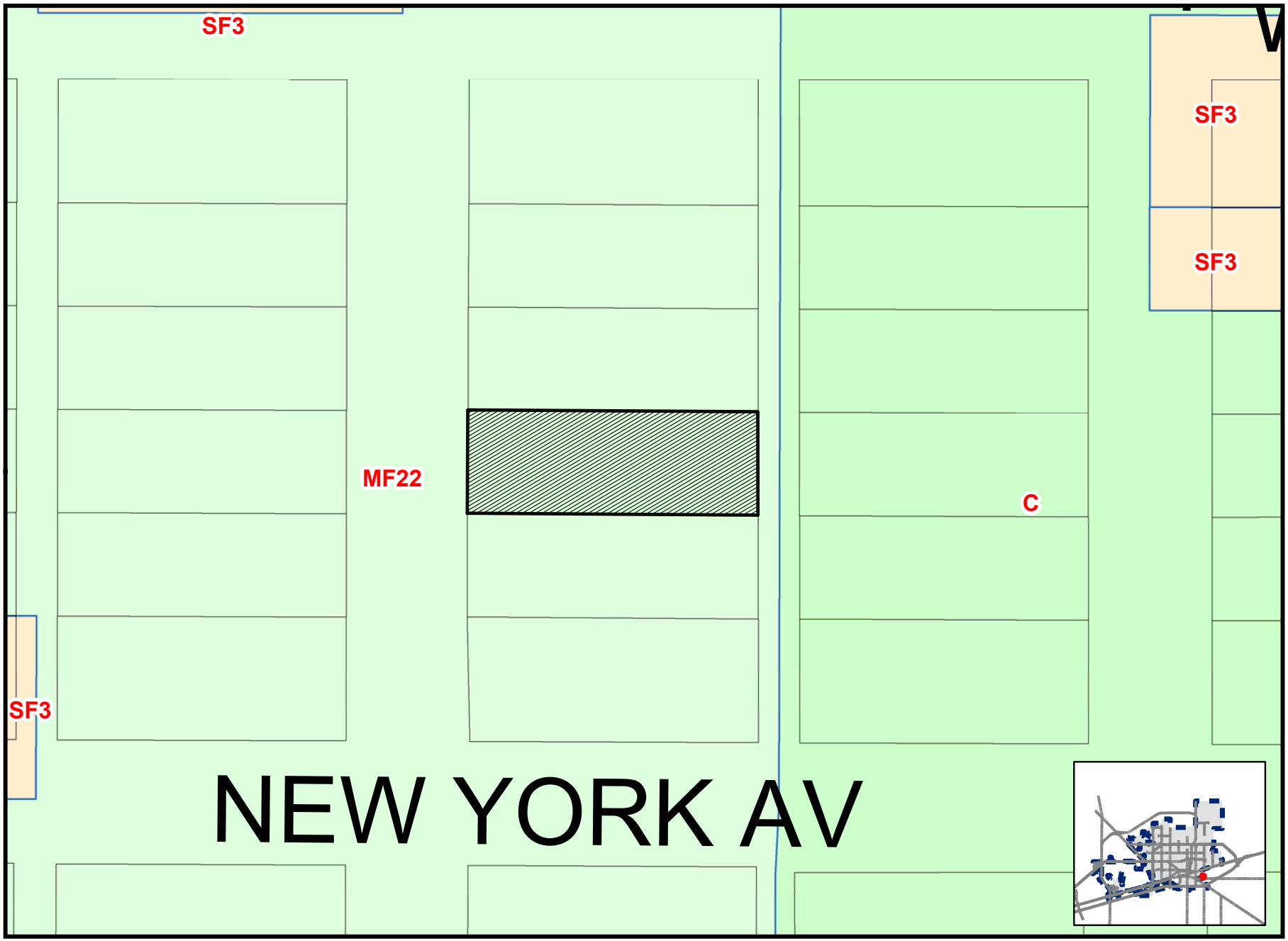
Generally located on the East side of S. Webster Street, approximately 192-feet south of E. Washington Ave. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



September 28, 2021



Map By CF, 08/13/2021

Z-21-0258

Scale: 1" = 700'

ZONING MAP

NOR IS IT DESIGNED
INFORMATION CONTAINED
THE USE OF THIS DATA.


DIRT LIFE
TEXAS
JCG-4131




ROAD
CLOSED
STOP


508

City Council Meeting

Item Number: 29

Meeting Date: September 28, 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 A 2.273-ACRE TRACT OF LAND OUT OF SECTION 20, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-1, SINGLE-FAMILY DWELLING DISTRICT TO PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH MIDKIFF ROAD AND SINCLAIR 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 3) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Stephen T. Marcum is requesting to rezone the property located at 3301 Sinclair Avenue, to redevelop the existing Senior Life Midland building.

Recommended City Council Action:

Approve

Surrounding Zoning and Land Uses:

The properties to the north, east, and west are zoned SF-1, Single-Family District, and are the locations of residential homes. The property to the south is zoned PD, Planned District for an Office Center, and the location of Permian Nephrology Associates.

Current Zoning:

SF-1, Single-Family Dwelling District (Ordinance No. 6723).

Analysis:

The applicant Stephen T. Marcum, is requesting to rezone the property from SF-1, Single-Family Dwelling District to PD, Planned Development District for an Office Center to allow for the redevelopment of Senior Life Midland on the property located at 3301 Sinclair Avenue. Senior Life Midland is a private, non-profit agency that offers programs designed to meet the needs of older Midland Residents.

The property has a specific use permit (Ordinance No. 6723), which allows the property to be used as a senior citizen center. Since the current zoning ordinance does not allow this use, through a specific use designation, a planned development district provides some flexibility to allow for these uses.

The proposed site plan (Exhibit B) shows 28,837 square feet of building, including twenty-three (23) office spaces, three (3) conference rooms, a handy man shop, a kitchen, several storage rooms, a receiving area, and a volunteer pick-up area. Sixty-three (63) parking spaces are proposed out of the seventy-two (72) that are required per our code (1 per 400 square feet). Therefore, this site does not have adequate parking. However, the applicant has noted that the 63 parking spaces are more than adequate for their staff and the population that they serve.

Furthermore, a business office is not allowed in the SF-1, Single-Family Dwelling District. Therefore, this zone change request will bring this lot into conformance with the current zoning ordinance and allow for the redevelopment of the site. Additionally, this property is in the process of platting.

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. Please note if oil & gas wells are not identified or left off of plat, this could prevent receiving city permits for structures. Any plugged and abandoned well would need to be identified.

Transportation: (Approved)

No additions or changes to site access are approved with plat or zoning review. Driveways or other access points are approved only with construction drawing review.

No objections to plat.

Planning:

This proposed development fits with chapter 3, An Integrated Land Use Vision, "Future Land Use Map" of the Tall City Tomorrow comprehensive plan as this area is called for Urban-Medium Neighborhood Center. This designation calls for a mix of traditional neighborhood business including small-scale commercial, office, civic, and residential. The commercial uses should be low impact and provide a variety of neighborhood services. Therefore, the redevelopment of Senior Life Midland is compliant with the recommendations of the Tall City Tomorrow.

This request was approved at the September 7, 2021 Planning and Zoning Commission meeting.

Staff recommends approval of this zone change from SF-1, Single-Family Dwelling District to PD, Planned Development District for an Office Center, subject to condition A through C.

Conditions:

A. **That the use and development of this property shall conform to the regulations of the O-1, Office District.**

B. **That this property shall conform to the site plan and elevations, which are attached hereto and incorporated herein as Exhibits "B".**

C. **That the landscaping shall conform to the regulations set forth in Title XI, Chapter 9 of the City Code.**

Letters of Objection:

Staff has not received any letters of objection as of September 22, 2021.

Attachments:

Application
Property Survey (Exhibit A)
Site Plan and Elevations (Exhibit B)
Maps
Ordinance No. 6723

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE A 2.273-ACRE TRACT OF LAND OUT OF SECTION 20, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, FROM SF-1, SINGLE-FAMILY DWELLING DISTRICT TO PD, PLANNED DEVELOPMENT DISTRICT FOR AN OFFICE CENTER (GENERALLY LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH MIDKIFF ROAD AND SINCLAIR 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 a 2.273-acre tract of land out of Section 20, 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") to PD, Planned Development District for an Office Center 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 SF-1, Single-Family Dwelling District to PD, Planned Development District for an Office Center.

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

O-1, Office District.

SECTION THREE. That a site plan, which is attached hereto as Exhibit "B" 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 and elevations attached hereto as Exhibit "B".

B. That the landscaping shown in Exhibit "B" shall be considered illustrative. The landscaping shall conform to the regulations set forth in Title XI, Chapter 9 of the City Code.

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

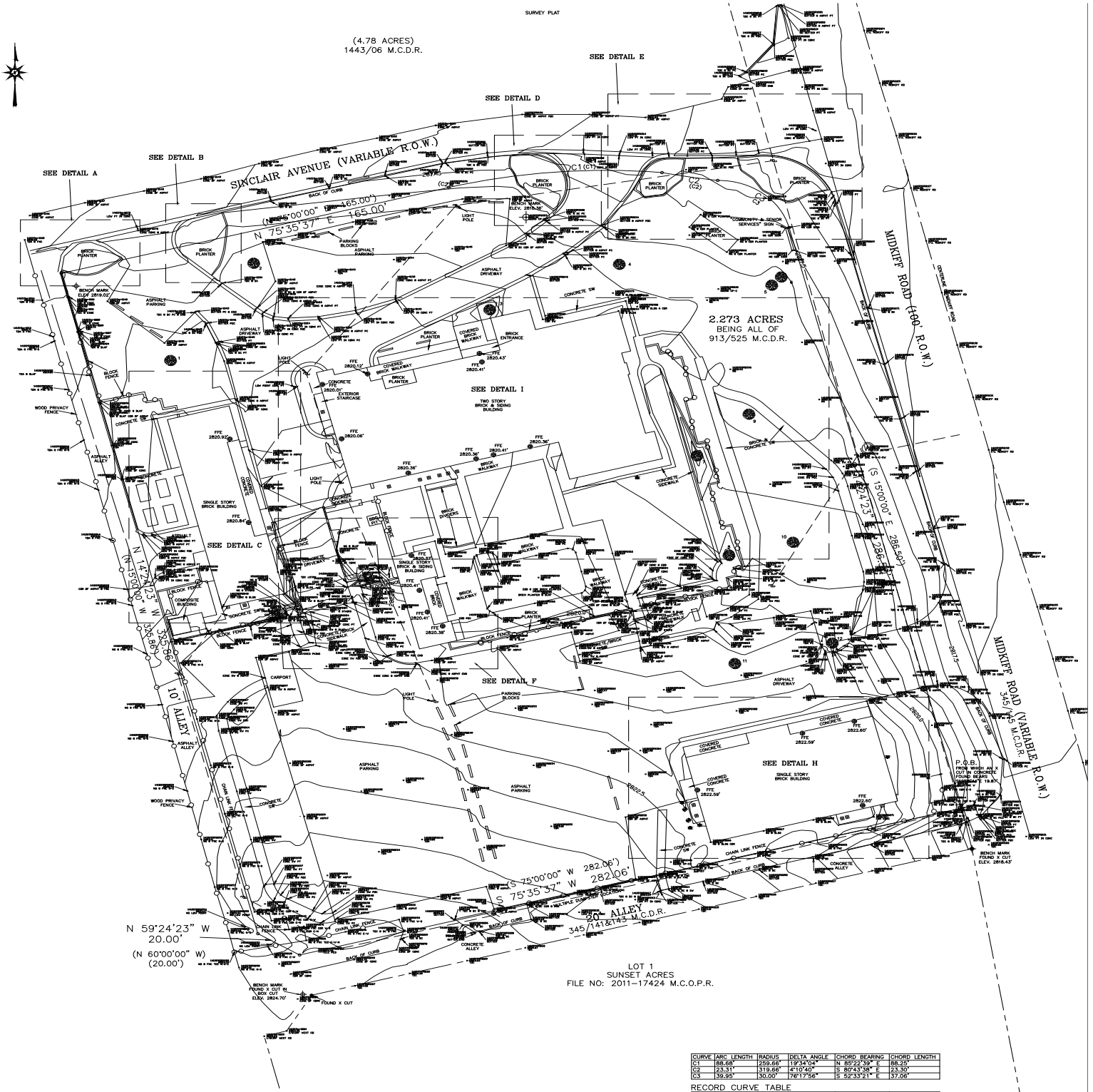
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"



CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	88.68'	259.66'	19°34'04"	N 85°22'39" E	88.25'
C2	23.31'	319.66'	4°10'40"	S 80°43'58" E	23.30'
C3	39.95'	30.00'	76°17'56"	S 52°33'21" E	37.06'

RECORD CURVE TABLE

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	88.68'	259.66'	19°34'00"	N 04°43'00" E	88.24'
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C3	39.95'	30.00'	76°17'56"	S 53°08'58" E	37.06'

LEGAL DESCRIPTION: Being 2.273 acres of land out of Section 20, Block 39, T-1-S, T. & P. RR. Co. Survey, Abstract No. 1166 in Midland County, Texas and also being all of that certain 2.269 acre tract described in Volume 913, Page 525 of the Deed Records of Midland County, Texas; Said 2.273 acre tract being more particularly described as follows and as surveyed under the supervision of Cross Texas Land Services, Inc in December, 2014 & January 2015;

BEGINNING at a 1/2 inch iron rod set in the west Right of Way line of Midkiff Road, the north line of a 20 foot alley and the east line of said Tract 2 for the southeast corner of said 2.269 acre tract and the southeast corner hereof and Iron which an "X" cut in concrete found for the northeast corner of that certain tract described in File No: 2011-17424 of the Official Public Records of Midland County, Texas bears South 12°05'44" East a distance of 19.87 feet;

THENCE South 75°35'37" West a distance of 282.06 feet along the north line of said 20 foot alley and the south line of said 2.269 acre tract to a 1/2 inch iron rod set for the most southerly southwest corner here of;

THENCE North 59°24'23" West a distance of 20.00 feet along the southwesterly line of said 2.269 acre to a 1/2 inch iron rod set in the east line of a 10 foot alley for the most westerly southwest corner hereof;

THENCE North 14°24'23" West a distance of 325.86 feet along the east line of said 10 foot alley and the west line of said 2.269 acre tract to an "X" marked in concrete in the south line of Sinclair Avenue for the northwest corner of said 2.269 acre tract and the northwest corner hereof;

THENCE along the south line of Sinclair Avenue and the north line of said 2.269 acre tract, the following 4 courses:

1. North 75°35'37" East a distance of 165.00 feet to a 1/2 inch iron rod set for a corner hereof;
2. with a curve turning to the right with an arc length of 88.68 feet, with a radius of 259.66 feet, with a chord bearing of North 85°22'39" East , with a chord length of 88.25 feet to a 1/2 inch iron rod set for a corner hereof;
3. with a reverse curve turning to the left with an arc length of 23.31 feet, with a radius of 319.66 feet, with a chord bearing of South 80°43'58" East , with a chord length of 23.30 feet to a 1/2 inch iron rod set for a corner hereof ;
4. with a reverse curve turning to the right with an arc length of 39.95 feet, with a radius of 30.00 feet, with a chord bearing of South 52°33'21" East , with a chord length of 37.06 feet to a 1/2 inch iron rod set in the west line of said Midkiff Road and the east line of said 2.269 acre tract;

THENCE South 14°24'23" East a distance of 286.50 feet along the west line of said Midkiff Road and the east line of said 2.269 acre tract to the **POINT OF BEGINNING** containing 2.273 acres more or less, and as shown hereon.

TREE NUMBER	SPECIES	DIAMETER
1	OAK	24"
2	OAK	24"
3	MESQUITE	6"
4	OAK	10"
5	OAK	42"
6	OAK	16"
7	OAK	TWIN 12"
8	OAK	TWIN 17"
9	PECAN	21"
10	PECAN	14"
11	PECAN	20"
12	PECAN	18"

HQ: 111 Austin Street, Mason, Texas, 76856
(877)347-6883
TX: PIRM REG. #100264-00, OK CA #1816
NM: PIRM REG. #10778-00, OK CA #1816
FILE: S:\SURVEY\MIDLAND\Projects\PROJECTS & MISC JOBS\14-01666 COMMUNITY & SENIOR SERVICES\14-01666.DWG
CTLS
Cross Texas Land Services, Inc
HQ: 111 Austin Street, Mason, Texas, 76856
(877)347-6883
TEXAS - OKLAHOMA
TX: PIRM REG. #100264-00 &
#10193808, OK CA #1816
www.crosstexaslandservices.com

THE UNDERSIGNED DOES HEREBY STATE THAT THIS SURVEY WAS THIS DAY MADE ON THE GROUND OF THE PROPERTY LEGALLY DESCRIBED HEREON AND IS CORRECT TO THE BEST OF HIS KNOWLEDGE AND BELIEF, AS FURTHER DESCRIBED BY THE BOUNDARY AGREEMENTS, CONFLICTS, PROTRUSIONS, ENCROACHMENTS, OVERLAPPING OF IMPROVEMENTS, VISIBLE EASEMENTS AND RIGHTS OF WAY AS SHOWN HEREON, AND THAT THERE ARE NO DISCREPANCIES, CONFLICTS, SHORTAGES IN AREA, BOUNDARY LINE CONFLICTS, ENCROACHMENTS, OVERLAPPING OF IMPROVEMENTS, VISIBLE EASEMENTS AND RIGHTS OF WAY, EXCEPT AS SHOWN HEREON.

THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE AND SHALL NOT BE USED OR VIEWED OR RELIED UPON AS A FINAL SURVEY DOCUMENT.

1-22-2015
REGISTERED PROFESSIONAL LAND SURVEYOR DATE

0' 20' 40' 60'

THE UNDERSIGNED JOINT TENANT GRANTEE, JOINT TENANT GRANTEE, AND TENANT GRANTEE, HEREBY CERTIFY TO THE TEXAS CHAMBERS SYSTEM, TITLE CENTRAL, FIRST TITLE & ESCROW, LLC, AND CROSS TEXAS LAND SERVICES, INC. THAT THIS SURVEY WAS MADE ON THE GROUND OF THE PROPERTY LEGALLY DESCRIBED HEREON AND IS CORRECT TO THE BEST OF HIS KNOWLEDGE AND BELIEF, AS FURTHER DESCRIBED BY THE BOUNDARY AGREEMENTS, CONFLICTS, PROTRUSIONS, ENCROACHMENTS, OVERLAPPING OF IMPROVEMENTS, VISIBLE EASEMENTS AND RIGHTS OF WAY, EXCEPT AS SHOWN HEREON.

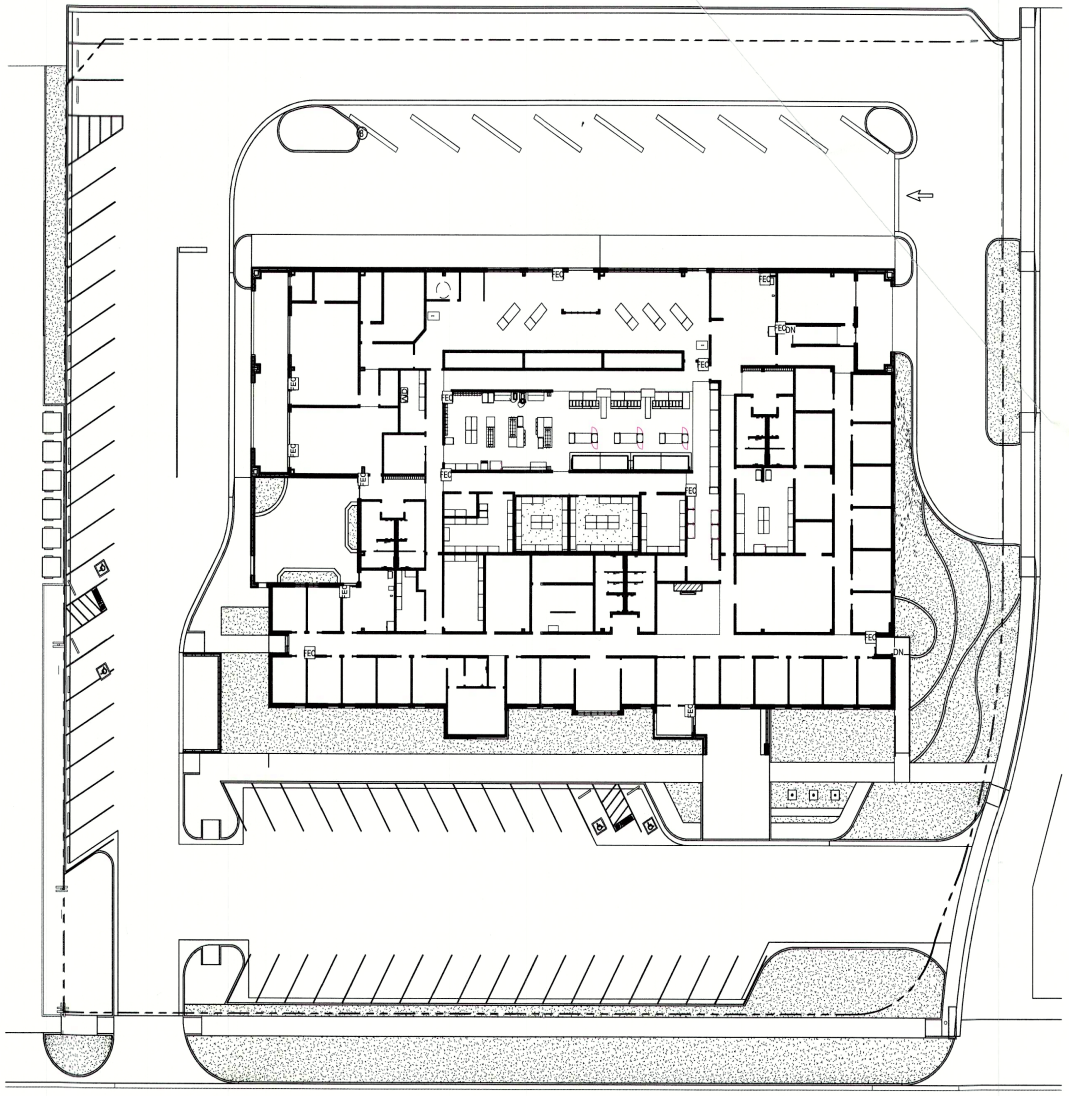
NOTES:
1. BEARINGS, DISTANCES AND ACREAGE SHOWN HEREON ARE NAD 83 GRID BEARINGS, HORIZONTAL DISTANCES AND ACREAGE TO THE TEXAS COORDINATE SYSTEM, TEXAS CENTRAL ZONE, UTILIZING NGS CONTROL MONUMENTS "MIDLAND RESET" AND "MIDLAND 2" AND ARE DERIVED ON THE GRID COORDINATES SHOWN HEREON ARE MEASURE AND ARE ALSO BASED ON GPS RTK CORS/OPUS.
2. CONSTRUCTION SYMBOLS ARE SHOWN FOR THE LOCATION OF BENCH MARKS THAT ARE ON SET IRON RODS AND NOT SHOWN ELSEWHERE.
3. IRON RODS SET ARE 1/2 INCH RODS 18INCH WITH PLASTIC CAPS STAMPED "CTLS".
4. THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A CURRENT TITLE REPORT. THERE MAY BE EASEMENTS AND/OR COVENANTS AFFECTING THIS PROPERTY, NOT SHOWN HEREON.

LEGEND:

BOUNDARY LINE	CLEAN OUT
ADVERSE LINE	MONUMENT FOUND
SURVEY LINE	MONUMENT SET
BURIED UTILITY LINE	A/C UNIT
OVERHEAD UTILITY LINE	UTILITY POLE/RISER
PUBLIC UTILITY EASEMENT	WATER WELL/METER
BUILDING SETBACK LINE	MANHOLE
RECORD CALL	ELECTRIC BOX/METER
	FIRE HYDRANT
	TELEPHONE/CABLE PEDESTAL
	BENCH MARK
	GAS METER
	FINISH FLOOR ELEVATION SPOT (FFE)
	M.C.R.A. – MIDLAND COUNTY PLAT RECORDS
	M.C.D.R. – MIDLAND COUNTY DEED RECORDS
	M.C.O.P.R. – MIDLAND COUNTY OFFICIAL PUBLIC RECORDS

REFERENCED COMMUNITY & SENIOR SERVICES	
ADDRESS/LOCATION: SINCLAIR AVENUE	
LEGAL DESCRIPTION: 2.273 ACRES OF LAND OUT OF SECTION 20, BLOCK 39, T-1-S, T. & P. RR. CO. SURVEY, ABSTRACT NO. 1166 IN MIDLAND COUNTY, TEXAS	
JOB NO. 14-01666	REV. 1
DRAWN BY: FJG	PAGE: 1 OF 2

EXHIBIT "B"



X-1.02 SITE PLAN
SCALE: 1" = 20'-0"
DATE: 07/06/21

PACKET 29-10

NEW FACILITY

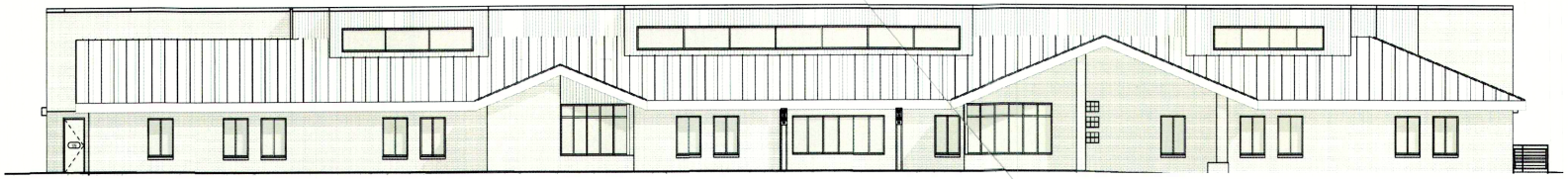
September 28, 2021

VANDERGRIFF GROUP
ARCHITECTS • PC
312 N. BIG SPRING SUITE 100 (432)687-0781 MIDLAND, TEXAS

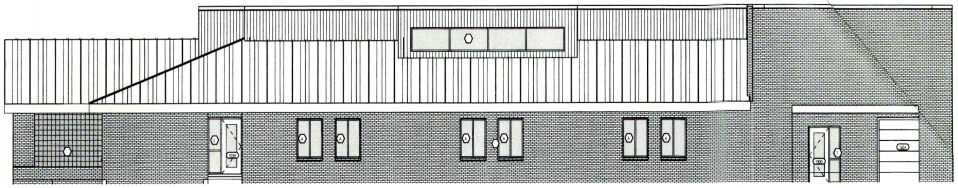
© Copyright 2021 Vandergriff Group Architects PC

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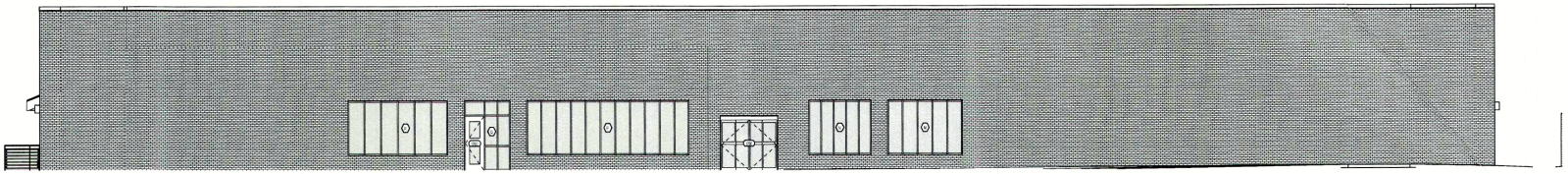
EXHIBIT "B" (cont'd)



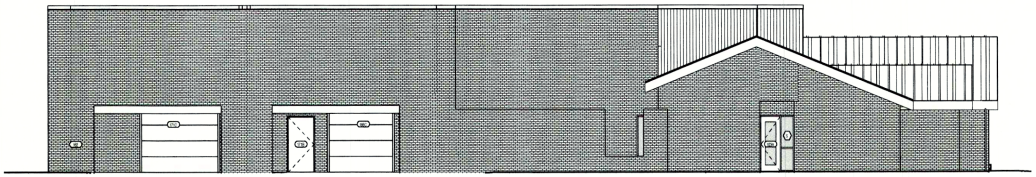
1 X-1.05 SOUTH ELEVATION EXHIBIT
1/8" = 1'-0"



2 X-1.05 EAST ELEVATION EXHIBIT
1/8" = 1'-0"



3 X-1.05 NORTH ELEVATION EXHIBIT
1/8" = 1'-0"



4 X-1.05 WEST ELEVATION EXHIBIT
1/8" = 1'-0"

X-1.05 ELEVATIONS PACKET
SCALE: 1/8" = 1'-0"
DATE: 07/06/21

NEW FACILITY

September 28, 2021

VANDERGRIFF GROUP
ARCHITECTS • PC
312 N. BIG SPRING SUITE 100 (432)687-0781 MIDLAND, TEXAS

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7/7/2021 11:13:09 AM

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: 2-21-0256

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Stephen T. Marcum, P.E.		Phone (432)685-1226 Email smarcum@skylinecivilgroup.com	
Address 3323 N. Midland Drive, STE 113-166	City Midland	State TX	Zip 79707

Property Owner Printed Name: Community & Senior Services of Midland		Phone (432) 689-6693 Email	
Address 3301 Sinclair Ave.	City Midland	State TX	Zip 79707

Representative *(if different from Applicant or Property Owner)* Firm: Skyline Civil Group, LLC Printed Name: Stephen T. Marcum, P.E.		Phone ( ) Email	
Address Same as Above	City	State	Zip

Street Address: 3301 Sinclair Ave.

Legal Description
Lot: Block: Subdivision: RE: Survey Attached Herein

Current Zoning:
SF1

Proposed Zone: O-1
(List by tracts if more than one district is requested)

Reason for Zone Change Request: Commercial Business / Office Proposed
Community driven business / very important/appreciated by senior's within The Midland Community.

Present Use of Property: Senior Life Facility / Meals on Wheels / Meal Preparation and Delivery

Proposed Use of Property: Same Use

How would this zone change affect the public health, safety and welfare?
Community driven business / very important/appreciated by senior's within The Midland Community.

Describe how conditions affecting the property have changed since present zoning designation: N/A
Community driven business / very important/appreciated by senior's within The Midland Community.

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: 08.01.21
Applicant (printed): Stephen T. Marcum	
Property Owner (signature): [signature] (SLM)	Date: 08.01.21
Property Owner (printed): Kathleen Kirkland Haynie (Senior Life Midland	

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 Stephen T. Marcum who, being by me duly sworn, upon oath says: That (s)he is the owner of Kathleen K. Haynie or authorized by Senior Life Midland, 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.

[signature]
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 11th day of August, 2021, to certify which witness my hand and seal of office.

Rebekah Taylor
Notary Public, State of Texas
Notary ID 449619-2
My Commission Exp. 06-23-2024

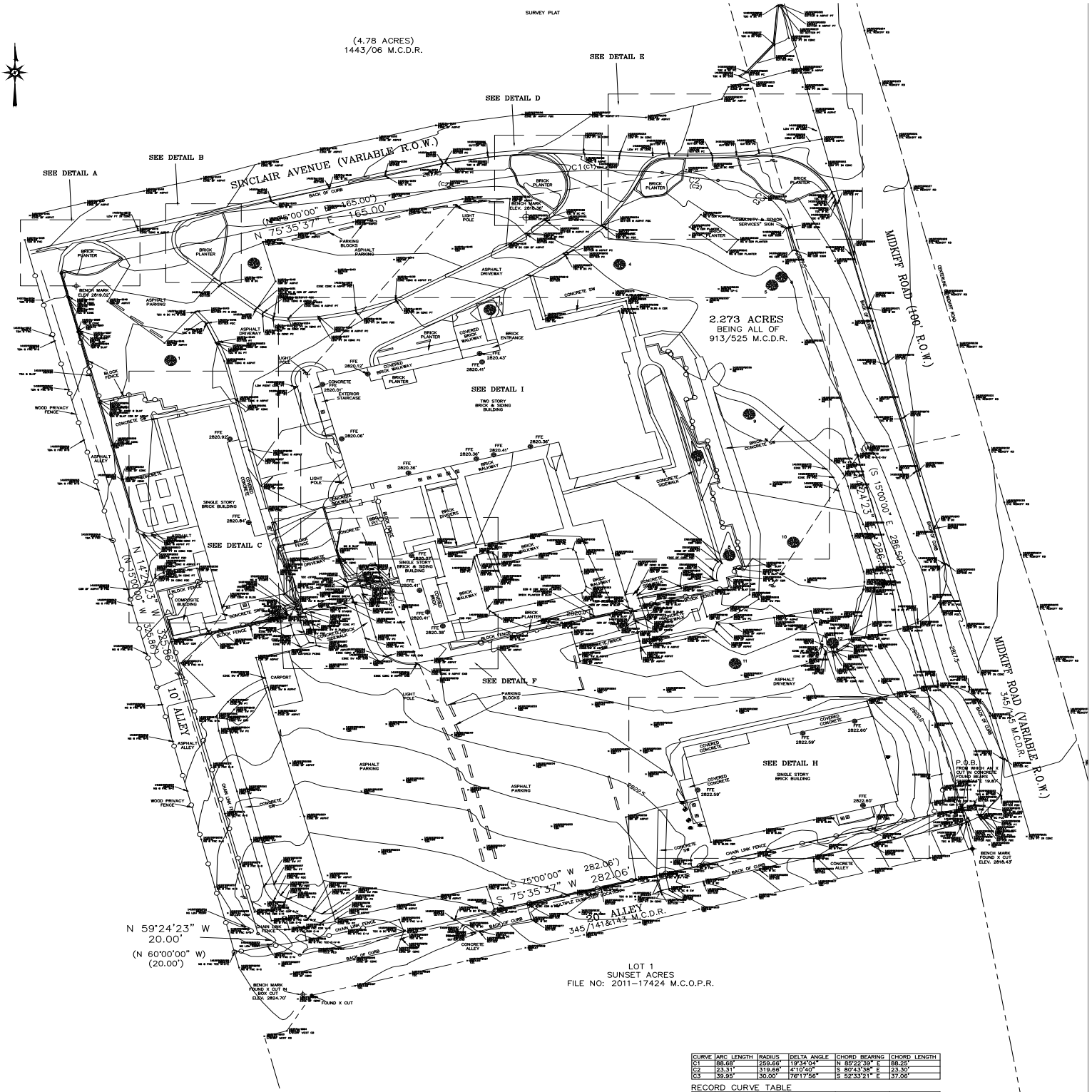
(Rebekah) [signature]
NOTARY PUBLIC, ~~MIDLAND COUNTY,~~ Lubbock County TEXAS

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.****

SURVEY PLAT



CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	88.68'	259.66'	19°34'04"	N 85°22'39" E	88.25'
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HQ: 111 Austin Street, Mason, Texas, 78856
(877)347-6883
TX: PBSE REG. #10026400, OK CA #5816
TBPLS FIRM NO. 10194382
FILE: N:\SURVEY\SURVEY Projects\PROJECTS & MISC JOBS\14-01666 COMMUNITY & SENIOR SERVICES\14-01666.dwg
CTLS
Cross Texas Land Services, Inc
HQ: 111 Austin Street, Mason, Texas, 78856
(877)347-6883
TEXAS - OKLAHOMA
TX: PBSE REG. #10026400 & #10194382, OK CA #5816
www.crosstexaslandservices.com

A. THE UNDERSIGNED DOES HEREBY STATE THAT THIS SURVEY WAS THIS DAY MADE ON THE GROUND OF THE PROPERTY LEGALLY DESCRIBED HEREON AND IS CORRECT TO THE BEST OF HIS KNOWLEDGE AND BELIEF AS TO WINDOWS, IMPROVEMENTS, VISIBLE AND APPARENT EASEMENTS, CONFLICTS OR PROTRUSIONS, ENCROACHMENTS, OVERLAPPING OF IMPROVEMENTS, VISIBLE UTILITY LINES AND ROADS IN USE ADJOINING SAID PROPERTY EXCEPT AS SHOWN HEREON; AND THIS PROPERTY HAS VISIBLE ACCESS TO AND FROM A DEDICATED ROADWAY, EXCEPT AS SHOWN HEREON.

THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE AND SHALL NOT BE USED OR VIEWED OR RELIED UPON AS A FINAL SURVEY DOCUMENT.

1-22-2015
REGISTERED PROFESSIONAL LAND SURVEYOR — DATE

0' 20' 40' 60'

THE UNDERSIGNED JOINT OWNERS CERTIFY THAT THE PROPERTY SHOWN HEREON IS ALL OF THE PROPERTY CONVEYED TO US BY DEED RECORDED IN VOLUME 913, PAGE 525 OF THE DEED RECORDS OF MIDLAND COUNTY, TEXAS, AND THAT THERE ARE NO VISIBLE ENCROACHMENTS, CONFLICTS OR PROTRUSIONS, VISIBLE OR APPARENT EASEMENTS, OVERLAPPING OF IMPROVEMENTS, VISIBLE UTILITY LINES OR ROADS IN USE ADJOINING SAID PROPERTY EXCEPT AS SHOWN HEREON.

NOTES:
1. BEARINGS, DISTANCES AND AZIMUTH SHOWN HEREON ARE NAD 83 GRID BEARINGS, HORIZONTAL DISTANCES ARE ON GRID. TO OBTAIN SURFACE DISTANCES, MULTIPLY GRID DISTANCES BY 1.00013. ALL DISTANCES ARE MEASURED AND ARE BASED ON SEA LEVEL DATUM.
2. CONSTRUCTION SYMBOLS ARE SHOWN ONLY WHERE IMPROVEMENTS ARE WITHIN 10 FEET OF THE PROPERTY LINES.
3. IRON RODS SET ARE 1/2 INCH IRON RODS WITH PLASTIC CAPS MARKED "CTLS".
4. THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A CURRENT TITLE REPORT. THERE MAY BE EASEMENTS AND/OR CONFLICTS AFFECTING THIS PROPERTY, NOT SHOWN HEREON.

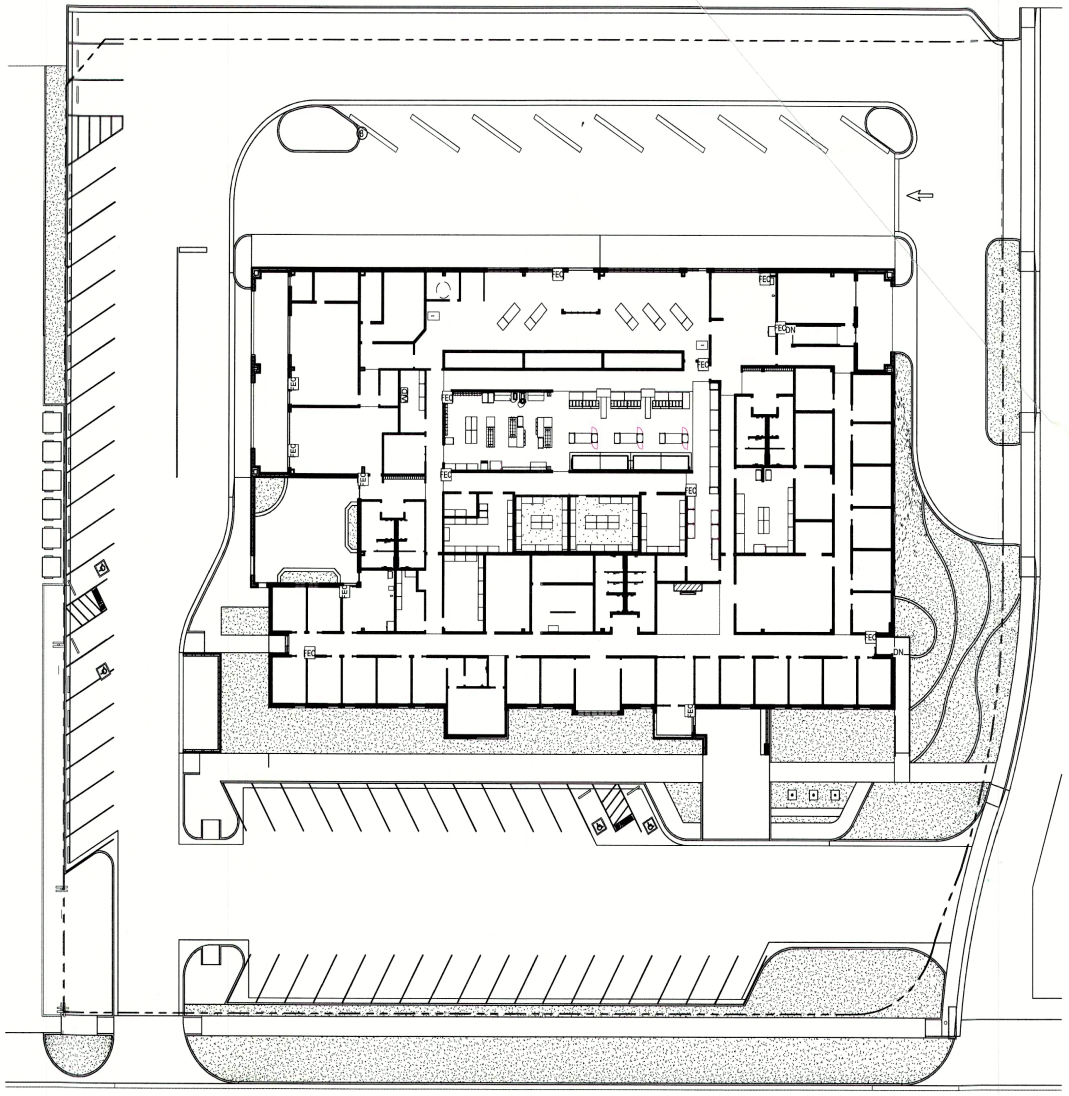
LEGEND:

BOUNDARY LINE	CLEAN OUT
ADJOINER LINE	MONUMENT FOUND
SURVEY LINE	MONUMENT SET
BURIED UTILITY LINE	A/C UNIT
OVERHEAD UTILITY LINE	UTILITY POLE/RISER
PUBLIC UTILITY EASEMENT	WATER WELL/METER
BUILDING SETBACK LINE	MANHOLE
RECORD CALL	ELECTRIC BOX/METER
	FIRE HYDRANT
	TELEPHONE/CABLE PEDESTAL
	BENCH MARK
	GAS METER
	FINISH FLOOR ELEVATION SPOT (FFE)

M.C.R.A. – MIDLAND COUNTY PLAT RECORDS
M.C.D.R. – MIDLAND COUNTY DEED RECORDS
M.C.O.P.R. – MIDLAND COUNTY OFFICIAL PUBLIC RECORDS

REFERENCED COMMUNITY & SENIOR SERVICES
ADDRESS/LOBBY: SINCLAIR AVENUE
LEGAL DESCRIPTION: 2.273 ACRES OF LAND OUT OF SECTION 20, BLOCK 39, T-1-S, T. & P. RR. CO. SURVEY, ABSTRACT NO. 1166 IN MIDLAND COUNTY, TEXAS

JOB NO. 14-01666 REV. 1
DRAWN BY: FVS PAGE: 1 OF 2



X-1.02 SITE PLAN
SCALE: 1" = 20'-0"
DATE: 07/06/21

PACKET 29-15

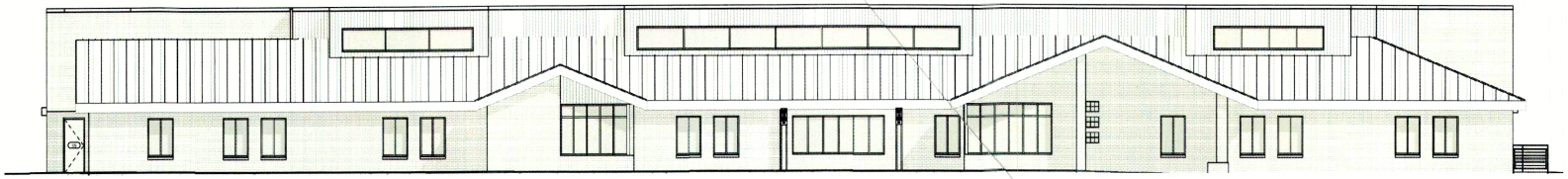
NEW FACILITY

September 28, 2021

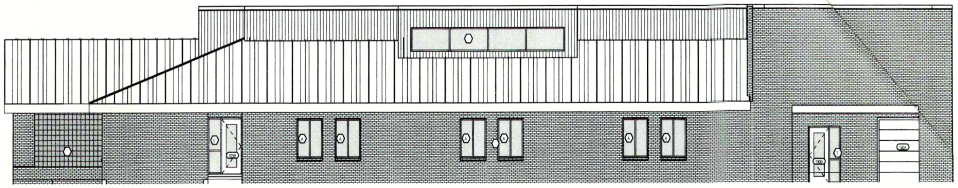
VANDERGRIFF GROUP
ARCHITECTS • PC
312 N. BIG SPRING SUITE 100 (432)687-0781 MIDLAND, TEXAS

C:\Users\CAD 23\Documents\02120-SENIOR LIFE MIDLAND-NEW FACILITY_rathomps.rvt
7/7/2021 11:12:43 AM

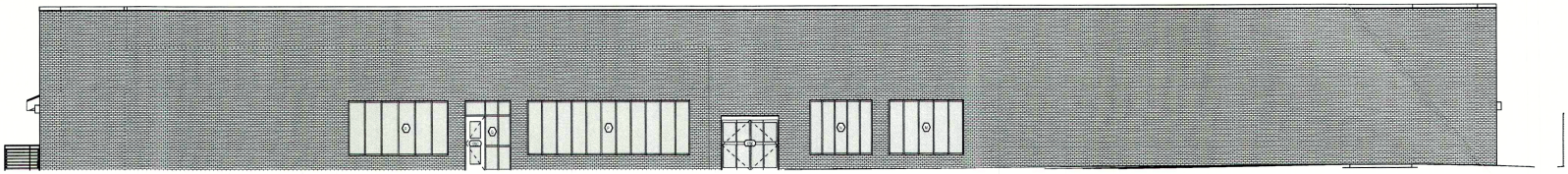
© Copyright 2021 Vandergriff Group Architects PC



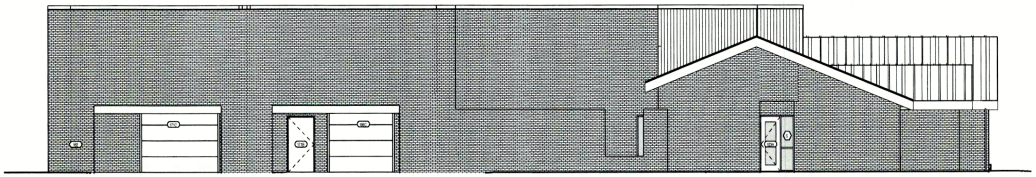
1 X-1.05 SOUTH ELEVATION EXHIBIT
1/8" = 1'-0"



2 X-1.05 EAST ELEVATION EXHIBIT
1/8" = 1'-0"



3 X-1.05 NORTH ELEVATION EXHIBIT
1/8" = 1'-0"



4 X-1.05 WEST ELEVATION EXHIBIT
1/8" = 1'-0"

X-1.05 ELEVATIONS PACKET
SCALE: 1/8" = 1'-0"
DATE: 07/06/21

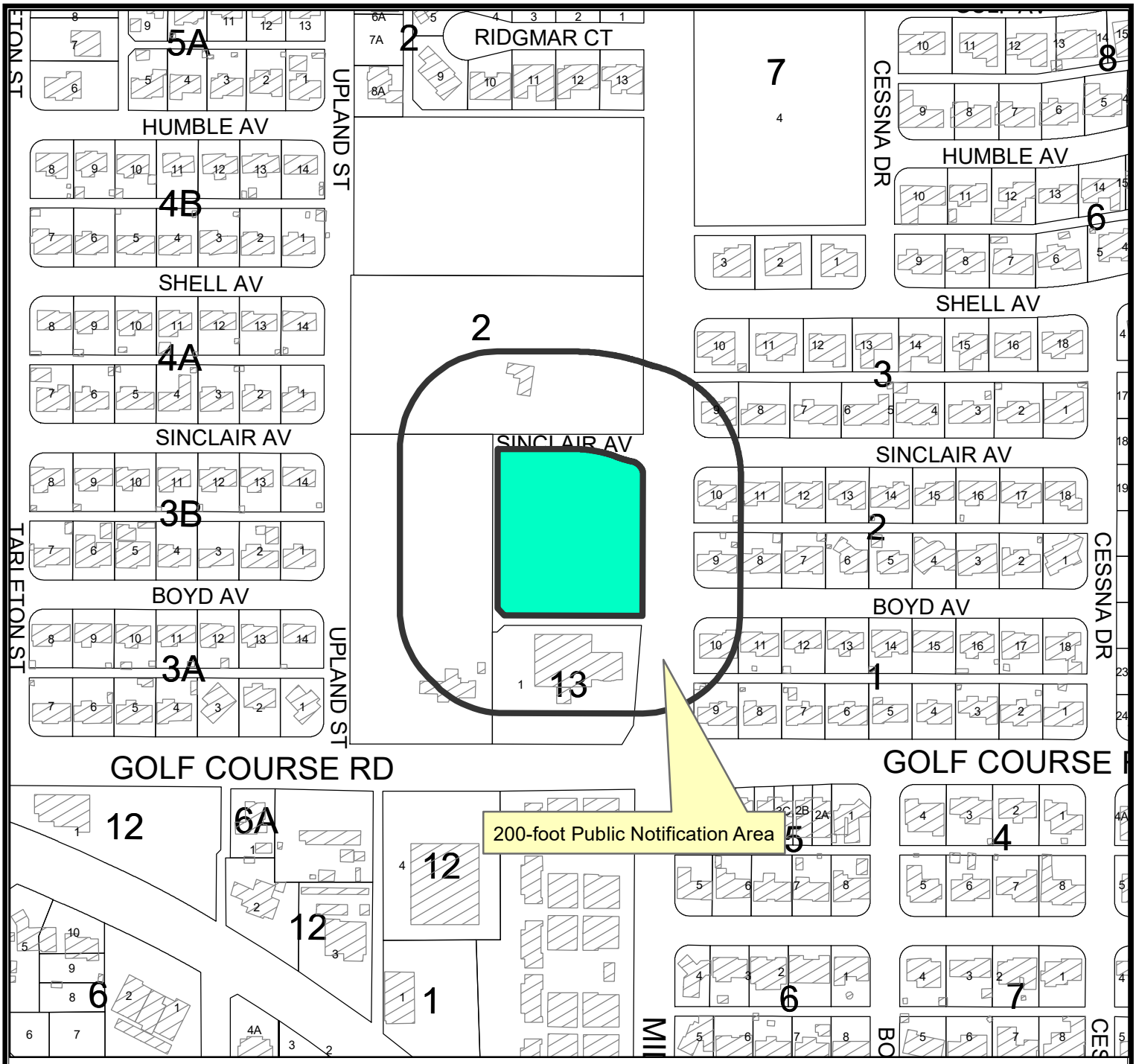
C:\Users\CAD 23\Documents\02120-SENIOR LIFE MIDLAND-NEW FACILITY_rathomps.rvt
7/7/2021 11:13:09 AM

NEW FACILITY

29.16

September 28, 2021

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ARCHITECTS • PC
312 N. BIG SPRING SUITE 100 (432)687-0781 MIDLAND, TEXAS
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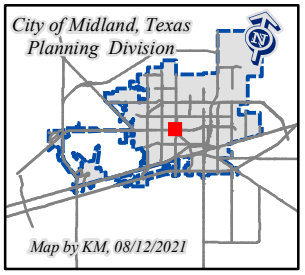
LOCATION MAP

Z-21-0256 **Scale: 1" = 200'**

Consider a request by Stephen T. Marcum for a zone change from SF-1, Single-Family Dwelling District to PD, Planned Development District for an Office Center on a 2.273-acre tract of land located in Section 20, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas.
Generally located on the southwest corner of the intersection of Mockingbird Cliff Road and Sinclair Avenue (Council District 3)

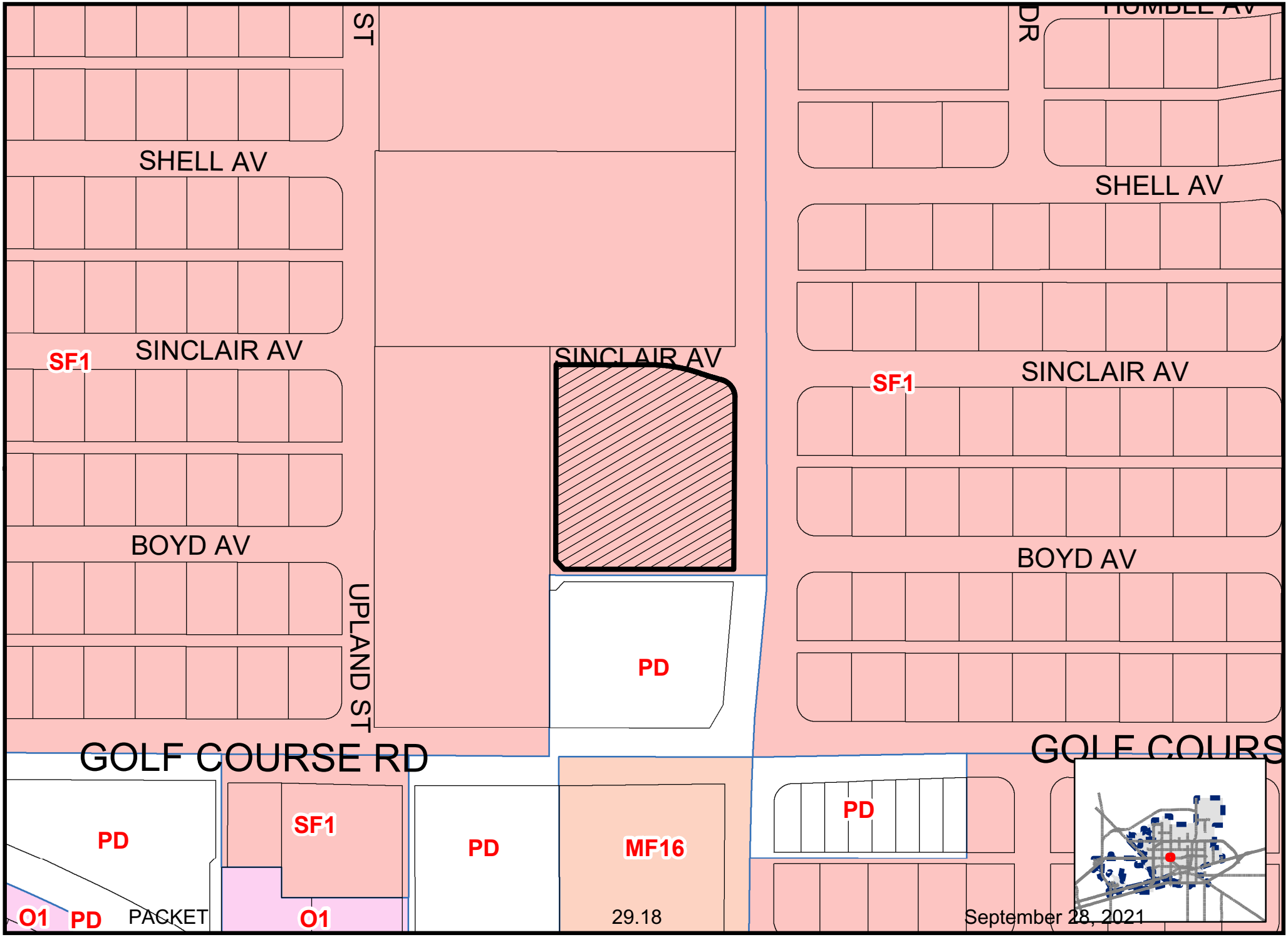
LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY OR ABSTRACTOR 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.

September 28, 2021



Map By KM, 08/12/2021

Z-21-0256

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.

pr

ORDINANCE NO. 6723

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF CERTAIN PROPERTY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED "1F-1", ONE-FAMILY DWELLING DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT FOR A SENIOR CITIZENS CENTER; MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF ONE THOUSAND DOLLARS ($1,000.00); AND ORDERING PUBLICATION

WHEREAS, the Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, 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 covenience will be best served by the granting of a Specific Use Permit, set out hereinafter, subject to the special conditions and restrictions set out hereinafter, on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned "1F-1", One-Family Dwelling District, to wit:

The N/380' of the E/2 of the S/2 of Tract 2, Sunset Acres Addition to the City of Midland, Midland County, Texas:

is hereby changed to permit said premises to be used under a Specific Use Permit for a Senior Citizens Center, together with the uses permitted in a "1F-1", One-Family Dwelling District, subject to the following conditions:

A. That the use and development of this tract for a Senior Citizens Center shall conform to the site plan attached hereto as Exhibit "A" and made a part hereof for all legal purposes.

B. That permitted activities shall be limited to those defined under Section 11-1-10-(A)-33-b of the City Code of Midland, Texas, pertaining to a Senior Citizens Center.

C. That the hours of operation shall not exceed 7:00 a.m. to 10:00 p.m. daily.

D. That the number of paid and volunteer staff members shall not exceed 20 at any time.

E. That the gross area of office space shall not exceed 6,971 square feet, including both the main and detached structures.

F. That the kitchen area, as located on Exhibit "A" shall not exceed 765 square feet in area, and may be used for the preparation of meals for both on-site and off-site serving. The maximum number of vehicle arrivals to distribute offsite meals shall not exceed 15 per day, and the number of on-site meals served shall not exceed 48 per day.

G. That any combination of group meetings, seminars, counseling services, director meetings or similar group activities shall be limited to a total of 30 participants at any time.

H. A van shall be available for the purpose of transporting participants to and from the center and shall be used to the greatest extent practical for reducing the number of personal vehicle trips to the center.

I. Adult day care shall be limited to 20 participants, in addition to persons attending counseling sessions or other group activities.

J. That the respective staff and participant limits stated above shall not apply to special receptions, meetings, and other similar group activities held not more than four (4) days per year.

SECTION TWO. 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 one thousand dollars $1,000.00).

SECTION THREE. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordianance in the manner and for the length of time prescribed by law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the 16th day of December, A.D., 1986; and passed to second reading on motion of Council member Corrales, seconded by Council member Godfrey, by the following vote:

Council members voting "AYE": Corrales, Godfrey, Heck, Marcum, Fish and Rendall

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 Corrales, seconded by Council member Godfrey, on the 22nd day of December, A.D., 1986, at a special meeting of the City Council:

Council members voting "AYE": Corrales, Godfrey, Heck, Rendall, Marcum and Fish

Council members voting "NAY": None

PASSED AND APPROVED THIS 22nd day of December, A.D., 1986.

Carroll M. Thomas

Carroll M. Thomas, Mayor

ATTEST:

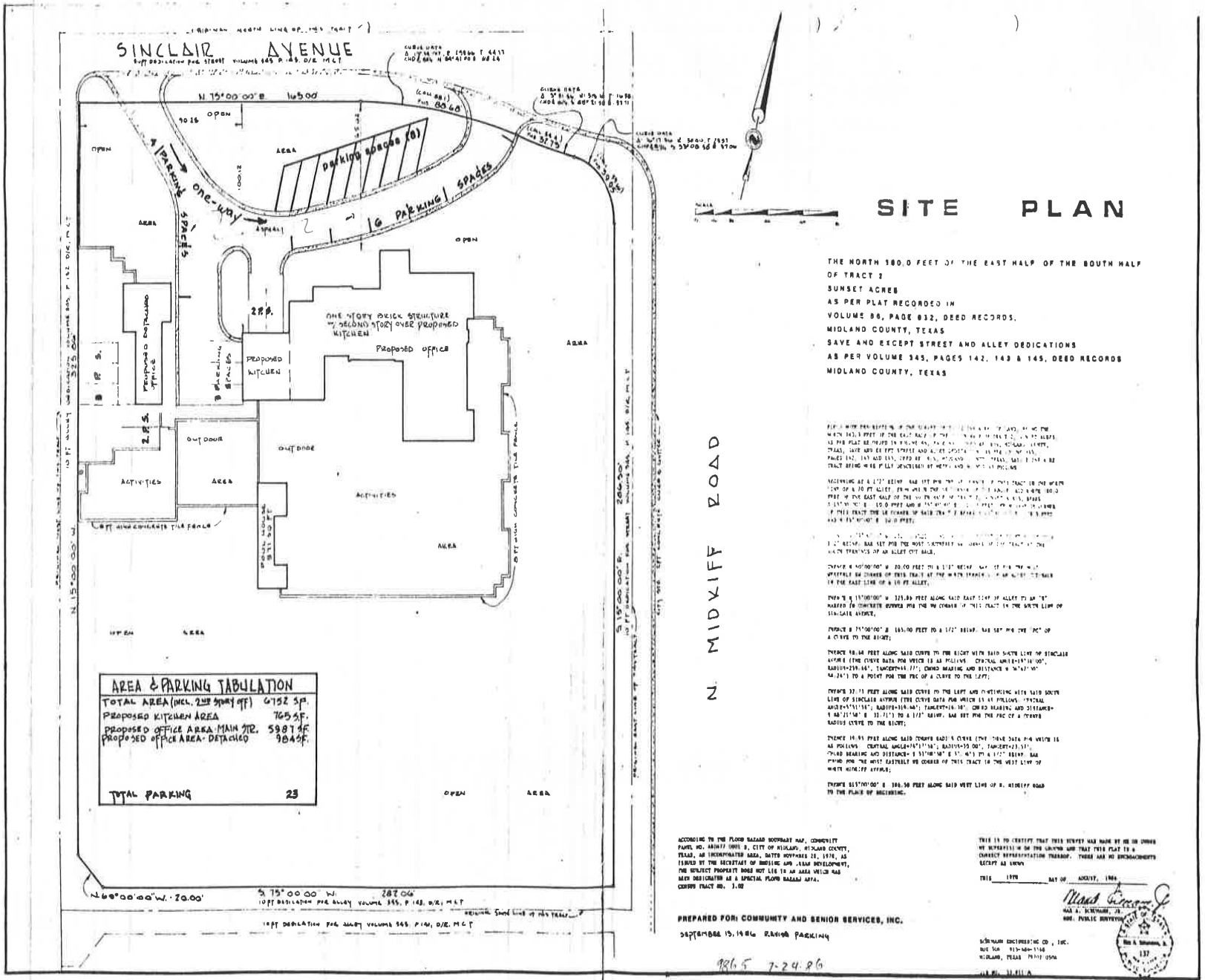
B. C. Clanton

B. C. Clanton, City Secretary

APPROVED AS TO FORM:

David W. Reagan

David W. Reagan, City Attorney



SITE PLAN

THE NORTH 180.0 FEET OF THE EAST HALF OF THE SOUTH HALF
OF TRACT 2
SUNSET ACRES
AS PER PLAT RECORDED IN
VOLUME 86, PAGE 832, DEED RECORDS,
MIDLAND COUNTY, TEXAS
SAVE AND EXCEPT STREET AND ALLEY DEDICATIONS
AS PER VOLUME 345, PAGES 142, 143 & 145, DEED RECORDS
MIDLAND COUNTY, TEXAS

ACCORDING TO THE FLOOD HAZARD BOUNDARY MAP, COMMUNITY PANEL NO. 480477 0001 B, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, AS INCORPORATED AREA, DATED NOVEMBER 20, 1978, AS ISSUED BY THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT, THE SUBJECT PROPERTY DOES NOT LIE IN AN AREA WHICH HAS BEEN DESIGNATED AS A SPECIAL FLOOD HAZARD AREA. CENSUS TRACT NO. 3.02

PREPARED FOR: COMMUNITY AND SENIOR SERVICES, INC.

SEPTEMBER 19, 1986 PARKING

1265 7-24-86

THIS IS TO CERTIFY THAT THIS SURVEY WAS MADE BY ME OR UNDER MY SUPERVISION ON THE GROUND AND THAT THIS PLAT IS A CORRECT REPRESENTATION THEREOF. THERE ARE NO ENCROACHMENTS EXCEPT AS SHOWN

THIS 1979 DAY OF AUGUST, 1986

HAL A. SCHUMANN, JR.
REG. PUBLIC SURVEYOR

SCHUMANN ENGINEERING CO., INC.
PHONE NO. 915-684-3168
MIDLAND, TEXAS 79701-0504

EXHIBIT "A"


VISITOR
PARKING
VISITOR
PARKING
MIDLAND
PARKING


STOP





City Council Meeting

Item Number: 30

Meeting Date: September 28, 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 A 1.742-ACRE TRACT OF LAND OUT OF LOT 1 AND ALL OF LOT 3, BLOCK 1, WEST 191 INDUSTRIAL PARK, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO LI, LIGHT INDUSTRIAL DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF STATE HIGHWAY 191, APPROXIMATELY 2,205 FEET WEST OF WESTLAKE 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 4) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Joval, LLC is requesting to rezone the properties located at 10400 and 10306 West State Highway 191 to add a storage warehouse for their equipment and materials.

Recommended City Council Action:

Approve

Fiscal Impact:

This proposal does not have a significant financial impact to the city.

Current Zoning:

RR, Regional Retail District

Surrounding Zoning and Land Uses:

The properties to the north are zoned CE, Country Estate District and the locations of residential homes. The property to the east is zoned RR, Regional Retail District and the location of All-State Fence & Supply. The property to the south across State Highway 191 is in the ETJ, Extraterritorial Jurisdiction and the location of oil wells. The location to the west is zoned PD, Planned District and the location of storage units.

Analysis:

The properties located at 10400 and 10306 West State Highway 191 are currently zoned RR, Regional Retail District, which does not allow for the development of a warehouse. The applicant, Joval, LLC is requesting a zone change to allow for the addition of a warehouse to store their equipment and materials. Joval, LLC owns the neighboring property that is already zoned LI, Light Industrial District. The property is currently in the process of being replatted.

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 objections to zoning/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. Please note if oil & gas wells are not identified or left off of plat, this could prevent receiving city permits for structures. Any plugged and abandoned well would need to be identified.

Transportation: (Approved)

Access spacing will be required to adhere to the TxDOT Access Management Standards along the state highway.

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 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). This entertainment complex will fit into the character of the area and provide a new location for Midland residents to gather and socialize.

This request was recommended for approval at the September 7, 2021 Planning and Zoning Commission meeting.

Staff recommends approval of this zone change from RR, Regional Retail District to LI, Light Industrial District, subject to condition A.

Condition:

A. That the use and development of the property shall conform to the regulations of the LI, Light Industrial District.

Letters of Objection:

Staff has not received any letters of objections as of September 22, 2021.

Attachments:

Application
Meets and Bounds (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 1.742-ACRE TRACT OF LAND OUT OF LOT 1 AND ALL OF LOT 3, BLOCK 1, WEST 191 INDUSTRIAL PARK, CITY AND COUNTY OF MIDLAND, TEXAS, FROM RR, REGIONAL RETAIL DISTRICT TO LI, LIGHT INDUSTRIAL DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF STATE HIGHWAY 191, APPROXIMATELY 2,205 FEET WEST OF WESTLAKE 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 1.742-acre tract of land out of Lot 1, Block 1, West 191 Industrial Park, 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, and all of Lot 3, Block 1, West 191 Industrial Park, City and County of Midland, Texas (collectively, the "Property") to LI, Light Industrial 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 RR, Regional Retail District to LI, Light Industrial 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

Field Notes:

Being a 1.742-acre tract of land and being a portion of that tract of land conveyed by deed to Joval LLC, recorded in Document #2010-17424, of the official public records of Midland County, Texas and also being the North-half of Lot 1, Block 1 of West 191 Industrial Park, a subdivision of Midland County, Texas according to the map or plat recorded in Plat Cabinet I, Page 39. Plat Records of Midland County, Texas and being more particularly described as follows:

BEGINNING at a 1/2" iron rod found at the northwest corner of this tract, from which another 1/2" iron rod found bears North 14°21'25" West a distance of 70.09 feet, and a RR Spike found for the Southwest corner of Section 32, Block 40 T&P RR Co. Survey bears South 13°33'60" East a distance of 853.51 feet;

THENCE North 75°13'59" East a distance of 211.22 feet to a calculated point for a northeast corner hereof;

THENCE South 14°08'28" East a distance of 360.14 feet along the common line of said Lot 1 and Lot 2 of the said West 191 Industrial Park Subdivision to a 1/2" iron rod with cap marked "WPG INC" set for a southeast corner of this said tract;

THENCE, South 75°44'53" West crossing into said Lot 1 a distance of 211.20feet to a 1/2" iron rod with cap marked "WPG INC" set for a southwest corner hereof, from which a 1/2" iron rod found in the North Right of Way line of State Highway 191 (400' R-O-W) bears South 14°08'31" East a distance of 295.09 feet;

THENCE North 14°08'31" West a distance of 358.24 feet to the POINT OF BEGINNING containing 1.742 acres of land, more or less.

TO THE OWNERS, LIENHOLDERS AND CONCERNED PARTIES

I, THE UNDERSIGNED DOES HEREBY CERTIFY THAT SURVEY INFORMATION FOUND IN THESE METES AND BOUNDS WAS DERIVED FROM ACTUAL FIELD NOTES OF THE ON-THE-GROUND SURVEYS MADE BY ME OR UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

REGISTERED PROFESSIONAL LAND SURVEYOR

8/31/2021
DATE

STATE OF TEXAS
REGISTERED
W. D. WATSON, JR.
1939
PROFESSIONAL
LAND SURVEYOR

Watson Professional Group Inc

P.O. DRAWER 11196
MIDLAND, TEXAS
79702
(432) 520-9200
FAX (432) 520-9212
FIRM#10146900

JOB NO.: 21-1048-02 DRAFT: AJ REV. 0
FILE: T:\MIDLAND\TITLE SURVEYS\SUB PLAT\ 21-1048 10314 hwy 191

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: Z-21-0255

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Joval LLC		Phone (310) 753-5770 Email Joe902750@gmail.com	
Address 11166 Villa Bellagio Dr.	City Las Vegas	State NV	Zip 89141

Property Owner Printed Name: Joval LLC		Phone ( ) Email	
Address 1116 Villa Bellagio Dr.	City Las Vegas	State NV	Zip 89141

Representative *(if different from Applicant or Property Owner)* Firm: Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 10306 10400 + 10314 W. SH. 191, Midland TX 79706

Legal Description
Lot: Block: Subdivision: See Attached "Exhibit A"

Current Zoning: RR

Proposed Zone: LI
(List by tracts if more than one district is requested)

Reason for Zone Change Request: We need to add a storage warehouse to that area. The neighboring portion we own is already zoned LI.

Present Use of Property: Storing materials + small equipment for directional drilling company

Proposed Use of Property: Storage warehouse to protect our equipment and materials

How would this zone change affect the public health, safety and welfare? Considering the neighboring properties are businesses as well, it should pose no issues with the health or safety of the public

Describe how conditions affecting the property have changed since present zoning designation: The surrounding area we own + occupy are zoned Light Industrial. This would seamlessly change from RR to LI

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 6/5/2021

Applicant (printed) Joseph E. Kennedy for Joval LLC

Property Owner (signature) [signature] Date 6/5/2021

Property Owner (printed) Joseph E. Kennedy for Joval LLC

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 appeared Joseph Kennedy who, being by me duly sworn, upon oath says: That (s)he is the owner of Joval LLC 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.

[signature]
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 5 day of June 2021, to certify which witness my hand and official seal of office.

MIKE JOHNSON
Notary ID #124163984
My Commission Expires
March 25, 2022

[signature]
NOTARY PUBLIC Taylor 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.****

Field Notes:

Being a 1.742-acre tract of land and being a portion of that tract of land conveyed by deed to Joval LLC, recorded in Document #2010-17424, of the official public records of Midland County, Texas and also being the North-half of Lot 1, Block 1 of West 191 Industrial Park, a subdivision of Midland County, Texas according to the map or plat recorded in Plat Cabinet I, Page 39. Plat Records of Midland County, Texas and being more particularly described as follows:

BEGINNING at a 1/2" iron rod found at the northwest corner of this tract, from which another 1/2" iron rod found bears North 14°21'25" West a distance of 70.09 feet, and a RR Spike found for the Southwest corner of Section 32, Block 40 T&P RR Co. Survey bears South 13°33'60" East a distance of 853.51 feet;

THENCE North 75°13'59" East a distance of 211.22 feet to a calculated point for a northeast corner hereof;

THENCE South 14°08'28" East a distance of 360.14 feet along the common line of said Lot 1 and Lot 2 of the said West 191 Industrial Park Subdivision to a 1/2" iron rod with cap marked "WPG INC" set for a southeast corner of this said tract;

THENCE, South 75°44'53" West crossing into said Lot 1 a distance of 211.20feet to a 1/2" iron rod with cap marked "WPG INC" set for a southwest corner hereof, from which a 1/2" iron rod found in the North Right of Way line of State Highway 191 (400' R-O-W) bears South 14°08'31" East a distance of 295.09 feet;

THENCE North 14°08'31" West a distance of 358.24 feet to the POINT OF BEGINNING containing 1.742 acres of land, more or less.

TO THE OWNERS, LIENHOLDERS AND CONCERNED PARTIES

I, THE UNDERSIGNED DOES HEREBY CERTIFY THAT SURVEY INFORMATION FOUND IN THESE METES AND BOUNDS WAS DERIVED FROM ACTUAL FIELD NOTES OF THE ON-THE-GROUND SURVEYS MADE BY ME OR UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

REGISTERED PROFESSIONAL LAND SURVEYOR

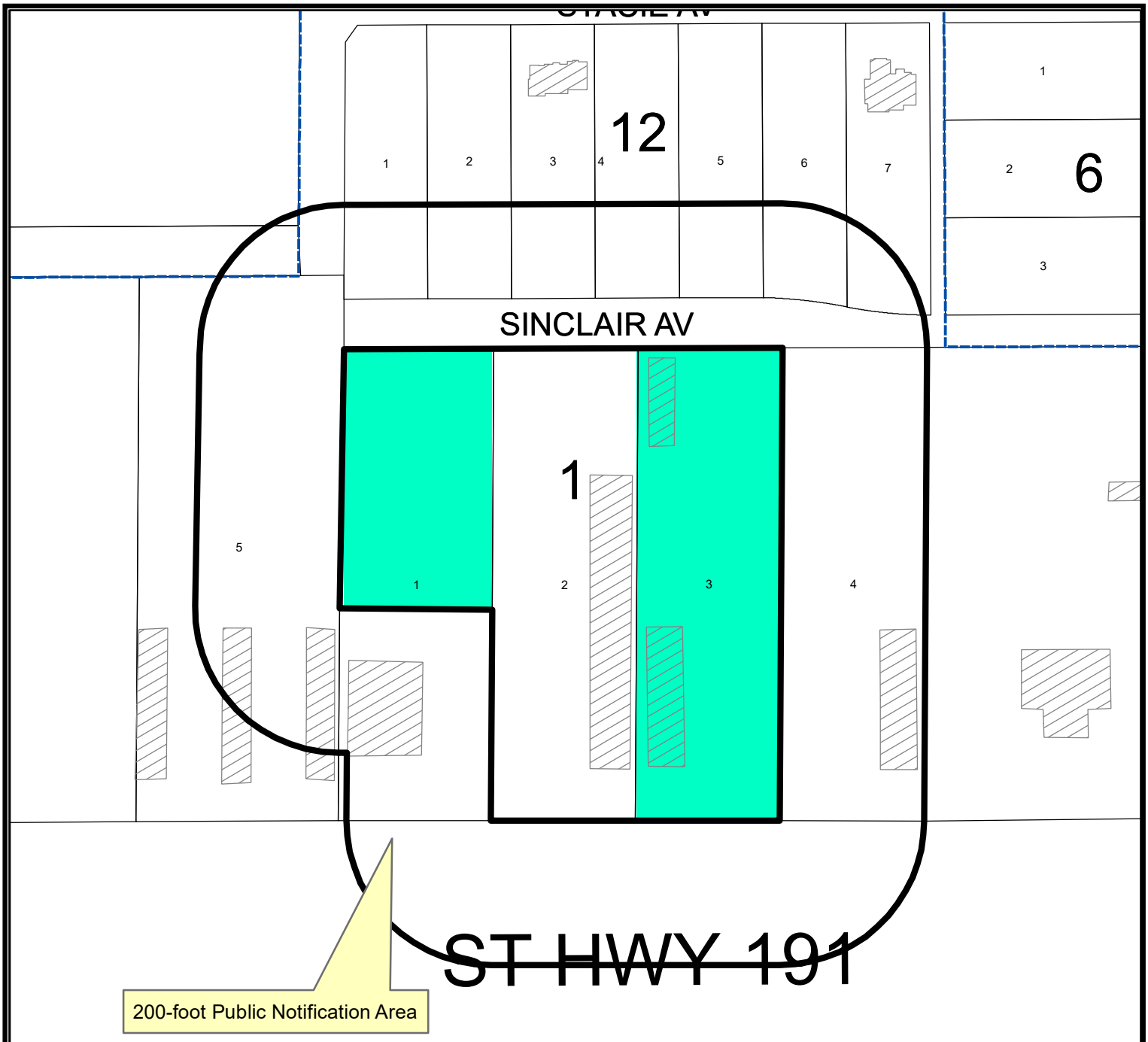
8/31/2021
DATE

STATE OF TEXAS
REGISTERED
W. D. WATSON, JR.
1999
PROFESSIONAL
LAND SURVEYOR

Watson Professional Group Inc

P.O. DRAWER 11186
MIDLAND, TEXAS
79702
(432) 520-9200
FAX (432) 520-9212
FIRM#10146900

JOB NO.: 21-1048-00 REV. 0
FILE: T:\MIDLAND\TITLE SURVEYS\21-1048 10314 hwy 191



LOCATION MAP

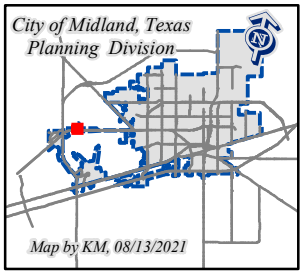
Z-21-0255 **Scale: 1" = 200'**

Consider a request by Joval, LLC for a zone change from RR, Regional Retail District to LI, Light Industrial District on 1.742-acre tract of land out of Lot 1 and all of Lot 3, Block 1, West 191 Industrial Park, City and County of Midland, Texas.

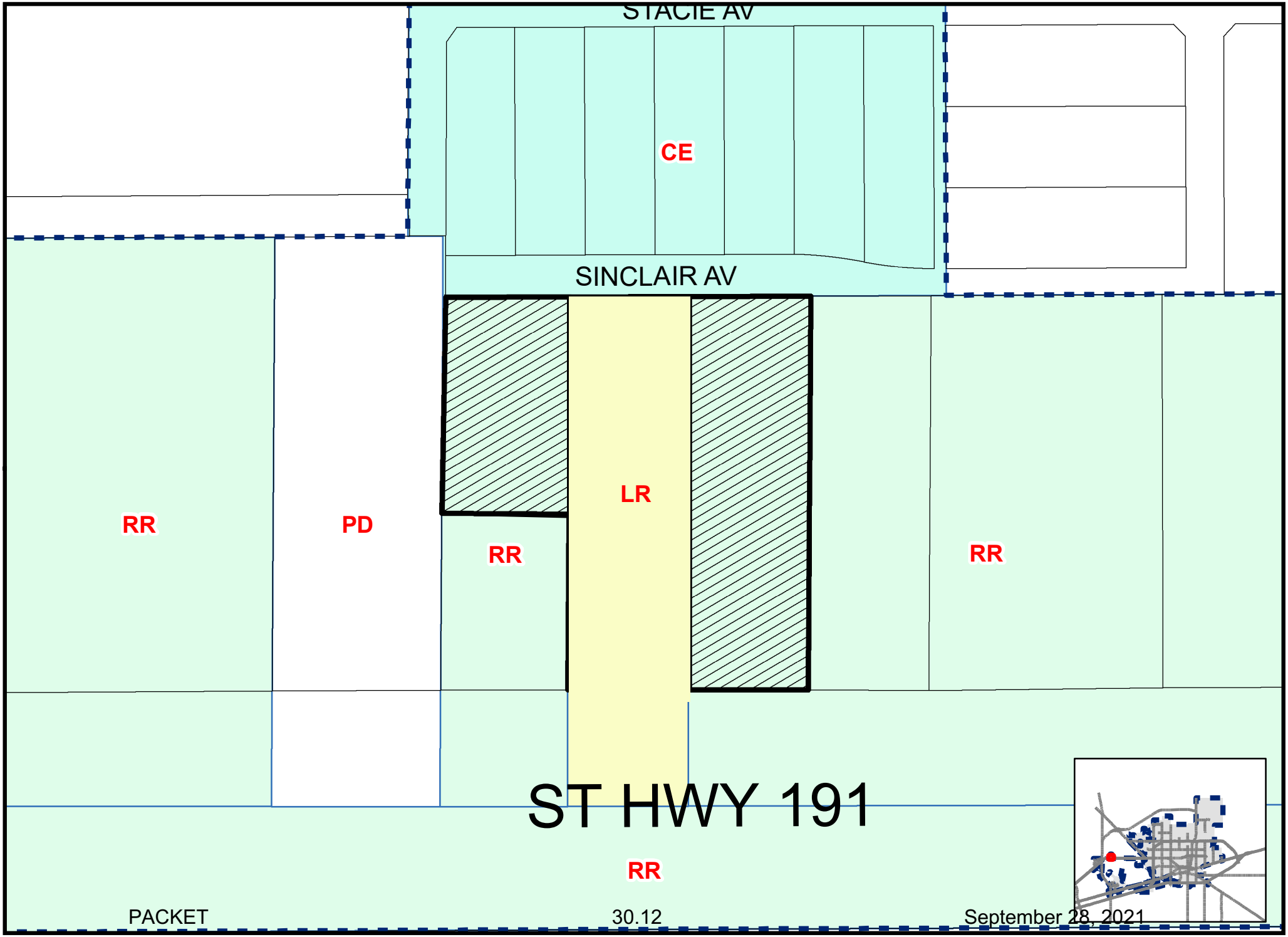
Generally located north of State Highway 191, approximately 2,205-feet west of Westlake Road (Council District 4)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



©THE CITY OF MIDLAND - 2021
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 KM, 08/13/2021

Z-21-0255

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.


FRANK'S
INTERNATIONAL


Terracon







City Council Meeting

Item Number: 31

Meeting Date: September 28, 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 11, BLOCK 3, GATEWAY PLAZA, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF STARBOARD DRIVE, APPROXIMATELY 612 FEET EAST OF SOUTH TRADEWINDS 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 (DISTRICT 4) (DEVELOPMENT SERVICES)

Purpose:

The applicant, Maverick Engineering, is requesting to rezone the property located at 5606 Starboard Drive, to develop an indoor trampoline and adventure park.

Recommended City Council Action:

Approve

Fiscal Impact:

PD, Planned District for a Housing Development (Ordinance No. 9955)

Surrounding Zoning and Land Use:

The property to the north is zoned PD, Planned Development District for a Housing Development, and the location of a vacant lot. The property to the east is zoned PD, Planned Planned District for a Shopping Center, and the location of Four Points Sheraton Hotel. The property to south is zoned PD, Planned Development District for a Shopping Center, and the

location of Cinergy Midland. The property to the west is zoned O-2, Office District, and the location of Hawthorn Suites by Wyndham Midland.

Analysis:

The property is located at 5606 Starboard Drive and is currently zoned PD, Planned Development District for a Housing Development (regulated by Ordinance No. 9955), which allows for the development of a multi-family senior housing project per the adopted site plan. Therefore, the applicant, Maverick Engineering, is requesting this zone change to allow for the development of an indoor trampoline and adventure park.

As shown on the site plan, hereto as Exhibit A, there will be 95 parking spaces, of which two will be ADA accessible spaces. The total square footage for the proposed development is approximately 22,800 square feet. It will consist of two retail spaces with the first space being approximately 16,000 square feet and the second space being approximately 6,800 square feet.

If approved, the development will need to conform to Section 5.05, Nonresidential Zoning District Dimensional Regulations and Section 6.01 through 6.05, Zoning Development Regulations of the Zoning Ordinance. As well as Chapter 9-Landscape Regulations for future landscaping.

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 objection to zone change.

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. Please note if oil & gas wells are not identified or left off of plat, this could prevent receiving city permits for structures. Any plugged and abandoned well would need to be identified.

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 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). This entertainment complex will fit into the character of the area and provide a new location for Midland residents to gather and socialize.

This request was approved at the September 7, 2021 Planning and Zoning Commission meeting.

Staff recommends approval of this zone change from PD, Planned Development District for a Housing Development to RR, Regional Retail District, subject to condition A.

Conditions:

A. That the use and development of this property shall conform to the regulations of the RR, Regional Retail District.

Letters of Objection:

Staff has not received any letters of objection as of September 22, 2021.

Attachments:

Site Plan (Exhibit A)
Application
Maps
Ordinance No. 9955



City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 11, BLOCK 3, GATEWAY PLAZA, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS, FROM PD, PLANNED DEVELOPMENT DISTRICT FOR A HOUSING DEVELOPMENT TO RR, REGIONAL RETAIL DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF STARBOARD DRIVE, APPROXIMATELY 612 FEET EAST OF SOUTH TRADEWINDS 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

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 11, Block 3, Gateway Plaza, Section 3, City and County of Midland, Texas (the "Property") to RR, Regional Retail 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 PD, Planned Development District for a Housing Development to RR, Regional Retail 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: Z-21-0259

Case Number:

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Open Door Real Estate LLC		Phone ( ) Email	
Address 5606 Starboard Dr	City Midland	State TX	Zip 79706

Property Owner Printed Name: Open Door Real Estate LLC		Phone ( ) Email	
Address 5606 Starboard Dr	City Midland	State TX	Zip 79706

Representative *(if different from Applicant or Property Owner)* Firm: Maverick Engineering Printed Name: Paladin Huckaba		Phone (432) 262-0999 Email phuckaba@maverick-eng.com	
Address 1909 W Wall St Ste K	City Midland	State TX	Zip 79701

Street Address: 5606 Starboard Dr

Legal Description
Lot: 11 Block: 3 Subdivision: Gateway Plaza Addition, Section 13

Current Zoning: PD	**Proposed Zone:** ~~LR~~ RR *(List by tracts if more than one district is requested)*

Reason for Zone Change Request: Advance the new development as proposed

Present Use of Property: vacant

Proposed Use of Property: Retail entertainment and activity complex

How would this zone change affect the public health, safety and welfare? No adverse affect

Describe how conditions affecting the property have changed since present zoning designation: Previous zoning was oriented toward multiple family housing. Current owner is proposing a public entertainment/activity complex

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): Cinnemon Stanford	Date: 8/6/21
Property Owner (printed) : Cinnimon Stanford	

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 who, being by me duly sworn, upon oath says: That (s)he is authorized by Open Door Real Estate LLC, 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 17th day of August, 2021, to certify which witness my hand and seal of office.

Kelsey Ann Stine

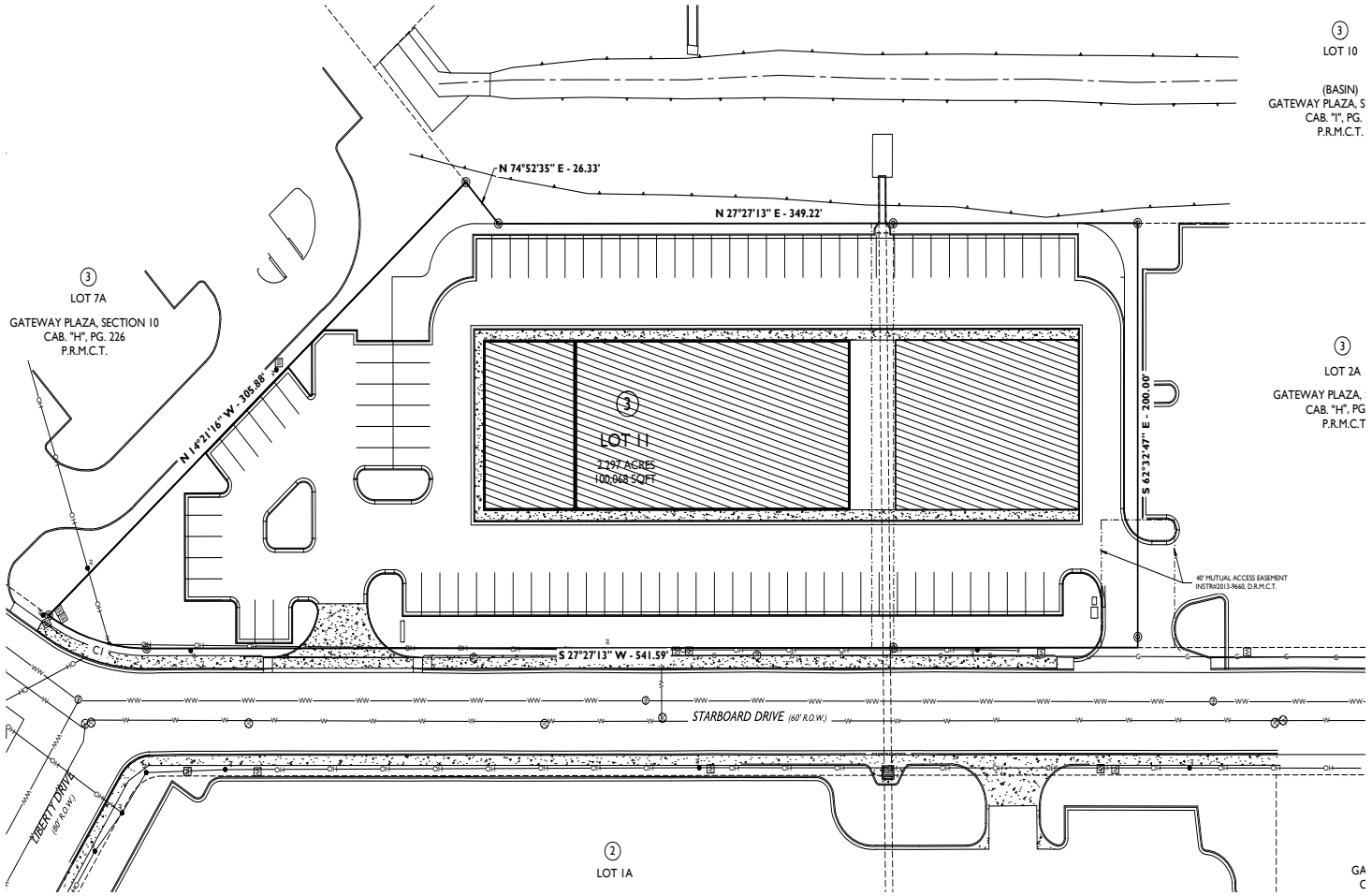
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

NOTARY PUBLIC STATE OF TEXAS
Kelsey Ann Stine
My Commission Expires
02/19/2022
ID No. 131456388

FOR OFFICE USE ONLY	
☒ Property Owner Authorization	☒ Dimensioned Site Plan
☒ Application Fee	☒ Plans in Digital Format (PDF/JPEG)
Check # 3508	
Received By: V.Shaw	Date: RECEIVED AUG 17 2021

LD VS

****Application will not be considered for scheduling until reviewed by a planner.****



LEGEND

- DENOTES FOUND 1/2" IRON ROD AS NOTED
- DENOTES SET 1/2-INCH IRON ROD
- DENOTES BENCH MARK
- DENOTES EXISTING WATER VALVE
- DENOTES EXISTING MANHOLE
- DENOTES EXISTING ELECTRICAL MANHOLE
- DENOTES EXISTING POWER POLE
- DENOTES EXISTING ELECTRICAL BOX
- DENOTES EXISTING GAS RISER
- DENOTES EXISTING TELEPHONE PEDESTAL
- DENOTES PROPOSED STORMDRAIN MANHOLE
- DENOTES EXISTING PIPELINE MARKER
- DENOTES EXISTING GAS METER
- DENOTES EXISTING WATER METER
- DENOTES BOUNDARY LINE
- DENOTES EXISTING EASEMENT LINE
- DENOTES EDGE OF ASPHALT
- DENOTES EXISTING LOTS
- DENOTES EXISTING OVERHEAD ELECTRIC LINE
- DENOTES EXISTING GAS LINE
- DENOTES EXISTING 8" SEWER LINE
- DENOTES EXISTING 8" WATER LINE

DIMENSIONAL NOTE:

DIMENSIONS SHOWN ARE TYPICALLY TO BACK OF CURB UNLESS NOTED OTHERWISE.

PARKING COUNT:

PARKING COUNT TOTAL (NOT INCLUDING BUILDING): 95

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F:\2021\21.0057--TJ HENSON--GATEWAY RETAIL ENTERTAINMENT REFERENCE 190045\DRAWINGS\CIVIL CONSTRUCTION PLANS\21.0057 C200 DIMENSIONAL PLAN.DWG

MAVERICK
ENGINEERING / SURVEY / WATER RESOURCES
1909 West Wall Street, Suite "K"
Midland, Texas 79701
ENGINEER FIRM # F-15089
Tel: (432) 262-0999 Fax: (432) 262-0989
www.Maverick-Eng.com

BY	APPR.	DATE

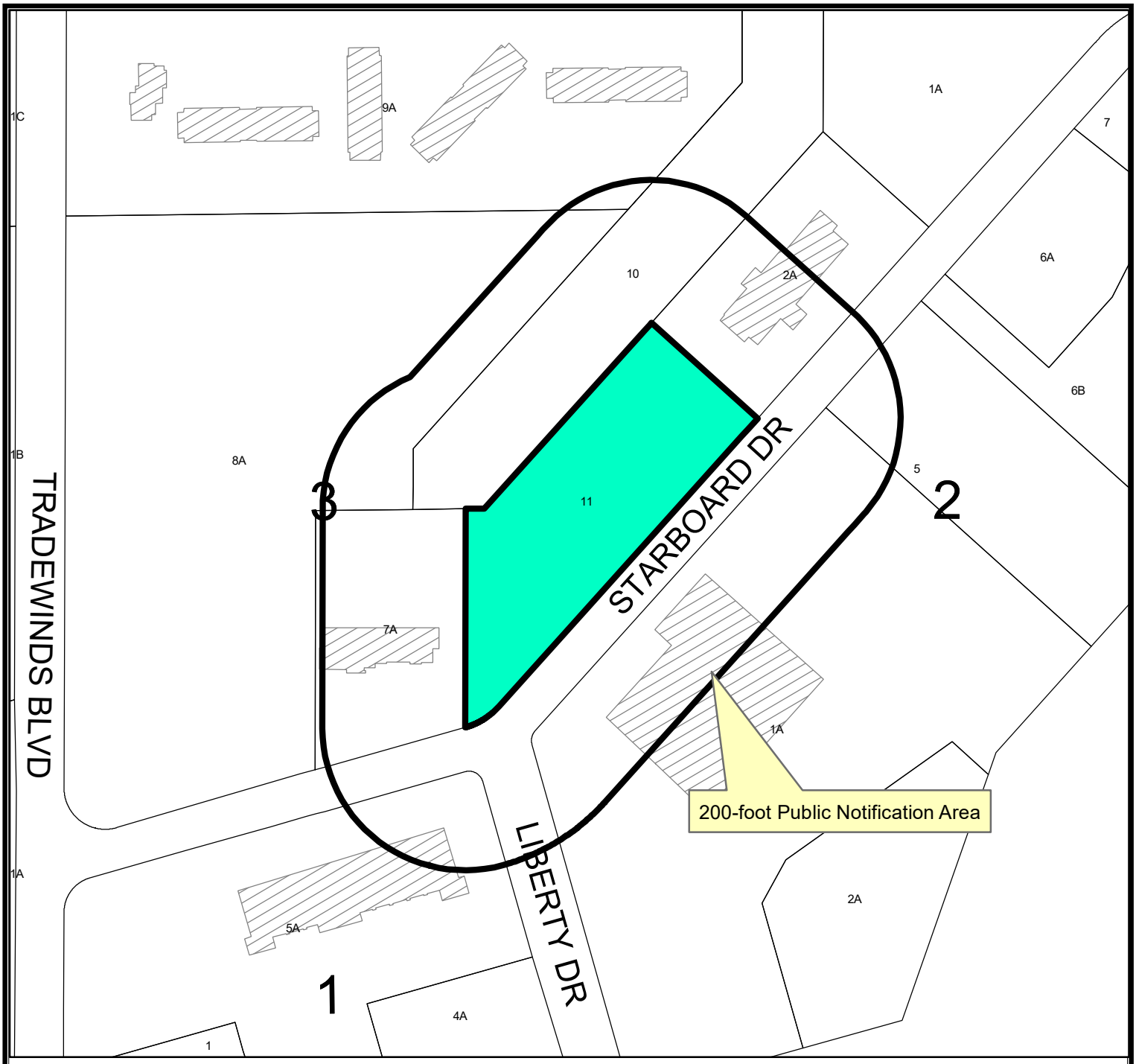
REVISIONS

DRAWN BY:	CLB
CHECKED BY:	ALM
APPROVED BY:	ALM
DATE:	05/03/2021
JOB:	21.0057

DIMENSIONAL PLAN
GATEWAY RETAIL ENTERTAINMENT
LOT 11, BLOCK 3, GATEWAY PLAZA ADDITION, SECTION 2, AN ADDITION TO THE CITY AND COUNTY OF MIDLAND, TEXAS,TEXAS

SHEET **C200** OF 07

811 Know what's below. Call before you dig.



LOCATION MAP

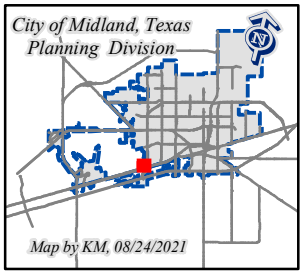
Z-21-0259 **Scale: 1" = 200'**

Consider a request by Maverick Engineering for a zone change from PD, Planned Development District for a Housing Development to RR, Regional Retail District on Lot 11, Block 3, Gateway Plaza, Section 3, City and County of Midland, Texas.

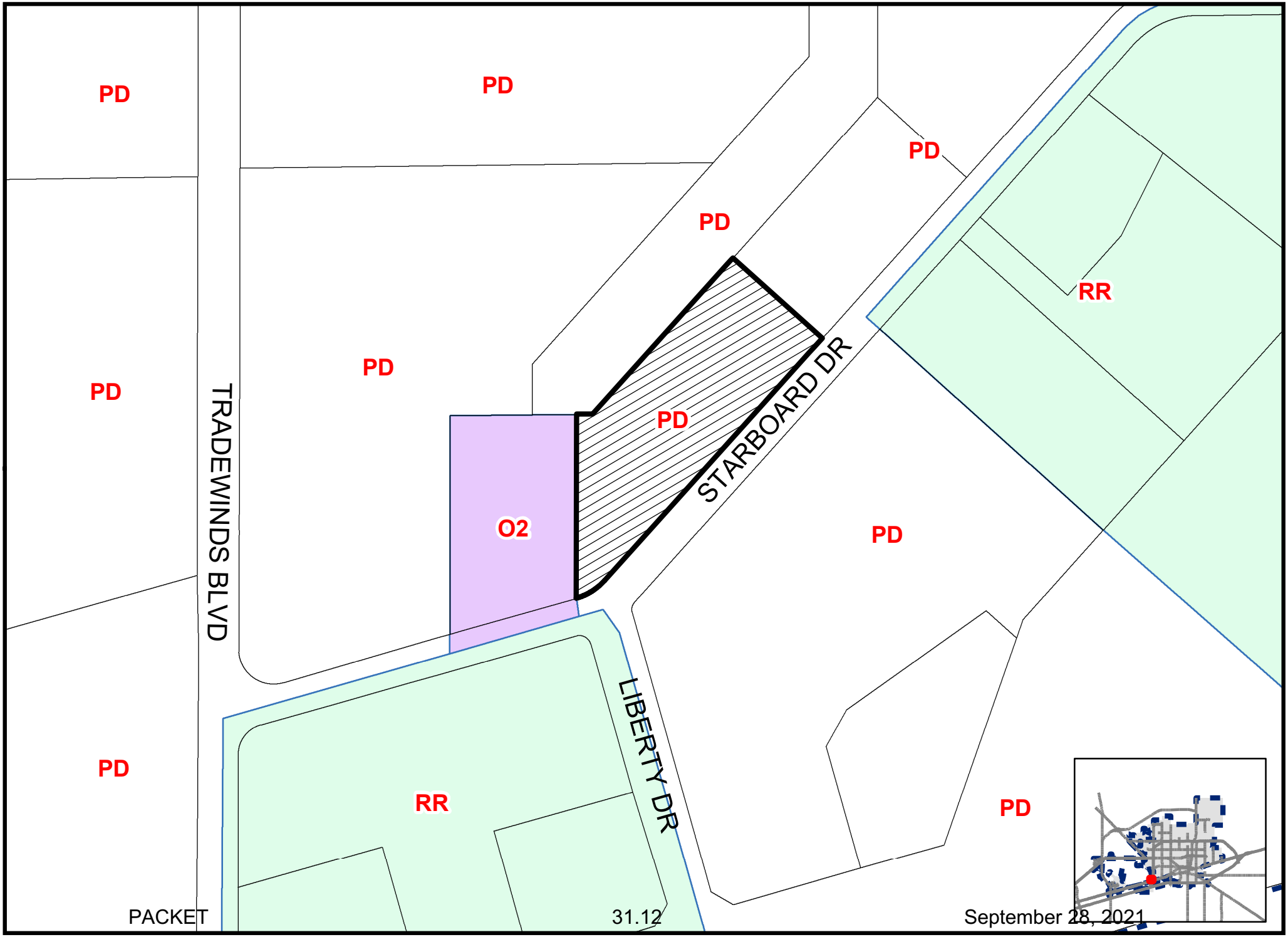
Generally located on the north side of Starboard Drive, approximately 612 feet east of S. Tradewinds Boulevard. (Council District 4)

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, 08/24/2021

Z-21-0259

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. 9955

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 5 AND 6, BLOCK 3, GATEWAY PLAZA ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE NORTH SIDE OF STARBOARD DRIVE, APPROXIMATELY 570 FEET EAST OF SOUTH TRADEWINDS 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

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 LR-2, Local Retail District, and it shall be used as a PD, Planned District for a Housing Development, said property being described as follows:

> Lots 5 and 6, Block 3, Gateway Plaza Addition, Section 2, 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 this property shall conform to the site plan and elevation drawings, which are attached hereto as Exhibits "A" and "B" and incorporated herein.

B. That the maximum building height shall not exceed five stories.

C. That the landscaping shall conform to the regulations set forth in Title XI, Chapter 9 of the City Code.

D. That all signage shall conform to the regulations set forth in Title XI, Chapter 7a of 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 23rd day of July, A.D., 2019; and passed to second reading on motion of Council member Love, seconded by Council member Robnett, by the following vote:

Council members voting "AYE": Trost, Hotchkiss, Love, 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 Love, on the 13th day of August, A.D., 2019, at a regular meeting of the City Council:

Council members voting "AYE": Trost, Hotchkiss, Love, Morales, Dufford, Lacy, Robnett

Council members voting "NAY": None

PASSED AND APPROVED THIS 13th day of August, A.D., 2019.

Jerry F. Morales, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant City Manager

Charles Harrington, Director of Development Services

APPROVED ONLY AS TO FORM:

John Gunnemiller, City Attorney

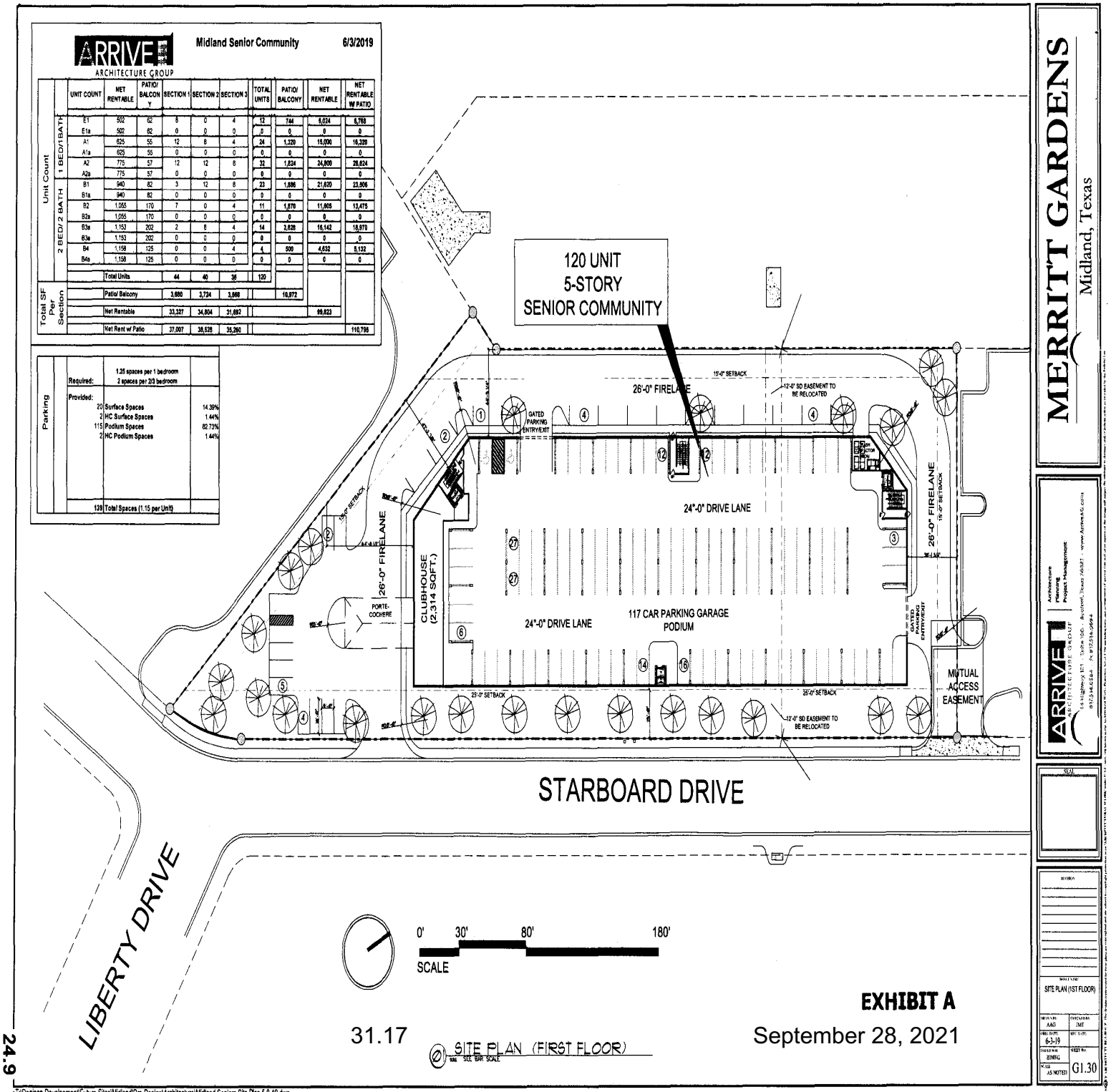
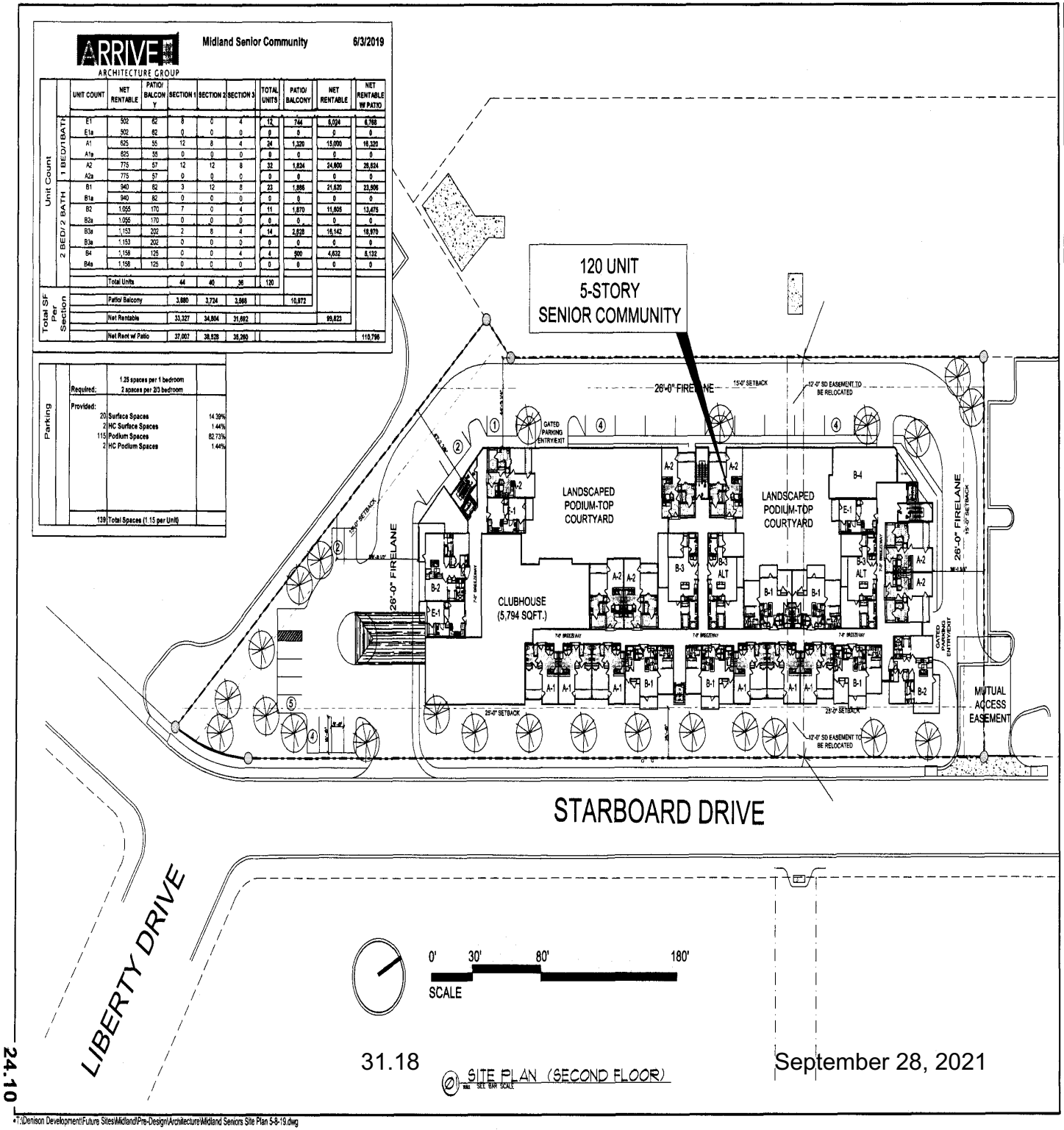


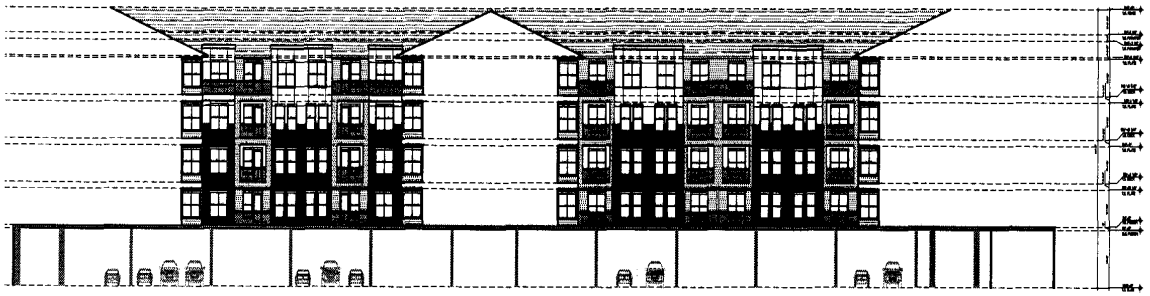
EXHIBIT A

September 28, 2021

T:\Denison Development\Future Sites\Midland\Pre-Design\Architecture\Midland Seniors Site Plan 5-8-19.dwg



T:\Denison Development\Future Sites\Midland\Pre-Design\Architecture\Midland Seniors Site Plan 5-8-19.dwg



10% REVEAL PANEL
50% HARDI SIDING/PANEL
40% BRICK

1 EXTERIOR NORTH ELEVATION-COURTYARDS



10% REVEAL PANEL
20% HARDI SIDING/PANEL
70% BRICK

2 EXTERIOR EAST ELEVATION

MATERIAL LEGEND

BRICK VENEER (King Size) ACME BRICK
- BRICK VENEER FIELD COLOR
  COLOR: T.B.D
- BRICK VENEER ACCENT COLOR
  COLOR: T.B.D

REVEAL PANEL OR EQUAL
- REVEAL PANEL FIELD COLOR
  COLOR: T.B.D
- REVEAL PANEL ACCENT COLOR
  COLOR: T.B.D

REVEAL PANEL OR EQUAL
- REVEAL PANEL FIELD COLOR
  COLOR: T.B.D
- REVEAL PANEL ACCENT COLOR
  COLOR: T.B.D

HARDI-PANEL JAMES HARDIE FIBER CEMENT PANEL OR EQUAL
- HARDI-PANEL FIELD COLOR
  COLOR: T.B.D
- HARDI-PANEL ACCENT COLOR
  COLOR: T.B.D

LAP SIDING JAMES HARDIE FIBER CEMENT LAP SIDING VENEER
- HARDI-SIDING FIELD COLOR
  COLOR: T.B.D
- HARDI-SIDING ACCENT COLOR
  COLOR: T.B.D

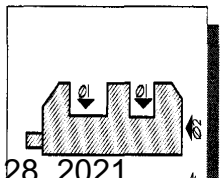
ROOF COMPOSITE ROOF OR EQUAL
- TPO OR SIMILAR
  COLOR: TBD

METAL CANOPY
- METAL CANOPY
  COLOR: TBD

ALUMINUM GARAGE DOOR - TRASH ACCESS
- ALUMINUM INSULATED GARAGE DOOR
  COLOR: TO MATCH STONE FIELD ITS LOCATED IN.

METAL RAILING & GATE
- VERTICAL PICKETS METAL RAILING
  COLOR: TBD
- VERTICAL PICKETS METAL MESH
  COLOR: TBD

NOTES:
1. ALL MATERIAL TRANSITIONS TO OCCUR AT INSIDE CORNERS PER SHEET A5.01 FOR VERTICAL AND HORIZONTAL TRANSITION DETAILS REF. TO A5.01
2. EXPANSION JOINTS TO BE LOCATED AT EVERY TRUCK CORNER AND IF RUN IS LONGER THAN 30'-0" CENTER THE EXPANSION JOINT.



BUILDING KEY PLAN

MERRITT GARDENS
Midland, Texas

ARRIVE
ARCHITECTURE GROUP
Architecture
Planning
Project Management

SEAL

REVISION

SHEET NAME
A5.02 EXTERIOR ELEVATIONS

DRAWN BY: AAO
CHECKED BY: JMT
ORIG. DATE: 6-3-19
REV. DATE:
ISSUED FOR: ZONING
SHEET NO: A5.02
SCALE: AS NOTED

EXHIBIT B

T:\Denison Development\Future Sites\Midland\Pre-Design\Architecture\Elevation Base.dwg









City Council Meeting

Item Number: 32

Meeting Date: September 28, 2021

To: City Council / City Manager

From: Elizabeth Shaughnessy, Senior Planner

Subject: RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A VENDOR MARKET AND CONCERT ON LOTS 1-12, BLOCK 56, A 0.57-ACRE PORTION OF NORTH COLORADO STREET RIGHT-OF-WAY ADJACENT TO SAID LOTS, AND A 0.57-ACRE PORTION OF WEST WALL STREET RIGHT-OF-WAY ADJACENT TO BLOCK 55, ALL OUT OF ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED SOUTH 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 Parking lot of 300 W. Wall Street; 111, 119 and 123 N Colorado Street and a portion of N. Colorado and W. Wall Street right-of-way as shown on the site plan (Exhibit A). They have moved to the parking lots on N. Colorado accros the east side of Centennial Park. The new location activates an area that would usually remaind vacant and allows for the park to be available for other events. 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, from 8:00 a.m. to 10:00 p.m

This event will consist of a market, live music, and activity spaces.

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 than 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.

Staff recommends that if this temporary land use permit is approved, it should be subject to conditions A through M.

A. This resolution should supersede the previous resolution no. 2021-104.

B. 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.;

C. 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.

D. That the Applicant shall provide a minimum of 20 restrooms that shall be made available for use during all operating hours of the Event.

E. 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.**

F. 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.**

G. 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.

H. 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.**

I. 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.

J. 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.

K. That the Code Administration Division and the Planning Division shall be notified no later than 48 hours preceding the event.

L. That the applicant shall obtain approval from the Solid Waste Department for a refuse collection and clean-up plan prior to the Event.

M. That Lauren Johnston shall be responsible for ensuring that the conditions of this permit are observed.

Letters of Objection:

As of September 15, 2021, staff has not received any letters of objection.

Attachments:

Site Plan (Exhibit A)

Application
Maps

City Manager's Office

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A VENDOR MARKET AND CONCERT ON LOTS 1-12, BLOCK 56, A 0.57-ACRE PORTION OF NORTH COLORADO STREET RIGHT-OF-WAY ADJACENT TO SAID LOTS, AND A 0.57-ACRE PORTION OF WEST WALL STREET RIGHT-OF-WAY ADJACENT TO BLOCK 55, ALL OUT OF ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED SOUTH 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 Lots 1-12, Block 56, a 0.57-acre portion of North Colorado Street right-of-way adjacent to said lots, and a 0.57-acre portion of West Wall Street right-of-way adjacent to Block 55, all out of Original Town Addition, 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 4, 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.

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 be responsible for ensuring that the conditions herein are observed and satisfied.

M. That this resolution supersedes Resolution No. 2021-104, and Resolution No. 2021-104 shall be of no further force or effect.

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"



Vendors and Stage

Food trucks

Vendors

MIDLAND Planning Division

Temporary Land Use Application

Project Number:_____

Case Number:_____

Event Name: Lo Street Market

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Lauren Johnston		Phone ( ) Email	
Address 3406 Sinclair Ave	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: _____ Printed Name: Lauren Johnston		Phone ( ) Email	
Address	City	State	Zip

Street Address: 300 W. Wall Street; 111, 119 and 123 N Colorado Street and a portion of N. Colorado and W. Wall street right-of-way.

Legal Description
Lot: 1-12 Block: 56 Subdivision: Original Town Addition

Current Zoning: CB, Central Business District

Type of Temporary Use Requested:

Description of Event: Vendor Market and Street Concert.

Duration of Temporary Use: October 2021 - April 2022
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: 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.

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.

Number of Peace Offices Provided: TBD *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:** 10 /	**Bathroom Sinks:**
Women	**Toilets:** 10	**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:
Applicant (printed): Lauren Johnston	
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 _____ 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.

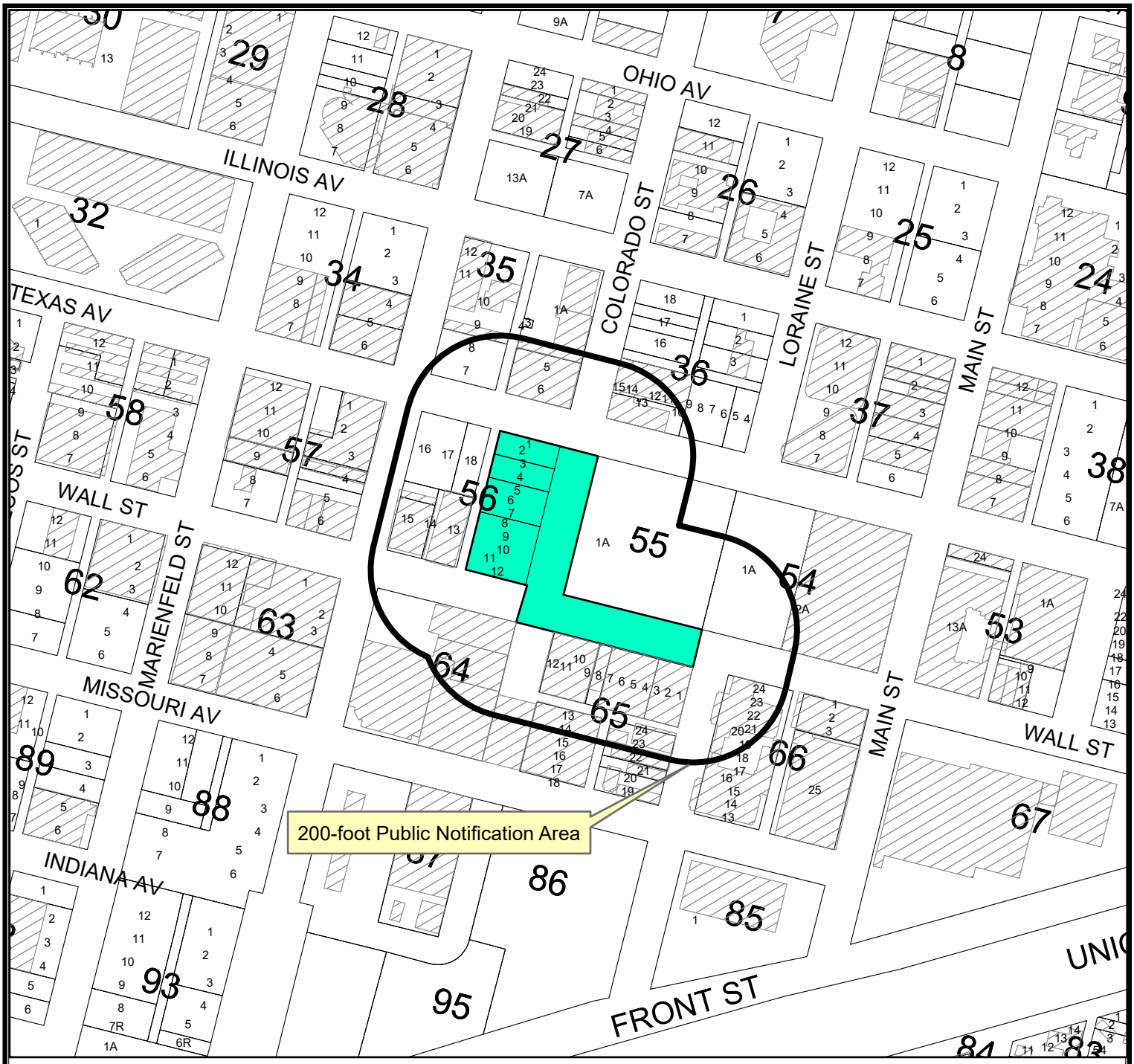
_____
Authorized Agent (*signature*)

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 #_____
Check #_____	☐ Damage Deposit
☐ Administrative Approval	Check #_____
Received By:	Date:

****Application will not be considered for scheduling until reviewed by a planner.****



LOCATION MAP

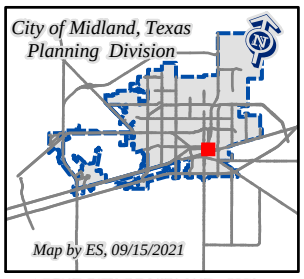
TLU-21-0087 **Scale: 1" = 200'**

Resolution Authorizing the Temporary Use of Land for a Vendor Market and Street Concert on Lots 1-12, Block 56, a 0.57 acre portion of the W Wall Street right-of-way, and a 0.57 acre portion of the North Colorado Street right-of-way, all out of Original Town Addition, City and County of Midland, Texas.

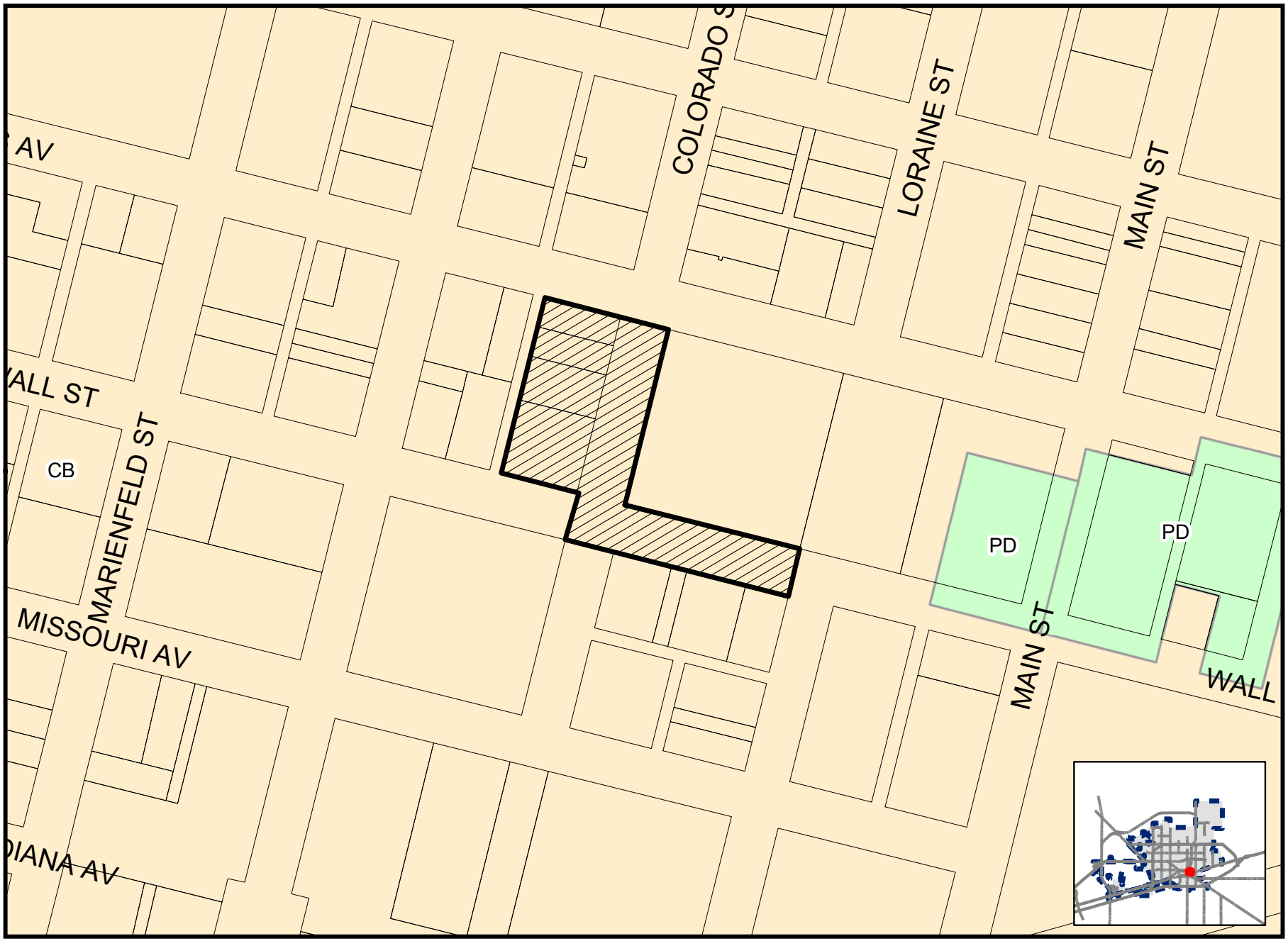
Generally located on the northwest corner of the intersection of North Main Street and West Wall Street - Council District 2

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



September 28, 2021



Map By ES, 09/15/2021

TLU-21-0087

Scale: 1" = 200'

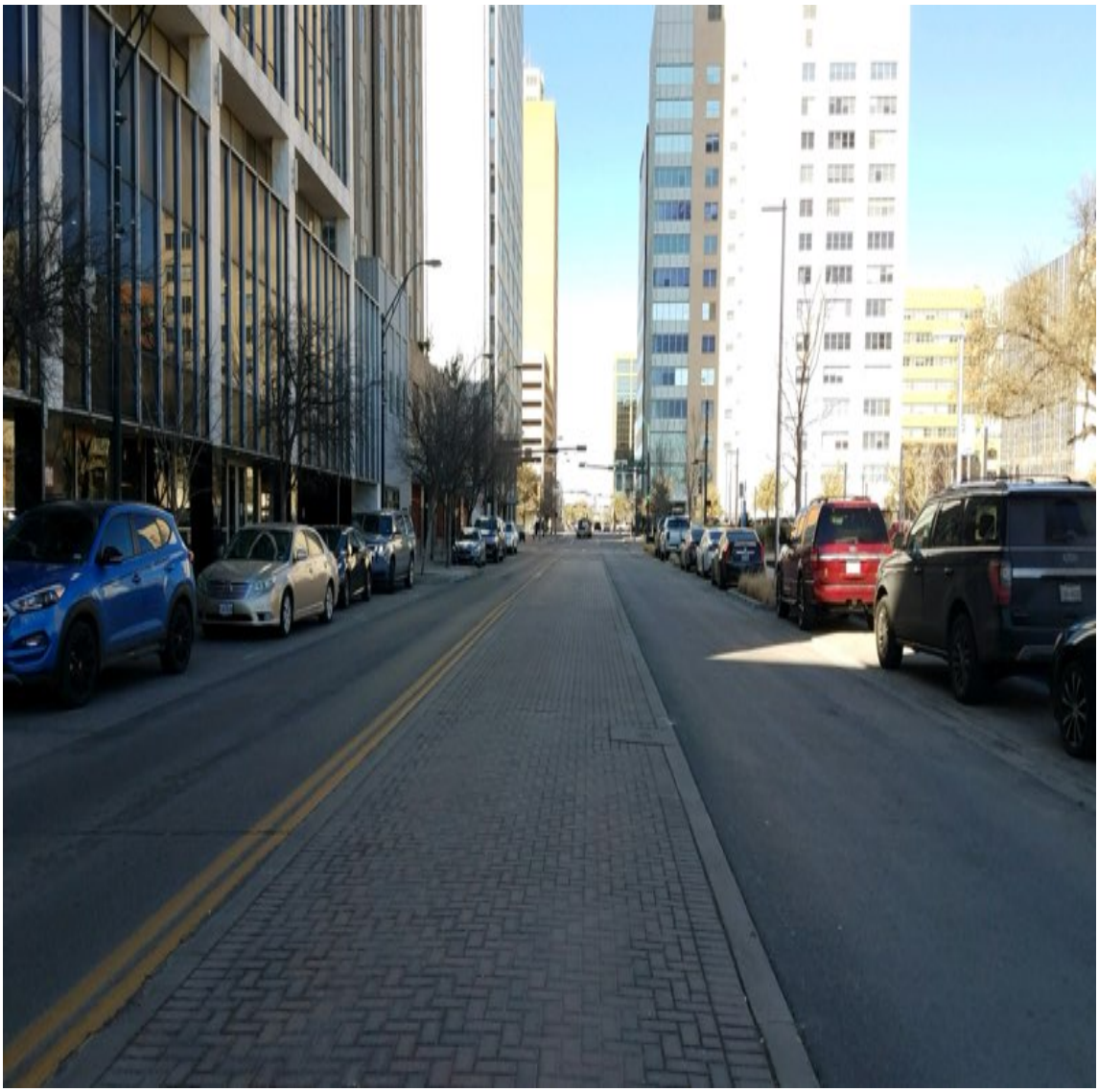
ZONING MAP

PACKET
32.15
September 28, 2021




LORAINE ST


STOP



City Council Meeting

Item Number: 33

Meeting Date: September 28, 2021

To: City Council / City Manager

From: Valerie A. Sherman, Senior Planner

Subject: **Motion granting Cactus Sign Company's appeal and reversing the Building Official's denial of a sign permit for Lot 4, Block 7, Highland Addition, City and County of Midland, Texas (Generally located on the east side of North Big Spring Street, approximately 72 feet north of West Cowden Avenue (DISTRICT 2) (DEVELOPMENT SERVICES)**

Purpose:

The applicant, Cactus Sign Company, is requesting a variance to the allowed area for an electronic message center (EMC) for a proposed freestanding sign for Area Insurance located at 1302 N Big Spring Street.

Recommended City Council Action:

Deny

Fiscal Impact:

No City funds are required to process this request.

Discussion:

Per the proposed sign plans, the applicant is requesting to place a 17-foot-tall freestanding sign with 53-square feet of signage, of which 21-square feet will be an electronic message center (EMC).

The request does not meet the requirements per the City of Midland Zoning Ordinance Section 11-7a-7.- Sign Standards.

(F) Use of an electronic message center (EMC) sign.

2. Size limitations. In all cases, the use of an electronic message center (EMC) shall count toward the total area of signs allowed on a property.

b. In the O-1, Office District and less restrictive zoning districts:

i. The area of an EMC shall be limited to 15% of the total area of signs permitted for the property or 42 square feet, whichever is less.

Per the City of Midland Zoning Ordinance Section 11-7a.-7- Sign Standards, this property is allowed to have 90 square feet of signage and the area of an EMC shall be limited to 15% of the total area of signs permitted for the property or 42 square feet, whichever is less. As 15% of 90 square feet is 13.5 square feet, the maximum allowed area of an EMC would be 13.5 square feet for this property. The proposed EMC is 21 square feet, which exceeds the maximum allowed area by 7.5 square feet.

Planning:

As this request represents a deviation from the existing sign regulations and no hardships have been shown to exist, staff would recommend denial of this application for a variance to the allowed area for an electronic message center on a freestanding sign.

Attachments:

Appeal Request
Building Official's Denial Letter
Application
Proposed Freestanding Sign
Maps

Robert Patrick

City Manager's Office

MIDLAND
Code Administration

PERMANENT SIGN
PERMIT APPLICATION

1. PROJECT INFORMATION

Project Address: 1302 N Big Spring
Project Description: Install 4x8" Cab. w/ 3'x7' EMC on existing.
Name of Business: Area Insurance
Valuation of Job: $ 15,000.00
Zoning:
Property Line Setbacks: Front _____ Side _____ Rear _____
Property Easements: Yes _____ No _____
Lot/Tract:
Block:
Subdivision/Survey:
Lot Size: (sq. ft.)
Type of Work: New Construction _____ Additional ✓ Repair Existing _____
Engineering Required: ✓
Sign Type: Pole/Pylon ✓ Monument _____ Directional _____ Wall _____ LED _____ Other _____
Illumination: Internal ✓ External _____ None _____
Proposed Sign Area: _____
Facade: Height: _____ Width: _____
Number of Signs: 1
Height Above Grade: 17'
Overhang Permitted: _____
Other: _____

2. BUILDING OWNER INFORMATION

Name: Cactus Sign
Address: 3504 W Wall
Phone: 570-7446
Fax:
Email: misty@cactussign.com

3. SIGNAGE / CONTRACTOR INFORMATION

Name: Area Insurance
Address: 1302 N Big Spring
Phone: 432-570-7446
Fax:
Email: misty@cactussign.com

4. PLEASE READ CAREFULLY

- Attach three (3) copies of the Signage Site Plan and Signage Elevations showing building dimensions and square footages of the signage areas.
- All signs with lighting must have an Underwriters Laboratory label affixed to cabinet and electrical.
- Be advised incomplete applications may be rejected, denied or cause permit processing delays.
- This permit becomes null and void if work authorized is not commenced within 180 days of issuance or if work is suspended or abandoned for a period of 180 days at any time after work is commenced.
- I hereby certify that I am the property owner or their authorized agent, and have the owner's consent to apply for the permit requested and receive all subsequent communications and business related to this application. I further certify that the information provided is true and correct to the best of my knowledge. This work shall comply with all provisions of laws and ordinances, whether specified or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any federal, state or local law regulating construction or the performance of construction.

Signature of Applicant: Bob Waldron
Date: 8/30/21
Printed Name of Applicant: Bob Waldron
Phone: 432-570-7446
Email: misty@cactussign.com
Fax:

Code Administration Division
Development Services Department
300 N. Loraine Street - P.O. Box 1152 - Midland, Texas 79702
Office: 432-685-7390 - Fax 432-686-1609

Ver: 9/6/18


8'
AREA INSURANCE
SERVICES, INC.
AUTO · MOTORCYCLES · BOATS · RV'S
HOMES · MOBILE HOMES · COMMERCIAL
(432) 570-4373
4'
WE'RE OPEN!
3'
7'
10'

DENIAL SIGN REVIEW LETTER
Sent via Electronic Mail

September 13, 2021

Cactus Sign Company
3504 W Wall St
Midland, TX 79701

RE: 1302 N Big Spring St

Mr. Waldron:

The plan review for the building permit for this project has been completed. The following comments or conditions that must be addressed prior to completion of the review and issuance of the building permit. Should you or the design consultants need further clarification regarding these comments or conditions, please contact the appropriate department or staff member.

Planning Division- Valerie Sherman- 432-685-7915 vsherman@midlandtexas.gov

Date: 9/06/2021
Status: Denied

On property with a single street frontage of less than 150 feet in length, the combined area of freestanding and wall signs shall not exceed one and one-half times the length of street frontage of said property.
Street frontage at 60 feet wide X 1.5 = 90 square feet allowed for all signs on the property.
→ Provide the square feet of the existing wall sign.
The area of an EMC shall be limited to 15% of the total area of signs permitted for the property or 42 square feet, whichever is less.
90 square feet of allowable signage for the property X 15% = 13.5 square feet maximum allowed for the EMC part of the pole sign.
→ Proposed EMC sign on pole at 21 square feet, is over the 13.5 maximum allowed for an EMC on the property for that district.

Code Administration – Liliana Morales – 432-685-7396 lmorales@midlandtexas.gov

Date: 8/30/2021

Sincerely,

Liliana Morales
Residential Plan Examiner
City of Midland, TX
Code Administration
432-685-7396
lmorales@midlandtexas.gov

From:	Liliana Morales
To:	Valerie Sherman
Subject:	FW: Permit Application SGN-037679-2021
Date:	Wednesday, September 15, 2021 11:28:08 AM
Attachments:	image001.png image002.png image003.png image004.png

---

From: Misty Hutson <misty@cactussign.com>
Sent: Wednesday, September 15, 2021 11:27 AM
To: Liliana Morales <lmorales@midlandtexas.gov>
Subject: Re: Permit Application SGN-037679-2021

I am requesting a variance for this sign i submitted. I would like to be at the next city council. Please email me the date and time for us to attend.

Thanks if you have any questions please call me to Rob Waldron 432-254-6628

Cactus Sign Co.
Misty Hutson
3504 W Wall Street Suite B
Midland Texas
Office 432-570-7446 Ext # 104
Cell 432-352-9672

From: Liliana Morales <lmorales@midlandtexas.gov>
Sent: Monday, September 13, 2021 10:15 AM
To: Misty Hutson <misty@cactussign.com>
Cc: Rob Waldron <rob@cactussign.com>
Subject: RE: Permit Application SGN-037679-2021

Please see attachment for your records.

From: Valerie Sherman <vsherman@midlandtexas.gov>
Sent: Friday, September 10, 2021 10:29 AM
To: Liliana Morales <lmorales@midlandtexas.gov>
Subject: FW: Permit Application SGN-037679-2021

Hi Liliana,

Would you please send a denial letter for SGN-037679-2021, Area Insurance, to Misty at misty@cactussign.com. She will be applying for a variance on this sign permit. If you are no longer taking care of the sign permits, please let me know who I need to forward this too as soon as possible. Thank you.

Valerie A. Sherman
Senior Planner|Development Services
O. 432-685-7915
E. vsherman@midlandtexas.gov









300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

From: Valerie Sherman
Sent: Thursday, September 2, 2021 10:23 AM
To: Liliana Morales <lmorales@midlandtexas.gov>
Subject: RE: Permit Application SGN-037679-2021

Thank you. I'm not able to get a hold of him by phone.

From: Liliana Morales <lmorales@midlandtexas.gov>
Sent: Thursday, September 2, 2021 10:18 AM
To: Valerie Sherman <vsherman@midlandtexas.gov>
Subject: RE: Permit Application SGN-037679-2021

I forgot to attached the comments, but I got them over to him.

From: Valerie Sherman <vsherman@midlandtexas.gov>
Sent: Thursday, September 2, 2021 10:17 AM
To: Liliana Morales <lmorales@midlandtexas.gov>
Subject: RE: Permit Application SGN-037679-2021

Hi Liliana,

Did you send him my comments? Thanks.

From: Liliana Morales <lmorales@midlandtexas.gov>
Sent: Thursday, September 2, 2021 9:22 AM
To: Valerie Sherman <vsherman@midlandtexas.gov>
Subject: FW: Permit Application SGN-037679-2021

Please see his comments.

From: Rob Waldron <rob@cactussign.com>
Sent: Thursday, September 2, 2021 9:21 AM
To: Liliana Morales <lmorales@midlandtexas.gov>
Subject: RE: Permit Application SGN-037679-2021

Why is it denied, we're using the same pipe and same stub with same match plate? There's no explanation

Thanks

ROB R. WALDRON
SERVICE/INSTALL MANAGER
CACTUS SIGN COMPANY, INC.
3504 W. WALL ST #B,
MIDLAND TEXAS 79701
ROB@CACTUSSIGN.COM
432-570-7446 EXT. 104
432-254-6628 CELL
Registered Sign Electrical Contractors [TSCL 18624] –
Regulated by the Texas Department of Licensing and Regulation,
P.O. Box 2157, Austin, TX 78711, 1-800-803-9202 / 512-463-6599, www.license.tx.us/complaints

---

From: Liliana Morales <lmorales@midlandtexas.gov>
Sent: Thursday, September 2, 2021 9:17 AM
To: Rob Waldron <rob@cactussign.com>
Cc: Misty Hutson <misty@cactussign.com>
Subject: FW: Permit Application SGN-037679-2021

Please see comments per Planning Department.

From: Valerie Sherman <vsherman@midlandtexas.gov>
Sent: Wednesday, September 1, 2021 3:00 PM
To: Liliana Morales <lmorales@midlandtexas.gov>

Subject: RE: Permit Application SGN-037679-2021

Liliana,

I have denied SGN-037679-2021 in Energov. Please forward my comments to the applicant. Thank you.

Valerie A. Sherman
Senior Planner|Development Services
O. 432-685-7915
E. vsherman@midlandtexas.gov



300 N. Loraine | P.O. Box 1152 | Midland, TX 79702

From: Liliana Morales <lmorales@midlandtexas.gov>
Sent: Monday, August 30, 2021 3:52 PM
To: Valerie Sherman <vsherman@midlandtexas.gov>
Subject: FW: Permit Application SGN-037679-2021

Ready for review SGN-037679-2021

From: Rob Waldron <rob@cactussign.com>
Sent: Monday, August 30, 2021 3:24 PM
To: Liliana Morales <lmorales@midlandtexas.gov>
Subject: RE: Permit Application

Lilliana,

Correct we aren't moving it just using the existing pipe and mounting/match plate with new signage, as per drawing attached.

Thanks

ROB R. WALDRON
SERVICE/INSTALL MANAGER

CACTUS SIGN COMPANY, INC.
3504 W. WALL ST #B,
MIDLAND TEXAS 79701
ROB@CACTUSSIGN.COM
432-570-7446 EXT. 104
432-254-6628 CELL
Registered Sign Electrical Contractors [TSCL 18624] –
Regulated by the Texas Department of Licensing and Regulation,
P.O. Box 2157, Austin, TX 78711, 1-800-803-9202 / 512-463-6599, www.license.tx.us/complaints

---

From: Liliana Morales <lmorales@midlandtexas.gov>
Sent: Monday, August 30, 2021 2:58 PM
To: Misty Hutson <misty@cactussign.com>
Cc: Rob Waldron <rob@cactussign.com>
Subject: RE: Permit Application

Please provide mounting details. Sign will not be relocated correct it will remain in its original spot?

From: Tomasa Gomez <tgomez@midlandtexas.gov>
Sent: Monday, August 30, 2021 1:07 PM
To: Liliana Morales <lmorales@midlandtexas.gov>
Cc: Permit Requests <permitrequests@midlandtexas.gov>
Subject: FW: Permit Application

SGN-037679-2021

From: Misty Hutson <misty@cactussign.com>
Sent: Monday, August 30, 2021 12:54 PM
To: Permit Requests <permitrequests@midlandtexas.gov>; Liliana Morales <lmorales@midlandtexas.gov>
Cc: Valerie Sherman <vsherman@midlandtexas.gov>
Subject: Permit Application

Permit application
Area Insurance
1302 N Big Spring
Midland Texas

Remove existing cabinet
Replace with new cabinet and EMC

1. 4' X 8' Cabinet
1. 3'X 7' EMC

Existing Pole 17 OAH

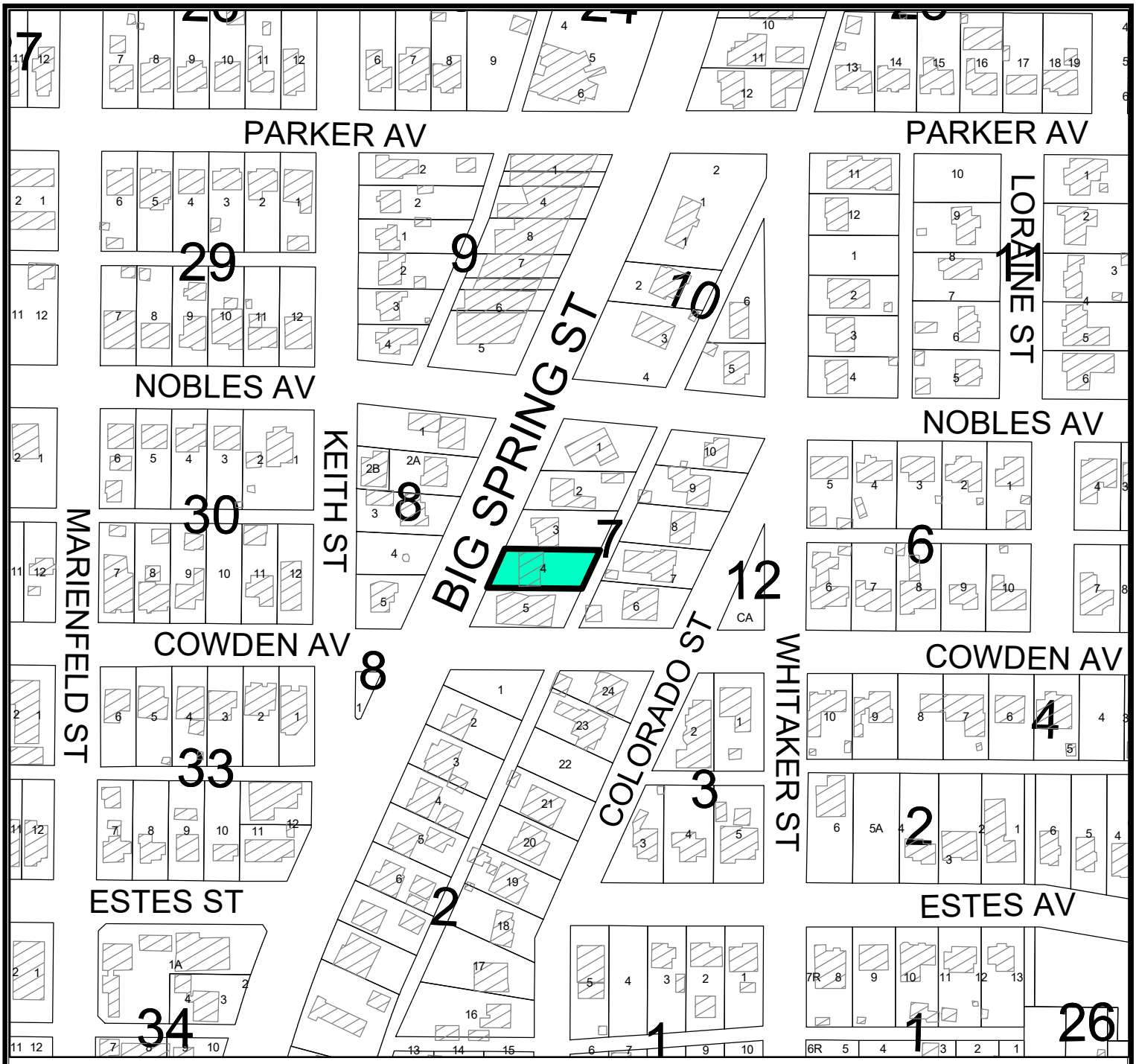
Cactus Sign Co.
Misty Hutson
3504 W Wall Street Suite B
Midland Texas
Office 432-570-7446 Ext # 104
Cell 432-352-9672

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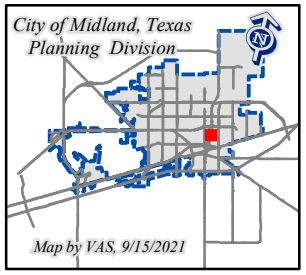
LOCATION MAP

SGN-037679-2021 **Scale: 1" = 200'**

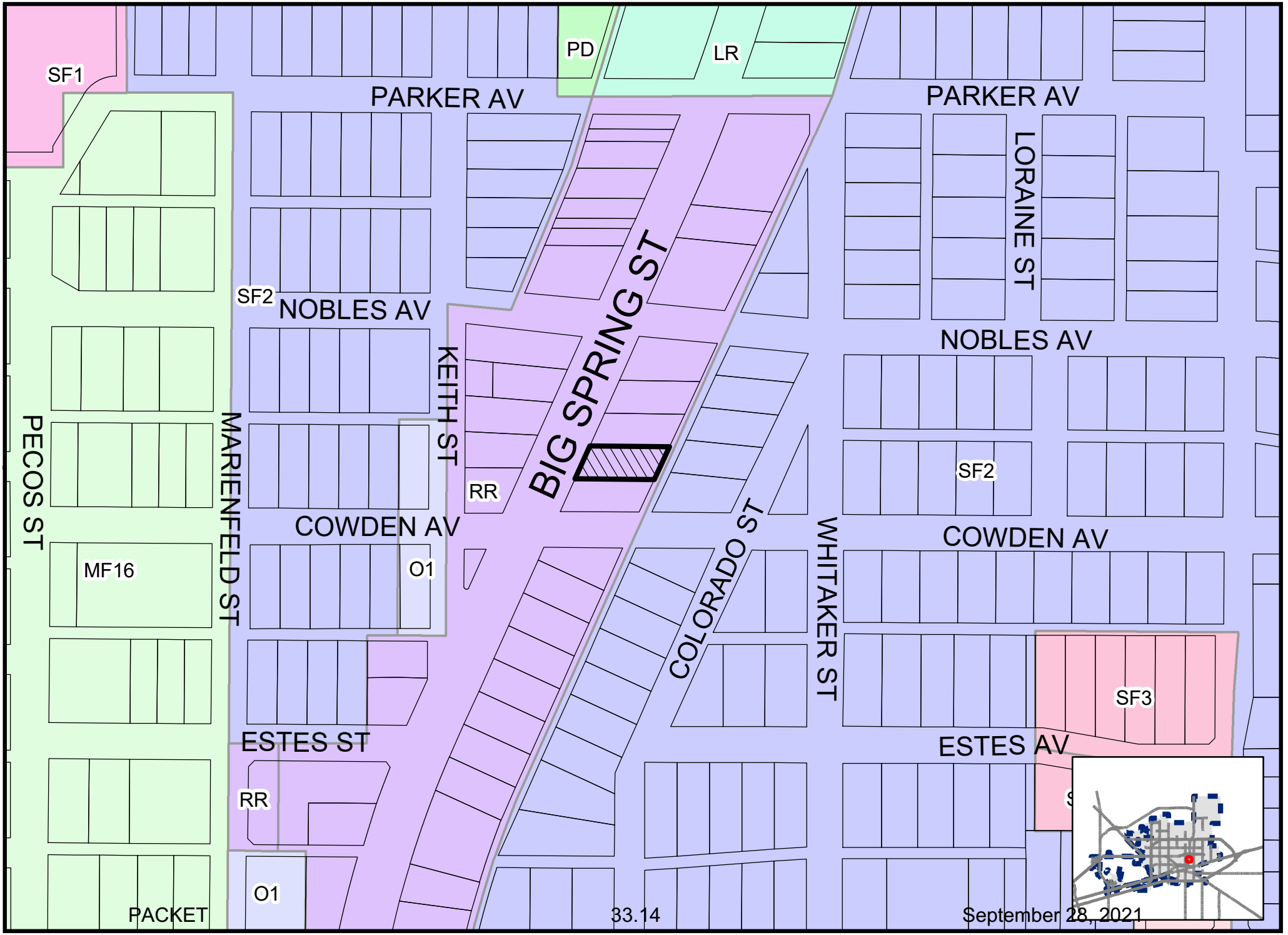
A motion appealing the Building Official's denial of a sign permit application by Cactus Sign Co. for Lot 4, Block 7, Highland Addition, City and County of Midland, Texas.
(Generally located on the east side of N. Big Spring Street, approximately 72 feet north of W. Cowden Avenue. Council District 2)

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 VAS, 9/15/2021

SGN-037679-2021 **Scale: 1" = 200'**

ZONING MAP

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AREA
INSURANCE
AUTO • MOTORCYCLES • BOATS • RV'S
HOMES • MOBILE HOMES • COMMERCIAL
(432) 570-4373
Big Spring St


AREA
INSURANCE
AUTO • MOTORCYCLES • BOATS • RVS
HOMES • MOBILE HOMES • COMMERCIAL
(432) 570-4373
AREA INSURANCE
SERVICES, INC.


N Big Spring St



City Council Meeting

Item Number: **34**

Meeting Date: **September 28, 2021**

To: **City Council / City Manager**

From: **Valerie Sherman,**

Subject: **Motion granting Cactus Sign Company's appeal and reversing the Building Official's denial of a sign permit for 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 Loop 250 North Frontage Road) (DISTRICT 3) (DEVELOPMENT SERVICES)**

Purpose:

The applicant, Cactus Sign Company, is requesting a variance to the allowed area for a freestanding sign, as well as the Prohibited Sign Regulations, in order to affix several proposed sign faces, to the side of a 320 square foot metal shipping container/trailer for The Tailgate, located at 4401 N Big Spring Street.

Recommended City Council Action:

Deny

Fiscal Impact:

No City funds are required to process this request.

Discussion:

Per the proposed sign plans, the applicant is requesting to use a metal shipping container/trailer to affix several sign faces to the side of the metal shipping container/trailer. The side of the metal shipping container/trailer is a total of 320 square feet.

The request does not meet the requirements per the City of Midland Zoning Ordinance Section 11-7a-7.- Sign Standards.

(H) General Business Sign

3. In the NS District and less restrictive districts.

j. On property with multiple street frontages, the length of each street frontage shall be used to calculate total sign area, provided that the cumulative area of all signs shall not exceed 360 square feet, and that no one sign shall exceed 180 square feet in area.

Based on the application, they have exceeded the maximum of 180 square feet allowed, by 140 square feet.

Also, the request does not meet the requirements per the City of Midland Zoning Ordinance Section 11-7a-3.- Prohibited Signs

All signs not expressly permitted under this Chapter or exempt from regulation are prohibited in the City. Such signs include, but are not limited to:

(P) Any sign or advertising device attached to any motor vehicle or any trailer or other structure parked on a public right-of-way, on public property, or on private property so as to be visible from a public right-of-way, the basic purpose of which sign or advertising device is to provide advertisement of a product or to direct people to a business or activity located on the same property or other property or premises.

Planning:

As this request represents a deviation from the existing sign regulations and no hardships have been shown to exist, staff would recommend denial of this application for a variance to the allowed area for a freestanding sign and to utilize a metal shipping container/trailer to affix several proposed sign faces, for the property at 4401 N. Big Spring Street.

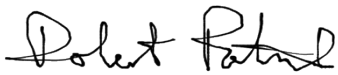
If approved, staff recommends that it should be subject to condition A.

Condition:

A. That the metal shipping container cannot be used for purposes of storage.

Attachments:

Appeal Request
Building Official’s Denial Letter
Application
Proposed Freestanding Sign
Maps



City Manager's Office

From: Sean Elphick
To: Elizabeth Shaughnessy
Subject: Sign Denial
Date: Thursday, September 23, 2021 10:28:30 AM

Elizabeth,

I am appealing the denial letter I received from the city in regards to street signage for The Tailgate Midland LLC.

Sean Elphick

CAUTION: This email originated from outside your organization — exercise caution when opening attachments or clicking links, especially from unknown senders.

MIDLAND
Code Administration

DENIAL SIGN REVIEW LETTER
Sent via Electronic Mail

September 23, 2021

Cactus Sign Company
3504 W Wall St
Midland, TX 79701

RE: 4401 N Big Spring St

Mr. Waldron

The plan review for the building permit for this project has been completed. The following comments or conditions that must be addressed prior to completion of the review and issuance of the building permit. Should you or the design consultants need further clarification regarding these comments or conditions, please contact the appropriate department or staff member.

Planning Division- 432-685-7400

Date: 9/27/2021
Status: Denied

- **The request does not meet the requirements per the City of Midland Zoning Ordinance Section 11-7a-3.- Prohibited Signs:**

  All signs not expressly permitted under this Chapter or exempt from regulation are prohibited in the City. Such signs include, but are not limited to:

  (P) Any sign or advertising device attached to any motor vehicle, or any trailer or other structure parked on a public right-of-way, on public property, or on private property so as to be visible from a public right-of-way, the basic purpose of which sign or advertising device is to provide advertisement of a product or to direct people to a business or activity located on the same property or other property or premises.

- **The request does not meet the requirements per the City of Midland Zoning Ordinance Section 11-7a-7.- Sign Standards.**

  (H) General Business Sign

  3. In the NS District and less restrictive districts.

j. On property with multiple street frontages, the length of each street frontage shall be used to calculate total sign area according to subparagraphs h and i above, provided that the cumulative area of all signs shall not exceed 360 square feet, and that no one sign shall exceed 180 square feet in area.

Based on the application, the sign exceed the maximum 180 square feet allowed, by 140 square feet.

Code Administration – Liliana Morales – 432-685-7396 lmorales@midlandtexas.gov

Date: 9/27/2021
Status: Denied

Shipping containers cannot be used to mount any signs, shipping container are typically not allowed within city limits. In addition to exceeding allowable signage.

Sincerely,

Liliana Morales
Residential Plan Examiner
City of Midland, TX
Code Administration
432-685-7396
lmorales@midlandtexas.gov

MIDLAND
Code Administration

PERMANENT SIGN
PERMIT APPLICATION

1. PROJECT INFORMATION

Project Address: 4401 N BigSpring | Project Description: Install ACM Panel as per drawing

Name of Business: The Tailgate

Valuation of Job: $ 1,500.00 | Zoning:

Property Line Setbacks: Front _____ Side _____ Rear _____ | Property Easements: Yes _____ No _____

Lot/Tract: | Block: | Subdivision/Survey: | Lot Size: (sq. ft.)

Type of Work: New Construction ✓ Additional _____ Repair Existing _____ | Engineering Required: _____

Sign Type: Pole/Pylon _____ Monument ✓ Directional _____ Wall _____ LED _____ Other _____

Illumination: Internal: _____ External _____ None ✓ | Proposed Sign Area: _____ Facade: Height: _____ Width: _____

Number of Signs: 3 | Height Above Grade: _____ | Overhang Permitted: _____ | Other: _____

2. BUILDING OWNER INFORMATION

Name: The Tailgate | Address: 4401 N BigSpring

Phone: | Fax: | Email:

3. SIGNAGE / CONTRACTOR INFORMATION

Name: CactusSign | Address: 3504 W Wall Street

Phone: 570-7446 | Fax: | Email: Misty@cactussign.com

4. PLEASE READ CAREFULLY

- Attach three (3) copies of the Signage Site Plan and Signage Elevations showing building dimensions and square footages of the signage areas.
- All signs with lighting must have an Underwriters Laboratory label affixed to cabinet and electrical.
- Be advised incomplete applications may be rejected, denied or cause permit processing delays.
- This permit becomes null and void if work authorized is not commenced within 180 days of issuance or if work is suspended or abandoned for a period of 180 days at any time after work is commenced.
- I hereby certify that I am the property owner or their authorized agent, and have the owner's consent to apply for the permit requested and receive all subsequent communications and business related to this application. I further certify that the information provided is true and correct to the best of my knowledge. This work shall comply with all provisions of laws and ordinances, whether specified or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any federal, state or local law regulating construction or the performance of construction.

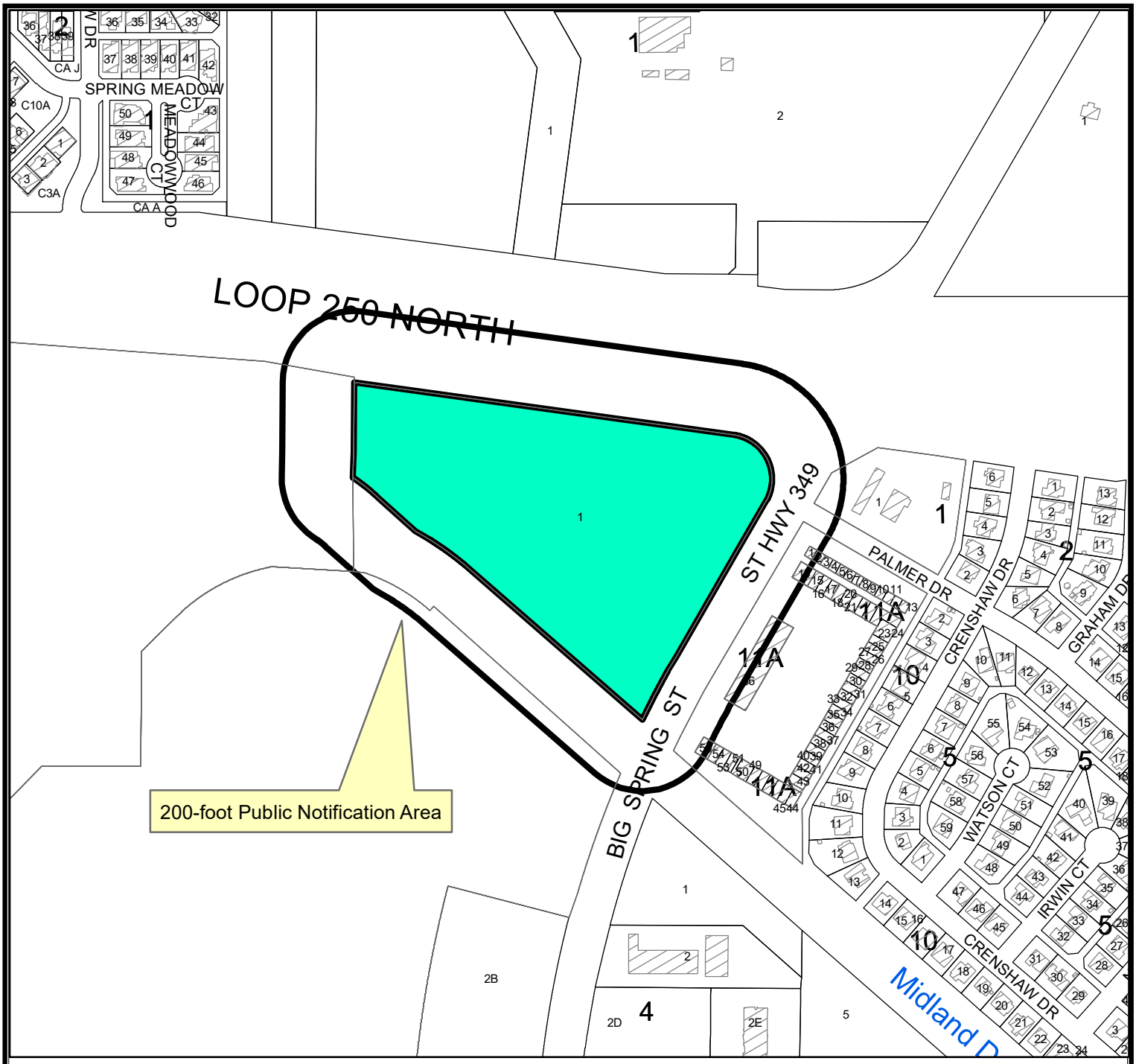
Signature of Applicant: Rob Waldron | Date: 9/20/21

Printed Name of Applicant: Rob Waldron | Phone: 432-570-7446

Email: Misty@cactussign.com | Fax:

Code Administration Division
Development Services Department
300 N. Loraine Street - P.O. Box 1152 - Midland, Texas 79702
Office: 432-686-4370 - Fax 432-686-1609

7'x7'
5'x20'
4401 N BigSpring
Murray's
3.4.9
ESTABLISHED 1984
EAT MORE CURLY FRIES
5'
20'
THE TAILGATE
FOOD PARK - STAGE - BAR - EVENTS - GAMES
40'x40"



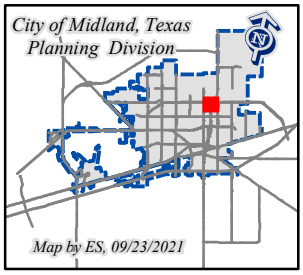
LOCATION MAP

Scale: 1" = 400'

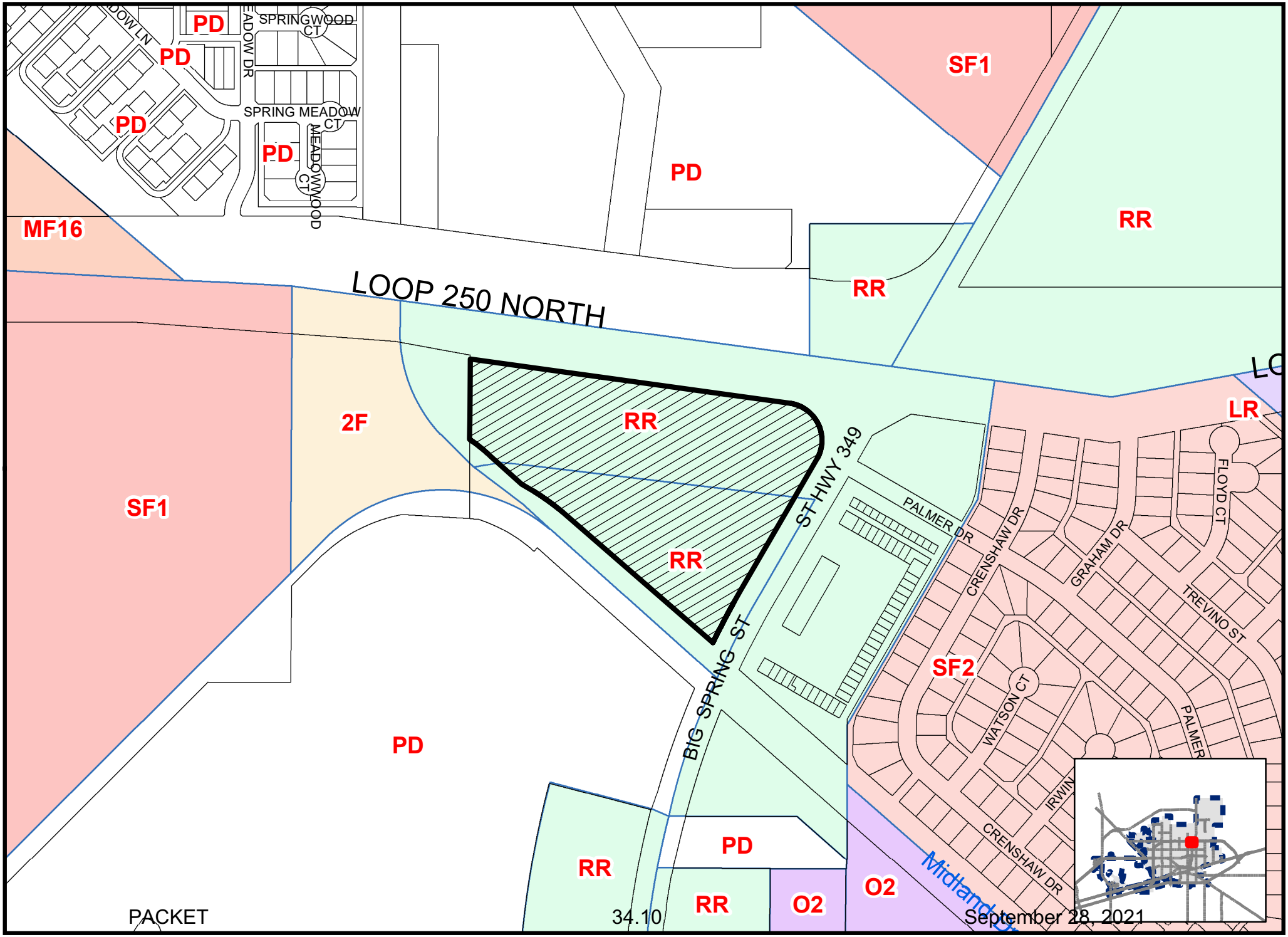
A motion granting Cactus Sign Company's appeal and reversing the Building Official's denial of a sign permit on Lot 1, Block 1, Claydesta Plaza North, Section 4, City and County of Midland, Texas. Generally located on the southwest corner of the intersection of North Big Spring Street and West 250 Loop North. (Council District 3)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



September 28, 2021



Map By ES 09/23/2021

Scale: 1" = 400'

ZONING MAP

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HAYASHI
JAPANESE HIBACHI & SUSHI


SOUTHBOUND
TRUCKS MUST
USE LOOP 250



BOARDS AND COMMISSIONS OF THE CITY OF MIDLAND
September 28, 2021

AIRPORT PLANNING AND DEVELOPMENT BOARD
(Advisory)
(Membership-10; Terms - 3 Years expiring 3-3-4.)

	Appt Date	Term Expires	Eligibility Expires
Nick Hood	09/15	Sept 30 2021	Sept 30 2021
Armand "Chip" Smith	09/18	Sept 30 2021	Sept 30 2024
Scooter Brown	09/16	Sept 30 2022	Sept 30 2022
Wes Reeves	08/15*	Sept 30 2023	Sept 30 2023
Justin Kuethe	09/19	Sept 30 2022	Sept 30 2025
Nick McClure	09/19	Sept 30 2022	Sept 30 2025
Gena Linebarger	09/20	Sept 30 2023	Sept 30 2026
Butch Morgan	09/20	Sept 30 2023	Sept 30 2026
Benjamin Fietz	09/20	Sept 30 2023	Sept 30 2026
Joshua Lorenz	09/20	Sept 30 2023	Sept 30 202

Justine Ruff (Liaison)
Lori Blong (Council Liaison)

Ex-Officio members are Earl Erdman and Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

ANIMAL SERVICES ADVISORY COMMISSION
(Advisory)
(Membership - 7; Terms - 4 Years)

	Appt Date	Term Expires	Eligibility Expires
Leah Lewis	09/17	Sept 30 2021	Sept 30 2025
Robert "Robin" Donnelly	11/13	Sept 30 2021	Sept 30 2021
Dr. (Erickson) Lee (Veterinarian)	05/14	Sept 30 2022	Sept 30 2022
Alyson Dial	09/18	Sept 30 2022	Sept 30 2026
Dr. J. Annette Jensen (Veterinarian)	04/20	Sept 30 2024	Sept 30 2028
Tasha Sport	04/20	Sept 30 2024	Sept 30 2028
Sharla Hotchkiss	04/20	Sept 30 2024	Sept 30 2028

Leah Lewis (Liasion)
Spencer Robnett (Council Liaison)

BUILDING AND FIRE CODE REVIEW COMMITTEE/CONSTRUCTION BOARD OF ADJUSTMENTS & APPEALS

(Membership – 9; Terms – 6 Years)

Shall consist of two architects, a fire protection contractor or specialist, a general contractor, an electrical contractor, a homebuilder, a plumbing and mechanical contractor, a structural engineer, a City Council Liaison

	Appt Date	Term Expires	Eligibility Expires
Ryan Almand (Electrical Contractor)	12/18	Sept 30 2024	Sept 30 2030
Jay Bradford (Architect)	12/18	Sept 30 2024	Sept 30 2030
Ron Ainsworth (Plumbing & Mechanical Contractor)	12/18	Sept 30 2024	Sept 30 2030
T.J. McClure (Architect)	12/18	Sept 30 2024	Sept 30 2030
Laurence Oeth (Structural Engineer)	12/18	Sept 30 2024	Sept 30 2030
David Hickman (Fire Protection)	12/18	Sept 30 2024	Sept 30 2030
Gary Glasscock (General Contractor)	12/18	Sept 30 2024	Sept 30 2030
Robert Anderson (Homebuilder)	12/18	Sept 30 2024	Sept 30 2030
Jeff Pinkstaff (Liaison)	12/18	Sept 30 2024	Sept 30 2030
Spencer Robnett (Council Liaison)			

CAPITAL IMPROVEMENT ADVISORY COMMITTEE

(Advisory)

(Membership – 7)

A minimum of 40% must be representative of real estate, development, or building industries who are not employees or officials of a political subdivision or governmental entity.)

	Appt Date
Carl Craigo	10/19
Walter Pate	06/18
Mark Payne	06/18
Courtney Black	06/18
Brian Sales	06/18
Chuck Harrington	06/18
Jose Ortiz (Liaison)	06/18
Lori Blong (Council Liaison)	

CITIZENS DEVELOPMENT AND HOTEL/MOTEL ADVISORY BOARD

(Advisory)

(Membership - 7; Terms - 2 Years Staggered)

4 2020, 3 -2021

	Appt Date	Term Expires	Eligibility Expires
Joey Hopkins	10/18	Sept 30 2022	Sept 30 2022
Alex Singh	10/18	Sept 30 2022	Sept 30 2022
Becky Wisdom	10/18	Sept 30 2022	Sept 30 2022
Brandon Ofield	09/20	Sept 30 2022	Sept 30 2024
Clint Williamson	04/21	Sept 30 2023	Sept 30 2025
Ellen K. Ramsey	10/18	Sept 30 2023	Sept 30 2023
Vicky Hailey	09/21	Sept 30 2023	Sept 30 2025
Amy Turner (Liaison)			
Lori Blong (Council Liaison)			

MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

Five Directors, Elected by Local Taxing Entities.
City Nominates/Cast Vote for one Director
(Terms - 2 Years)

	Appt Date	Term Expires
Robert McNaughton	11/15	Dec 31 2021

MIDLAND DEVELOPMENT CORPORATION

(Membership - 7; Terms -3 Years - Staggered)

	Appt Date	Term Expires	Eligibility Expires
Chase Gardaphe	01/19	Jan 14 2022	Jan 14 2025
Wesley Bownds	07/15*	Jan 14 2022	Jan 14 2022
Barry Simpson	01/19	Jan 14 2022	Jan 14 2025
Stephen Lowery	01/17	Jan 14 2023	Jan 14 2023
P Lourcey Sams	04/20	Jan 14 2023	Jan 14 2026
Jill Pennington	04/20	Jan 14 2023	Jan 14 2026
Brad Bullock	04/21	Jan 14 2024	Jan 14 2027

Amy Turner (Liaison)
Lori Blong (Council Liaison)

MIDLAND DOWNTOWN PARK CONSERVANCY BOARD

(Membership - 7; City Appoints 3 Seats; Terms -3 Years - Staggered)

	Appt Date	Term Expires	Eligibility Expires
Barry Beal Jr.	08/18	Sep 30 2024	Sep 30 2024
David Byrd	08/18	Sep 30 2023	Sep 30 2023
Sharla Hotchkiss	07/20*	Sep 30 2022	Sep 30 2025

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

	Appt Date	Term Expires	Eligibility Expires
Steve Jones	**09/08***	**Jan 1 2010**	**Jan 1 2012**
Cathy Oestmann	**11/05***	**Jan 1 2010**	**Jan 1 2010**
Vacancy		**Jan 1 2007**	
Vacancy		**Jan 1 2007**	
Vacancy		**Jan 1 2007**	
Vacancy		**Jan 1 2009**	
Curt Kamradt	**11/05***	**Jan 1 2014**	**Jan 1 2014**

Sharla Hotchkiss (Liaison)

MIDLAND HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 3 even & 2 odd.)

Appointments Made by Mayor (LGC 392.031)

	Appt Date	Term Expires
Sylvestor Cantu	09/18*	Oct 2021
Cheryl Wadley (Resident Commissioner)	11/19	Oct 2021
Wes Gotcher	09/20	Oct 2022
Robert Lehrer	09/20	Oct 2022
Latoya Mayberry	06/21	Oct 2023

Isaac Garnett (Staff Liasion)

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD

(Ad Hoc)

	Appt. Date
Vacancy	
W. L. “Scooter” Brown	09/04
Vacancy	
Richard Hatchett	11/08
Vacancy	
Ted H. Jones	09/04
Mitch Malouf	11/08
Christi Newton	09/04
Dan Rush	09/04

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making)

(Membership – 12 with 6 appointed by Midland; Terms - 2 Years Staggered; Can serve 3 terms)

	Appt Date	Term Expires	Eligibility Expires
E. J. Baldridge	10/18	Sept 30 2022	Sept 30 2024
Iris Foster	06/18*	Sept 30 2022	Sept 30 2024
Joseph Sanchez	12/19	Sept 30 2023	Sept 30 2025
Jack Ladd	07/20	Sept 30 2022	Sept 30 2026
Daniel Norwood	04/21	Sept 30 2023	Sept 30 2027
Elizabeth Haigler	04/21	Sept 30 2023	Sept 30 2027

Charles Harrington (Liaison)

OIL AND GAS ADVISORY COMMITTEE

(Advisory)
(Membership – 5; Terms – 3 Years expiring 2-2-1)
2 real property developer, real estate sales, or developer; 3 Lic. petroleum engineer, engineer w/ bachelor, or geologist

	Appt Date	Term Expires	Eligibility Expires
Bill Lanier (Real Estate)	09/18	Sept 30 2021	Sept 30 2024
Scott Bowden (Real Estate)	10/19	Sept 30 2022	Sept 30 2025
Ross Klabon (Petroleum Eng.)	10/19	Sept 30 2022	Sept 30 2025
Court Adkins (Petroleum Eng.)	09/17	Sept 30 2023	Sept 30 2023
Rhett Bullock (Petroleum Eng.)	09/21	Sept 30 2024	Sept 30 2026

Ron Jenkins (Liaison)

PARKS AND RECREATION COMMISSION

(Advisory)
(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	Appt Date	Term Expires	Eligibility Expires
Connie Ferguson	09/16	Sept 30 2022	Sept 30 2022
Stephanie Martin	10/16	Sept 30 2022	Sept 30 2022
Laura Smith	10/19	Sept 30 2022	Sept 30 2025
Francis Schammel	10/19	Sept 30 2022	Sept 30 2025
Susannah Prucka	04/20	Sept 30 2023	Sept 30 2026
Lynn Rogers	04/20	Sept 30 2023	Sept 30 2026
Dal Watson	09/20	Sept 30 2023	Sept 30 2026
Ron Stroman	09/20	Sept 30 2023	Sept 30 2026
Shirley Howard	02/16*	Sept 30 2024	Sept 30 2024

Cristina Odenburg-Burns (Liaison)
John Norman (Council Liaison)

PERMIAN BASIN COMMUNITY CENTER FOR MH/MR (PermiaCare)

(Decision Making)
(Membership - 2 (City); Terms - 2 Years)

	Appt Date	Term Expires
Ryan Peckham (City)	08/20	June 2022
Derek Cook (City)	06/21	June 2023

PERSONNEL BOARD OF APPEALS

(Decision Making)
(Membership - 3; No designated terms. Mayor appoints.)

	Appt. Date
Scott Dufford	01/14
Hugh A. "Andy" Shaffer	09/05
Patrick Payton	01/20
Mark Widman (Liaison)	

PLANNING AND ZONING COMMISSION

(Advisory & Decision Making)
(Membership - 7; Terms - 3 Years)

	Appt Date	Term Expires	Eligibility Expires
Chase Gardaphe	01/14*	Sept 30 2022	Sept 30 2022
Karmen Bryant	02/19*	Sept 30 2022	Sept 30 2025
Diane Williams	09/17	Sept 30 2023	Sept 30 2023
Lucy Sisniega	09/20	Sept 30 2023	Sept 30 2026
Stacey Jo Grosse	09/20	Sept 30 2023	Sept 30 2026
Zachary Deck	09/20	Sept 30 2023	Sept 30 2026
Adrian Carrasco	09/21	Sept 30 2024	Sept 30 2027
ALTERNATES:			
Emily Holeva	09/20	Sept 30 2023	Sept 30 2026
Beverly Dillow	09/21	Sept 30 2024	Sept 30 2027
Elizabeth Shaughnessy (Liaison)			

ZONING BOARD OF ADJUSTMENT AND AIRPORT ZONING BOARD OF ADJUSTMENT

(Decision Making)
(Membership - 5; Terms - 2 Years expiring 3 odd & 2 even.)

	Appt Date	Term Expires	Eligibility Expires
Reed Claybrook	03/19*	Sept 30 2022	Sept 30 2024
Derek Whiting	01/18*	Sept 30 2023	Sept 30 2023
E.J. Baldridge	02/18	Sept 30 2023	Sept 30 2023
Robert Gray	01/21	Sept 30 2024	Sept 30 2026
James Gerety	04/21	Sept 30 2024	Sept 30 2026
ALTERNATES: (not applicable to Airport Zoning)			
James Robert Franklin		Sept 30 2021	
VACANCY		**Sept 30 2020**	
VACANCY		**Sept 30 2020**	
VACANCY		**Sept 30 2020**	

* **Indicates appointment to an unexpired term.**

AIRPORT PLANNING & DEVELOPMENT BOARD
(Advisory; Membership - 10: Terms - 3 Years Expiring 3-3-4)
Ex-Officio Members are the City Manager and the City Attorney. The Secretary is the Director of Aviation.
September 2020 - August 2021

MEMBER	TERM EXPIRES	ATTENDANCE	MEETINGS ATTENDED	TOTAL MTGS	ELIGIBLE	NOTES
Nick Hood	Sept 30 2021	63%	5	8	No	
Armand "Chip" Smith	Sept 30 2021	50%	4	8	Yes	
Scooter Brown	Sept 30 2022	100%	8	8		
Wes Reeves	Sept 30 2023	88%	7	8		
Justin Kuethe	Sept 30 2022	63%	5	8		
Nick McClure	Sept 30 2022	88%	7	8		
Gena Linegarger	Sept 30 2023	75%	6	8		
Butch Morgan	Sept 30 2023	88%	7	8		
Benjamin Fietz	Sept 30 2023	75%	6	8		
Joshua Lorenz	Sept 30 2023	50%	4	8		
Applicants Name	Additional Boards Applying to	COUNCIL NOTES				
Robert Gary Gray (D1)						
Ken Sapien (D1)						
Clayton Black (D3)						
Beverly Dillow (D4)	P&Z					
Reggie Lawrence (D1)	CDHMAB, MDC, PBA					
Winston Kelly (D3)						
Dave Joyner (D3)						
Wesley Webb (D4)						

David Goll (D1)
Laura Retzer (D3)
Aaron Kinsey (D4)
Garrett Donnelly (D3)

ANIMAL SERVICES ADVISORY COMMISSION

(Decision Making; Membership - 6: Terms - 4 Years Expiring 4 odd and 2 even)

September 2020 - August 2021

MEMBER	TERM EXPIRES	ATTENDANCE	MEETINGS ATTENDED	TOTAL MTGS	ELIGIBLE	NOTES
Leah Lewis	Sept 30 2021	100%	7	7	Yes	Still Interested in Serving
Robert "Robin" Donnelly	Sept 30 2021	43%	3	7	No	
Dr. Laura (Erickson) Lee (Vet)	Sept 30 2022	71%	5	7		
Alyson Dial	Sept 30 2022	86%	6	7		
Dr. J. Annette Jensen (Vet)	Sept 30 2024	71%	5	7		
Tasha Sport	Sept 30 2024	100%	7	7		
Sharla Hotchkiss	Sept 30 2024	100%	7	7		

APPLICANTS NAME	Additional Boards Applying to	NOTES
Sierra Strickland (D1)		
Vanessa Medina (D3)		
Amy Barnhill (D1)	MHAC, P&Z, MDC	
Caitlin Egan (D3)		
Kenneth Woods (D4)	P&R	
Monica Perales (D3)		

MIDLAND HOUSING AUTHORITY COMMISSION
(Advisory; Membership - 5: Terms - 2 Years Expiring 2-3)
September 2020 - August 2021

MEMBER	TERM EXPIRES	ATTENDANCE	MEETINGS ATTENDED	TOTAL MTGS	ELIGIBLE	NOTES
Sylvester Cantu	Oct 30 2021	100%	4	4		Still Intrested in Serving
Cheryl Wadley (Res. Comm.)	Oct 30 2021	100%	4	4		Still Intrested in Serving
Wes Gotcher	Oct 30 2022	25%	1	4		
Robert Lehrer	Oct 30 2022	100%	4	4		
Latoya Mayberry	Oct 30 2023	0%	0	4		Appointed June 2021

Applicants Name	Additional Boards Applying to	COUNCIL NOTES
Ryan Rampton (D3)	P & R	
Amy Barnhill (D1)	ASAC, P&Z, MDC	
Adrian Urquidi (D1)	P&R	
Brandon Bradley (D2)		
Sheena Green (D3)		
Marjorie McQuerry (D1)		
Matthew Galindo (D2)	P&R	

OIL AND GAS ADVISORY COMMITTEE

(Advisory; Membership - 5: Terms - 3 Years Expiring 2-2-1)

2 Real Property Developer, Real Estate Sales, or Developer; 3 Lic. Petroleum Engineer, Engineer w/ Bachelor, or Geologist

September 2020 - August 2021

MEMBER	TERM EXPIRES	ATTENDANCE	MEETINGS ATTENDED	TOTAL MTGS	ELIGIBLE	NOTES
Bill Lanier (Real Estate)	Sept 30 2021	78%	7	9	Yes	Not intrested in serving again
Scott Bowden (Real Estate)	Sept 30 2022	67%	6	9		
Ross Klabon (Petro. Eng.)	Sept 30 2022	78%	7	9		
Court Adkins (Petro. Eng.)	Sept 30 2023	67%	6	9		
Rhett Bullock (Petr En)	Sept 30 2024	0%	0	9		Appointed 9/14/2021
Applicants Name	Additional Boards Applying to	COUNCIL NOTES				
Layton Hargesheimer (D3)						
Juan Correa (D3)						
Jacob Holloman (D3)	P & R					
Cameron Willmann (D3)						

APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Date: 8-11-21

Name: Amy Barnhill

Phone: 432-262-3473 **(Home)**

Address: 3801 Crestgate Avenue

(Business)

Midland Texas 79707

Email: ABarnhill712@gmail.com

(City) (State) (Zip)

I am ____ I am not ____ a U.S. Citizen

Please tell us about yourself:

Are you a graduate of Midland 101? ____yes _____no

I have lived in Midland 24 **years.**

Occupation: Environmental Specialist

Professional and/or Community Activities:

Board Member Ellen Noel Museum

Board Member Cas de Amigos

Volunteer for Meals on Wheels

What is your personal vision for the City?

I want to see our city prosper but not to the detriment of its citizens. I want our community to embrace its strengths and reach out to its citizens who struggle. I envision a community who works together to make our city great.

Please specify any time constraints you may have.

I do work a full time job but have the flexibility to attend meetings and attend community events.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Midland Housing Authority Commission

Animal Services Advisory Committee

Please tell us why you are interested in serving on this board or commission.

I have a heart for those who cannot advocate for themselves and often times that is the elderly and animals. I believe these boards are a good place to start in service of the city.

What contribution would you most like to make?

I want to add value in whatever manner I can whether it is a new perspective or a fresh opinion. I want to serve the city of Midland as a valued member of the community and I want to contribute to its continued success.

Additional pertinent information or references:

I believe I have a lot to offer in terms of serving my community. I have lived in Midland for 24 years, had children and grandchildren in various schools and attend a couple of different churches. I have sat back and watched and listened and tried to learn a few things about our community. I believe it is now time to contribute.

(2) Name of Board/Commission:

Planning and Zoning Commission

Midland Development Corporation

What contribution would you most like to make?

These are other boards/commissions that I have interest in. I find it interesting how communities decide what businesses are of value to the community and the processes involved with the development and zoning of such entities.

Additional pertinent information or references:

I am a passionate worker bee. When I get involved with something I try to put a lot of passion behind it. I enjoy volunteering and working along side others to make our community a great place to be.

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

_____

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

MIDLAND
Feel the Energy!

APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Date: 01/21/21

Name: Clayton Black

Phone: (432) 528-0461 (Home)

Address: #9 Lafayette Place

Same (Business)

Midland TX 79705

Email: claytonpblack@hotmail.com

(City) (State) (Zip)

I am ☑ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 30± years. (Midland & Martin Cos combined)

Are you a graduate of Midland 101? ☐ yes ☑ no

Occupation: Self Employed (oil/gas)

Professional and/or Community Activities: Gubanatorial Appointee: Currently serve on Tex. Appr. Lic. & Cert. Board, Graduate of Leadership Midland (2009), Have & still serve(d) on 7 Comittees at Midland C.C., Republican Co. Chairman (Martin Co.) Delegate to State Republican Convention, Served on City of Lubbock's Structural Standards Commission *(Please see attached resume for full list)

What is your personal vision for the City?

To see Midland, TX continue to grow and develop both on an economic & state level through increased oil/gas exploration & to try and diversify in to other areas.

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Airport Planning & Development Board

Please tell us why you are interested in serving on this board or commission.

I Consider this board to be a very key/instrumental entity for Midland & I believe that I am qualified to serve in this capacity. I am currently (2) Cessna Citation's that are housed at MAF and consider myself an aircraft enthusiast, & I understand how important our airports are to our city & would like to serve.

What contribution would you most like to make?

Once again, I would like to see Midland grow & develop in as many ways as possible and receive the recognition that we deserve and I believe that our airports are very important to our economic success. I would like to use my age, wisdom, education, & experience in any way possible to help contribute to this board!

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant

Clayton Black

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

CLAYTON P. BLACK

9 Lafayette Place, Midland, TX. 79705
claytonpblack@hotmail.com
www.lazylevenranch.com
(432) 458-3291 - business; (432) 528-0461 - cell

OBJECTIVE:
I am an experienced and self-motivated professional with polished managerial, engineering, and sales skills seeking to advance my career and contribute to the community in which I live.

EMPLOYMENT:

Lazy Leven Ranch, LLC. Stanton, TX.
President/Owner. Responsible for operating all aspects of family owned business including buying/selling of cattle, oil/gas leases and contracts, pipeline easements/right of way agreements, water sales, wind turbine leases and contracts. Recently completed course at Texas Tech University on Wind Power Systems, Technology and Economics. 06/2006-present.

Anchor Retaining Wall Systems, Denver, CO.
Regional Engineer/Regional Account Manager. Responsible for **managing** and **consulting** with licensee's in 18 states across the U.S. Primary focus is on Engineered Segmental Retaining Walls and its continued growth within these markets. Act as a consultant to specifying engineers and help design using mechanically stabilized earth technologies via the use of Anchor Block and give presentations as needed. Work with the sales team regularly and meet with the General Manager of each location on a quarterly basis to discuss sales objectives and how these goals can be met. 03/2005-06/2006

Contech Construction Products, Denver, CO & Lubbock, TX
Sales Engineer. Responsible for **sales** and **promotion** of over 100 products including storm sewer systems, underground storage detention systems, erosion control products and bridge structures with emphasis on corrugated metal and pvc pipes. Maintain job-site service to civil engineering and construction sites in Colorado and Texas. Assist specifying engineers with product design. Initiate all contractual agreements. 11/1997-03/2005

Texas Tech University, Lubbock, TX.
Research Assistant, Plant and Soil Science. Research team headed by Dr. Richard Zartman. Studies include carbon-based polymers as soil anti-crusting agents for crop seedling emergence, and application of biosolids to a semi-arid region in Sierra Blanca, Texas, as an alternative to land filling. 05/1997-11/1997

Trace Analysis Environmental Lab, Lubbock, TX.
Chemist. Performed numerous jobs including prep & analysis of various samples primarily for trace metals. Experienced in metals, wet chemical, and T.P.H. environmental labs instruments. 08/1995-05/1997

Environmental Hazard Consultants Inc., Lubbock, TX.
General Supervisor of Field Scouts & Fertilizer Sales. Recommended application of fertilizer use on cotton plants to stimulate growth and produce higher yields. Conducted general entomology tasks. 04/1995-08/1995

Smith Barney Shearson, Midland, TX.
Financial Advisor. 1992-1994

Du Pont/Stanton Chemical Co., Stanton, TX.
Sales Representative. Recommended application of Du Pont chemicals to producers. 1990

Texas Pest Management Association, Stanton, TX.
Head Field Scout. Recorded and analyzed data for referral to chemical companies. 1987-1989 (summers)

EDUCATION:

***Master of Science, Environmental Technology Management**, Department of Civil Engineering.*
Minors in Range and Wildlife Management and Geography.
Texas Tech University, Lubbock, TX. 1997 ***GPA: 3.4***

***Bachelor of Science, Management**, Department of Human Sciences.*
Texas Tech University, Lubbock, TX. 1992

Graduate Course Work

- **Thesis:** Research studies using cross-linked polymers for water retention in crop soil environments.
- Advanced Work in Specific Fields (Civil Engineering)
- Principles of Environmental Technology Management (Environmental Engineering)
- Environmental Impact Analysis (Civil Engineering)
- Economics of Manufacturing Systems (Industrial Engineering)
- Risk Management and Public Policy (Civil Engineering)
- Advanced Environmental Soil Science (Plant and Soil Science)
- Environmental Systems Models and Information Reporting (Environmental Engineering)
- Water and Wastewater Analysis (Civil Engineering)
- Organization and Management (Business Administration)

ORGANIZATIONS/CIVIC WORK:

Appointed by Gov. Rick Perry to serve on Texas State Board: Texas Appraiser Licensing & Certification Board. 2013-present. Re-Appointed by Governor Abbott in 2017 for another term

Midland Country Club: Golf Committee, Water Committee, Membership Committee, Finance Committee, Long Range Planning Committee, Board nominating/Search Committee, House Committee

NRA, Amer. Angus Assoc, Texas & Southwestern Cattle Raisers Assoc, Ducks Unlimited (lifetime sponsor). 2009-present

Leadership Midland 2008-2009

National Concrete & Masonry Association (NCMA) Certified Instructor. 2005

American Society of Civil Engineers, Denver, CO. & Lubbock, TX. 1998-present.

Texas Society of Professional Engineers, Lubbock, TX. 1998-2001

Republican Party of Texas:
Republican County Chairman, Martin Co. 2017-present; Republican Precinct Chairman for #62 in Lubbock, TX.; Lubbock County Republican Party Officer Exploratory Committee 2000; Officer (Sergeant at Arms) - Lubbock County Republican Convention 2000; Delegate – Texas State Republican Convention 2000

City of Lubbock – Structural Standards Commission 2000-2001

Lubbock Chamber of Commerce:
Legislative Committee & Transportation Committee 1999-2001; Leadership Lubbock 1999-2000

Broadway Festivals, Lubbock, TX. 4th on Broadway Logistics Chairman 1999

First United Methodist Church, Lubbock, TX.
FUMC Leadership Class; Lay Ministry. 1998-2001

Lubbock Lions Club, Lubbock, TX. 1998-2001.

Chamber of Commerce, Midland, TX. 1993

Midland, TX Jaycees:
Labor Day Rest Stop Chairman 1993; Mardi Gras Cook Off Chairman 1994.

Junior Achievement, Midland, TX. 1993-1994

Texas Tech University Student Senator: 1995-1996
Vice-Chairman of Student Services Committee; Student Service Fee Advisory Board

Phi Gamma Delta (Fiji) 1988-present:
Alumni Board of Chapter Advisors, Graduate Relations Chairman 1994, Inter Fraternity Council Representative 1991, Social Chairman and Rush Chairman 1990, Snowy White Owl Award 1990-1992, and 1994-1995, Awards Cup Chairman 1989, Intramural Football and Softball 1988-1992.


Black Ventures, LLC
Clayton Black
Owner


Black Ventures, LLC
#9 Lafayette Place
Midland, TX 79705
432.528.0461
claytonpblack@hotmail.com

APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Date: 6/1/2021

Name: Brandon Bradley

Phone: 432-260-1904 **(Home)**

Address: 1300 Lynn Avenue

432-934-2985 **(Business)**

Midland TX 79705

Email: brandonbradley89@yahoo.com

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 31 **years.**

Occupation:

Professional and/or Community Activities:

Entrepreneur

What is your personal vision for the City?

Growth & Diversity

Please specify any time constraints you may have.

Full time business owner and new father

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Midland Housing Authority Commission

Please tell us why you are interested in serving on this board or commission.

Housing is a great concern of mine.

What contribution would you most like to make?

To see an African American Chamber of Commerce or Business Collective start and educate, empower and market those of us wanting to be productive.

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

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City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433

Submit Via Email

Print Application

APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Date: 8/5/2021

Name: JUAN CARLOS CORREA

Phone: 432-853-2701 **(Home)**

Address: 3107 N BIG SPRING ST

432-247-8840 **(Business)**

MIDLAND TEXAS 79705

Email: JCCORREA@ENGVENTIONS.COM

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 7 **years.**

Occupation: CEO | ENGINEERING DIRECTOR

Professional and/or Community Activities:

Member of: ASME (American Society of Mechanical Engineers), SPE (Society of Petroleum Engineers), AOPA (Airtcraft Owners, anc

BAM BIZ HUB (Non Profit Community Program) Board member Oil & Gas Industry

What is your personal vision for the City?

Midland is a great place to live, where plenty of opportunities are just around the corner. We are at the heart of the one most vibrant

Energy foci on the planet, Oil & Gas, Wind Energy, and commerce it is the ideal place to create, and test novel endeavors. Plenty of

cultural values and traditions, besides industrial, and health care facilities, Midland is the perfect place to grow, and develop communi

Please specify any time constraints you may have.

I do not have a any constraints that may interfere with the position at the Advisory Committee

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Oil and Gas Advisory Committee

Please tell us why you are interested in serving on this board or commission.

In my 35 years in the oil industry, I have gained vast experience in Oil & Gas operations, combined with my ability to develop enginee

What contribution would you most like to make?

Ability to revise, and review working permit applications in the city region of competence

Interact with controllers and regulatory officials, to providing technical expertise

Disposition to mediate and recommend non-bias, and fair positions, in the case of disagreements with involved parts

Additional pertinent information or references:

Former UTPB professor Michael Crain. MCrain@BAMConsulting.com. 432-599-4386

Dr. Jose Delgado. Jodelo314@gmail.com. 432-260-9750

Mrs. Janeth Delgado.JanethDelgado63@yahoo.com. 432-770-3089

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

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Submit Via Email

Print Application

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PLEASE TYPE OR PRINT CLEARLY:

Date: 8/30/2021

Name: Matthew Reyes Galindo

Phone: 432-381-4959 **(Home)**

Address: 1118 E. Dormard Ave.

(Business)

Midland Tx 79705

Email: Matt.Galindo@yahoo.com

(City) (State) (Zip)

I am [✔] **I am not** [ ] **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? [ ] **yes** [✔] **no**

I have lived in Midland 33 **years.**

Occupation: Maintenenace Scheduler (ProPetro Services)

Professional and/or Community Activities:

Acive in education through out Midland, currently serve on the Education Committee for the Midland Chamber of Commerce.

Bunche Elementary Liason for Partners in Education and a member of the Superintenedent Community Advisory Committee for MISD

What is your personal vision for the City?

My vision for Midland moving forward is one the focuses on family, community, education, economic prosperity,

and the equitable delivery of municipal services for all.

Please specify any time constraints you may have.

I am available Mid morning to afternoon and anytime after 4pm.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Parks and Recreation Commission:

Please tell us why you are interested in serving on this board or commission.

As a young father of 4, parks and recreation is a part of my families everyday life.

Looking to work with leaders and community members to impove parks and keep them safe for all to enjoy

What contribution would you most like to make?

I bring a father and life long Midlander perspective. This I believe would help me contribute in making decissions and envoling the community when it comes to getting our parks up to par and safe for all to enjoy.

Additional pertinent information or references:

Ed Mayberry- 432-638-3504

Courtney Rattliff- 214-801-9670

(2) Name of Board/Commission:

Midland Housing Authority Commission:

What contribution would you most like to make?

Assist the needs of the communitys low-income housing and educating the community about resouces available.

Additional pertinent information or references:

Ed Mayberry- 432-638-3504

Courtney Ratliff- 2174-801-9670

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Signature of Applicant

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Date: 8-30-21

Name: Beverly K. Dillow

Phone: 432-557-5650 **(Home)**

Address: 6312 Haywood Drive

_____ **(Business)**

Midland, TX 79707

Email: beverlydillow@me.com

(City) **(State)** **(Zip)**

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 40plus **years.**

Occupation: Homemaker/Owner,Operator of Comet Cleaners and Laundry

Professional and/or Community Activities:

What is your personal vision for the City?

I want to see Midland clean and safe and I would love to be a part of a group that would encourage those things. Also, would love to see Midland up to date and see steady businesses thrive.

Please specify any time constraints you may have.

The only issue would be when we travel.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Planning and Zoning

Please tell us why you are interested in serving on this board or commission.

I would think the Planning and Zoning Commission would be the avenue in helping our city with the ideas of being safe, clean and productive.

What contribution would you most like to make?

My ideas and thoughts on how to make Midland safe, clean and thriving. When we travel, I do see how other cities are kept and I have always hoped to see some of that here in Midland.

Additional pertinent information or references:

We own our business and have several locations and we work hard at making them attractive and I think that is a plus for Midland.

(2) Name of Board/Commission:

Airport

What contribution would you most like to make?

In traveling I've seen how other airports operate and how they look. I would hope that I would have ideas for ours as well.

Additional pertinent information or references:

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Signature of Applicant

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PLEASE TYPE OR PRINT CLEARLY:

Date: 1/4/2021

Name: Robert Gary Gray

Phone: 4323527552 **(Home)**

Address: 4309 Greenville Dr.

4322215103 **(Business)**

Midland TX 79707

(City) (State) (Zip)

Email: garygray@me.com

I am [✓] **I am not** [ ] **a U.S. Citizen**

(I did graduate from Leadership Midland in the 1990s)

Please tell us about yourself:

Are you a graduate of Midland 101? [ ] **yes** [✓] **no**

I have lived in Midland 25 **years.**

Occupation: Business owner / Physical Therapist

Professional and/or Community Activities:

Teen Flow Board of Directors (current), Midland Children's Rehab Center, Medical Advisory Board (current),

Green Tree Country Club Board of Governors (current) and past President, American Cancer Society (previous),

Texas Board of Physical Therapy Examiners (2006-2019, 6 years as Chair), radio broadcaster for MISD varsity football (current)

What is your personal vision for the City?

A thriving City that is attractive to businesses, entrepreneurs, and familes. To attain such we must improve all aspects of our environment and community including housing, schools, recreation and certainly the airport and all it involves.

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Airport Planning and Development Board

Please tell us why you are interested in serving on this board or commission.

I find myself traveling 30-40 times per year from MAF and feel that my input from a traveler/user perspective would have value.

What contribution would you most like to make?

Participation in prudent decision making that benefits all users, employees, contractors and tennants of the Midland airport.

Additional pertinent information or references:

Reference - Mayor Patrick Payton

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant



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PLEASE TYPE OR PRINT CLEARLY:

Date: 8/31/2021

Name: Caitlin Egan

Phone: 432-638-8309 **(Home)**

N/A **(Business)**

Address: 1601 W Pine Ave

Midland Texas 79705

(City) (State) (Zip)

Email: caitlineganpierce@gmail.com

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 14 **years.**

Occupation: Landman

Professional and/or Community Activities:

I am a former veterinary technician and currently serve on the Board of Fix West Texas. I am also a volunteer and foster for Permian Basin Animal Advocates.

What is your personal vision for the City?

I would love to create an understanding for the need for animal welfare in this city. Push low cost spay/neuter and educate our community of the importance of spay/neuter and vaccinations. We need to educate our community on the options for surrendering an animal as well. MAS should be last resort! We must encourage owners to work with rescues to safely place their pet.

Please specify any time constraints you may have.

I work from home and generally have no issue with child care. Time constraints are of little issue.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Animal Advisory Commission

Please tell us why you are interested in serving on this board or commission.

As a former vet tech, Board Member of Fix West Texas and a volunteer/foster at Permian Basin Animal Advocates, animals are my passion. I am also very able to put aside emotion when necessary to view things in a clear and matter of fact manner.

What contribution would you most like to make?

I would love to help educate our community about animal welfare in hopes to relieve the burden that our employees at MAS have been forced to bear. We can reduce the number of animals coming into MAS with the proper resources and education for our community.

Additional pertinent information or references:

References: Kelsey Kuhrt: 432-661-2859

Karen Patterson: 254-715-2815

Jaime Alexander: 469-964-6473

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant

Caitlin Egan

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PLEASE TYPE OR PRINT CLEARLY:

Date: June 2, 2021

Name: Sheena R. Green

Phone: 432-210-8823 **(Home)**

Address: 2411 Haynes Dr

432-682-9701 **(Business)**

Midland TX 79705

Email: sgreen1182@gmail.com

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☑ **yes** ☐ **no**

I have lived in Midland 29 **years.**

Occupation: Development Director

Professional and/or Community Activities:

Development Director at Casa de Amigos of Midland, I currently serve the community of Midland TX through my role at Casa de Amig

My poistion allows me to build strong community relationships and collaborate with other nonprofits.

What is your personal vision for the City?

My vision for the City of Midland, TX is to help improve the overall well-being of all residents. Educaiton plays a large role in the succe

and stability of personal growth and self-awareness. My vision is to help guide Midland residence to the resources that Midland has to

I would like to be apart of Midland's continual growth and resources in my community.

Please specify any time constraints you may have.

I work full-time Monday-Friday 9am-5pm but my lunch hour is open, and weekends.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

I'm interested in the Midland Housing Authority Commission

Please tell us why you are interested in serving on this board or commission.

My knowledge of Midland and its resources makes me an ideal candidate for the Housing commission. Previous employment

opportunities and maturation introduced me to the importance of reliable, safe housing for everyone.

What contribution would you most like to make?

I'm at an age in my life that I'm realizing more and more how important a community is, I would like to be a voice for those who don't r

they have a voice. An advocate for people in the Midland community who don't understand the resources and support that our commu

has to offer to its citizens.

Additional pertinent information or references:

I've made wonderful connections working in the nonprofit sector over the last 10 plus years. Mrs. Michelle Evans- United Way Midlan

Mrs. Tonya Eckert- Casa de Amigos Midland, Mrs. Sherly Howard- Negro Professional Business Women and so many more.

(2) Name of Board/Commission:

Midland Housing Authority Commission

What contribution would you most like to make?

A voice for those in need. I'm familar with all sides of town in Midland County and I know my open-arm policy would be beneficial to M

residences.

Additional pertinent information or references:

I was the Regional Director/Membership Manager at GSDSW, Girl Scouts of the Desert Southwest for 5yrs. During that time I was ab

Make some great connections and friends. Mrs. Geriann Green - lifetime Girl Scout, Mrs. Laurie Johnson- NMC, and so many more.

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Sheena R Green Digitally signed by Sheena R Green
Date: 2021.06.02 10:26:55 -05'00'

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City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

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PLEASE TYPE OR PRINT CLEARLY:

Date: 7/19/2021

Name: Layton Hargesheimer

Phone: 432-413-7920 **(Home)**

Address: 2802 Lockheed Dr

432-687-3700 **(Business)**

Midland Texas 79701

(City) (State) (Zip)

Email: LaytonH@hannathon.com

I am [✔] **I am not** [ ] **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? [ ] **yes** [✔] **no**

I have lived in Midland 24 **years.**

Occupation: Petroleum Engineering

Professional and/or Community Activities:

Active Volunteer and Member of Redeemer Church of Midland

Member of the Society of Petroleum Engineers

What is your personal vision for the City?

My vision is to ensure that the city of Midland maintains the unique and valuable community it currently has while we continue to lead and grow.

Please specify any time constraints you may have.

none

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Oil and Gas Advisory Committee (Petroleum Engineer)

Please tell us why you are interested in serving on this board or commission.

I am interested in this board to make certain Midland's resources are developed adequately while making our city and comunity first priority. The Oil and Gas industry has been a passion and area i have been around my entire life.

What contribution would you most like to make?

To serve the City of Midland by offering my oil and gas experiance and knowledge as an Petroleum Engineer. I will commit to the citizens of Midland to serve in the best interest of our city with diligence and integrity.

Bachelor of Science in Petroleum Engineering fromt the University of Oklahoma

Additional pertinent information or references:

Dan Hord III , 432-253-7805 , danhord@hedlocinv.com

Randy Prude , 432-685-1980 , rprude@mcounty.com

Justin Kuethe , 432-238-1456 , justink@hannathon.com

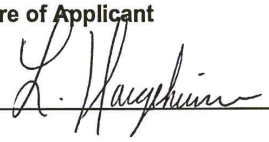
(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant



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PLEASE TYPE OR PRINT CLEARLY:

Date: 9/16/2021

Name: Dave Joyner

Phone: (432)638-9230 **(Home)**

Address: 405 W. Broadway St

(432)218-8549 **(Business)**

Midland TX 79701

Email: dave.joyner@gmail.com

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 13.5 **years.**

Occupation: Landman - Oil & Gas Investments

Professional and/or Community Activities:

President of University of Texas Alumni - Midland Chapter, Member- PBLA, First Presbyterian Church - Diaconate Facilitator,

Volunteer Tutor - 1to1 Midland High School tutoring program, Midland Education Foundation - Advisory Council Member, Young Life

Midland - Volunteer Leader, MISD - Key Communicator

What is your personal vision for the City?

Midland is a town with rich history and a bright future. It is a wonderful place to raise my family and I plan to live and work in Midland

for the rest of my career. I hope Midland continues on its path to a modern, diverse community where my children will want to raise

their families as well.

Please specify any time constraints you may have.

I am self-employed and very flexible scheduling-wise.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Airport Board

Please tell us why you are interested in serving on this board or commission.

I have been a pilot for the last 3 years and am interested in help guiding the future of Midland's rich general avaition community.

What contribution would you most like to make?

I would like to be a voice for not just general avaition pilots, but for community members as a whole on the airport board.

Additional pertinent information or references:

Ferrell Davis - (432) 559-6873

Wes Perry - (432) 413-9000

(2) Name of Board/Commission:

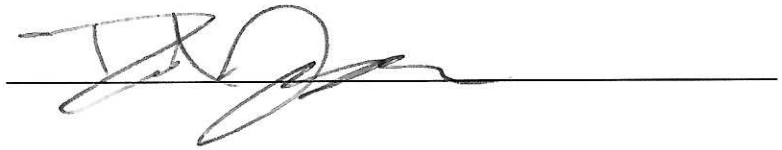
N/A

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant



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PLEASE TYPE OR PRINT CLEARLY:

Date: 8/24/2021

Name: Jacob Holloman

Phone: 7138051306 **(Home)**

Address: 1608 N J St

4326834391 **(Business)**

Midland TX 79701

Email: jacob.holloman@gmail.com

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 7 **years.**

Occupation: Consulting Engineer

Professional and/or Community Activities:

Society of Pretorluem Engineers

Professional Engineer

What is your personal vision for the City?

A city that grows to become a place people move to other than got a job here.

There is a lot of potential here, but most people don't realize it.

I want a city that people know what there is to do and become engaged with the city.

Please specify any time constraints you may have.

Most evenings doing work due to me having small children. Otherwise my schedule is flexible

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Oil and Gas Commission

Please tell us why you are interested in serving on this board or commission.

OIl and Gas is an area i am very familar with.

What contribution would you most like to make?

Additional pertinent information or references:

(2) Name of Board/Commission:

Parks and Recreation Commission

What contribution would you most like to make?

To help midland become more of a permanent place for people to be and not just a stop in their old and gas careers

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Jacob Holloman

Digitally signed by Jacob Holloman
DN: cn=Jacob Holloman, o, ou, email=jacob.holloman@gmail.com, c=US
Date: 2021.08.24 10:28:49 -05'00'

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

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PLEASE TYPE OR PRINT CLEARLY:

Date: 5/24/2021

Name: Marjorie McQuerry

Phone: 432-528-4374 **(Home)**

Address: 3320 Haynes Ave

(Business)

Midland Tx 79707

Email: marjimcq@gmail.com

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 62 **years.**

Occupation: Staff Land Coordinator

Professional and/or Community Activities:

What is your personal vision for the City?

Please specify any time constraints you may have.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

City of Midland Housing Authority

Please tell us why you are interested in serving on this board or commission.

Have been on this board for a few years. Was unaware that I had been removed. No meetings were held in person during 2020 but attended remotely when meetings were held. I am familiar with the agency and have attended training.

_____

What contribution would you most like to make?

_____

_____

_____

Additional pertinent information or references:

_____

_____

_____

(2) Name of Board/Commission:

_____

_____

_____

What contribution would you most like to make?

_____

_____

_____

Additional pertinent information or references:

_____

_____

_____

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Signature of Applicant

Marjorie McQuerry

Digitally signed by Marjorie McQuerry
DN: CN=Marjorie McQuerry, E=marjimcq@gmail.com
Reason: I am the author of this document
Location: your signing location here
Date: 2021-05-24 15:37:31
Foxit PhantomPDF Version: 10.0.0

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PLEASE TYPE OR PRINT CLEARLY:

Date: 9/27/2021

Name: Reggie Lawrence

Phone: 432.770.0881 **(Home)**

Address: 4721 Timber Lane

(Business)

Midland TX 79707

Email: Reggie@LawrenceTX.com

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☑ **yes** ☐ **no**

I have lived in Midland 18 **years.**

Occupation: Self Employed

Professional and/or Community Activities:

Business owner 2000-Present. City Development Advisory Committee 2010-2014. City of Midland Planning & Zoning Commissioner 2013-Present; Chair 2020-2021. Midcities Community Church member 1987-2013; Stonegate 2013-Present. Permian Basin Petroleum Association 2010-Present.

What is your personal vision for the City?

Over the years, as time seems to move faster, I've realized how slowly things have changed for our city. There are many decisions that need to be methodically made in order for time to move into place and bring to fruition the outcome of decisions. Without explanation, this statement may seem negative, but it is not. I see now, how and why, it is so important to have good leadership.

Please specify any time constraints you may have.

I'm flexible.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Midland Development Corporation; Airport Planning and Development Board; Personnel Board of Appeals

Citizens Development and Hotel/Motel Advisory Board

Please tell us why you are interested in serving on this board or commission.

Being in business for most of my life, I have learned to appreciate large budgets and understand how to navigatate through rough financial times while maintaining the financial viability of a business.

What contribution would you most like to make?

A healthy vibrant city.

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant



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PLEASE TYPE OR PRINT CLEARLY:

Date: 9/15/2021

Name: Winston Kelly

Phone: 432-853-7000 **(Home)**

Address: 2610 Inwood Ct

432-853-7000 **(Business)**

Midland TX 79705

(City) (State) (Zip)

Email: WinstonKelly@gmail.com

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☑ **yes** ☐ **no**

I have lived in Midland 30 **years.**

Occupation: Petroleum Engineer & Private Pilot

Professional and/or Community Activities:

2012 Leadership Midland Graduate. Midland Young Life Christian Ministry former campaign leader. West Texas Geological Society member. Society of Petroleum Engineers member. Current Quail Point HOA President (5 yrs). First Presbeterian Church member. Midland High School grad 2003. University of Oklahoma Petroleum Engineering Degree. Instrument Rated Private Pilot, Jet Owner.

What is your personal vision for the City?

To make Midland a first class city that not only thrives as an elite business climate but also in friendly and family oriented values. A city that uses it capabilties wisely & can rise to meet current and future challenges by focusing on public safety, education & health, transportation and infrastructure, and the overall quality of all Midlanders.

Please specify any time constraints you may have.

No time constraints. I am able and willing to meet whenever for any amount of time as necessary.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Airport Planning & Development Board

Please tell us why you are interested in serving on this board or commission.

As an insturment rated private pilot for over 16 years I have a deep passion and interest in aviation.

What contribution would you most like to make?

I would like to be a fresh young mind capable of fairly listening & understanding tasks, then making the correct educated decisions that benefit long term goals. I can do this by applying my skills learned in the oil & gas industry as well as experience in major development projects, I have experience serving on nonprofit & commercial boards and work professionally with others.

Additional pertinent information or references:

Wes Reeves - Fellow Pilot & Aviation colleague

Jeff Salehi - Business Partner

Wes Perry - Family Friend & Character Reference

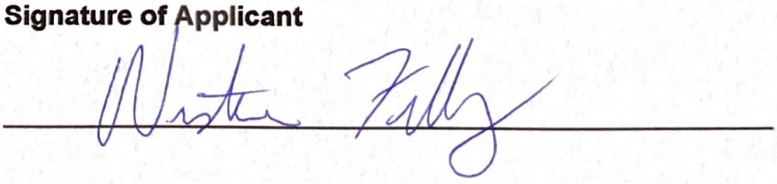
(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Date: 9/3/2021

Name: Monica Perales

Phone: 956-235-3417 **(Home)**

Address: 2600 McClintic Street

432-687-1777 **(Business)**

Midland TX 79705

Email: monicap@forl.com

(City) (State) (Zip)

I am [✔] **I am not** [ ] **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? [ ] **yes** [✔] **no**

I have lived in Midland 4.5 **years.**

Occupation: Attorney at Fasken Oil and Ranch, Ltd.

Professional and/or Community Activities:

I served on the Denver, CO mayor's Focus Neighborhoods initiative - addressing blighted and underprivileged neighborhoods, worke

in Denver's office of economic development and served on numerous charitable boards in CO and TX: Keep Denver Beautiful, Keep

Laredo Beautiful, Laredo Animal Protective Society (pres.), LULAC, LaRasa, Midland Humane Coalition, Denver Dumb Friends Leagı

What is your personal vision for the City?

To improve quality of life codes including their enforcement: litter, illegal dumping, enforcement of zoning codes, health and safety

code (unwanted pet population). Ideally, I'd like to enhance the public/private partnership between animal rescue groups and

the City of Midland so as to be more proactive regarding the overwhelming amount of unwanted pets in the area.

Please specify any time constraints you may have.

My work allows me to leave the office for meetings. My office hours are 8:30am to 5pm.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Animal Services Advisory Commission

Please tell us why you are interested in serving on this board or commission.

I have firsthand experience in addressing pet overpopulation and in forming public/private partnerships between a city and

animal rescue groups.

What contribution would you most like to make?

I'd like to share my experience in order to provide counsel to the group in how to best address the problem of unwanted pets. I'd like to share my perspective as a member of an ethnic minority group regarding pet ownership, spaying/neutering. I'd like to encourage a collaboration among other entities such as Crimestoppers for reporting animal abuse. There are many ideas to share.

Additional pertinent information or references:

I have a background in public relations which I used to our advantage as president of Laredo Animal Protective Society. There, I studied under the ASPCA in order to enhance our shelter regulations. I completely revamped our shelter guidelines, protocol, and led our team in the construction of a new city shelter.

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant *Monica Perales*

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433

Submit Via Email

Print Application

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 19, 2018

Mr. Jay Cartwright
Radiation Safety Officer
Waste Control Specialists LLC
17101 Preston Road
Dallas, TX 75248

SUBJECT: RESPONSE TO THE AUGUST 30, 2018, WASTE CONTROL SPECIALISTS LLC REQUEST TO EXTEND THE POSSESSION TIME IN THE U.S. NUCLEAR REGULATORY COMMISSION SPECIAL NUCLEAR MATERIAL EXEMPTION ORDER CONDITION 8.B.4 TO WASTE CONTROL SPECIALISTS LLC (CAC NO. 001542/DOCKET NO. 070-7005/EPID NO. L-2018-LLO-0000)

Dear Mr. Cartwright:

On August 30, 2018, Waste Control Specialists LLC (WCS) sent a letter to the U.S. Nuclear Regulatory Commission (NRC) requesting relaxation of Condition 8.B.4 of the currently effective NRC Special Nuclear Material (SNM) Exemption Order to WCS. In the letter, WCS requested permission to possess U.S. Department of Energy (DOE) Los Alamos National Laboratory (LANL) Waste at the WCS Low-Level Waste Site (WCS Site) near Andrews, Texas, until December 23, 2020. The August 30, 2018, WCS letter is available in the NRC's Agencywide Documents Access and Management System (ADAMS) as Accession No. ML18250A289.

Since 2001, the NRC has issued one initial Order (see ADAMS Accession No. ML030130085 (2001 Order)) and three superseding Orders (see ADAMS Accession Nos. ML042650361 (2004 Order), ML092810374 (2009 Order), and ML14238A268 (2014 Order)) granting WCS exemptions from the requirements of 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material," to possess Special Nuclear Material (SNM). Each Order has allowed WCS to possess greater than a critical mass of SNM, as defined in 10 CFR 150.11, "Critical Mass," without obtaining a Part 70 license from the NRC. The currently effective NRC Order (2014 Order) to WCS is dated December 3, 2014, and is available in ADAMS as Accession No. ML14238A268. The 2014 Order contains conditions that allow WCS to possess and store the LANL Waste at two locations at the WCS Site without obtaining an NRC Part 70 license. The LANL Waste is transuranic waste with SNM that originated from LANL and is destined for disposal at the DOE Waste Isolation Pilot Plant (WIPP) Facility in New Mexico. Currently, DOE transuranic waste may only be disposed at the WIPP Facility. The DOE closed the WIPP Facility after a radiation release event in February 2014 and then re-opened it in 2017. Subsequently, much of the LANL Waste was shipped to the WIPP Facility; however, some of the LANL Waste cannot be shipped from the WCS Site because it does not meet U.S. Department of Transportation (DOT) shipping requirements.

Order Condition 8.B.4. of the 2014 Order to WCS states that, "WCS is allowed to possess the LANL Waste for a maximum of 2 years." Order Condition 11 of the 2014 Order to WCS states that, "The Director of the Office of Nuclear Material Safety and Safeguards [NMSS] (or designee), may, in writing, relax or rescind any of the above conditions upon demonstration by

WCS of good cause." By letter dated March 28, 2016, (ADAMS Accession No. ML16095A361), WCS requested that the NRC extend the storage timeframe for the LANL Waste at the WCS Site until December 23, 2018. By letter dated September 23, 2016, (ADAMS Accession No. ML16097A265), the NMSS Director approved the 2016 WCS request.

In its August 30, 2018 letter, WCS requested that it be allowed to continue to store LANL Waste at the WCS Site until December 23, 2020 because the final disposition plan for the LANL Waste will not be implemented (i.e., all LANL Waste shipped from the WCS Site) before the current deadline of December 23, 2018. The DOE-led Integrated Project Team (which includes the DOE, the Texas Commission on Environmental Quality (TCEQ), the NRC, the U.S. Environmental Protection Agency, and WCS) is still determining a recommended path forward for the safe disposition of the LANL Waste. The Integrated Project Team was formed in response to separate orders to DOE and WCS from TCEQ in late 2015 directing those entities to provide a Joint Plan to TCEQ with options for disposition of the LANL Waste in storage at the WCS Site. The NRC joined the Integrated Project Team in May 2017. As part of its participation on the Integrated Project Team, the NRC is aware that developments in 2019 could allow all of the remaining LANL Waste in storage at the WCS Site to be safely shipped from the WCS Site under the DOT shipping requirements to WIPP, LANL, or elsewhere over time.

Consistent with both the 2014 Order to WCS and the September 2016, NRC letter to WCS modifying the 2014 Order Condition 8.B.4, the NRC has determined that an additional two-year extension of the timeframe for the storage of LANL Waste at the WCS Site is appropriate because: (1) it is consistent with the timeframe for storage of waste at the WCS Site previously approved by the NRC and permitted by TCEQ, while (2) the NRC maintains a definitive possession time specified in the Order.

As noted in both the 2014 Order to WCS and the September 2016 letter to WCS:

- the 2014 Order contains conditions that enable the LANL Waste to be safely and securely possessed and stored at the WCS Site;

- under the 2014 Order, WCS is responsible for the safe and secure possession of radioactive material at the WCS Site; and

- the 2014 Order contains conditions that require WCS to: (1) notify the NRC if any of the Order conditions are violated, and (2) obtain the NRC's approval prior to changing any activities associated with the Order conditions.

The NRC finds that the waste continues to be safely and securely stored at the WCS Site consistent with the requirements of the 2014 Order because there has been no change in the LANL Waste in storage at the WCS Treatment, Storage, and Disposal Facility (TSDF), with the exception of the LANL Waste that has already been shipped to the WIPP Facility. The NRC also finds that the LANL Waste in storage at the WCS Federal Waste Facility disposal cell continues to be safely and securely stored consistent with the requirements of the 2014 Order, as stated by WCS in its August 30, 2018 letter and confirmed via the NRC's participation on the Integrated Project Team.

Based on the above, the NRC has determined that WCS demonstrated good cause in satisfying the Condition 11 requirements of the 2014 Order to WCS, such that the NMSS Director is relaxing Condition 8.B.4 of that Order to allow WCS to possess the LANL Waste until December 23, 2020. Consequently, the possession time limit specified in Condition 8.B.4 of the NRC's 2014 Order to WCS is extended to December 23, 2020.

The NRC staff prepared an environmental assessment (EA) in support of its review of WCS' exemption request from NRC licensing requirements under 10 CFR Part 70. The EA (ADAMS Accession No. ML18333A025) can also be found at 83 FR 64902.

If you have any questions or need additional information, please contact Harry Felsher of my staff at Harry.Felsher@nrc.gov or at (301) 415-6559.

Sincerely,

/RA/

Marc L. Dapas, Director
Office of Nuclear Material Safety
and Safeguards

Docket No. 070-7005

cc: A. Forbes
Texas Commission on
Environmental Quality

SUBJECT: RESPONSE TO THE AUGUST 30, 2018, WASTE CONTROL SPECIALISTS LLC REQUEST TO EXTEND THE POSSESSION TIME IN THE U.S. NUCLEAR REGULATORY COMMISSION SPECIAL NUCLEAR MATERIAL EXEMPTION ORDER CONDITION 8.B.4 TO WASTE CONTROL SPECIALISTS LLC (CAC NO. 001542/DOCKET NO. 070-7005/EPID NO. L-2018-LLO-0000)
DATE December 19, 2018

DISTRIBUTION: SPoy/MSST JPark/FCSE

ADAMS ACCESSION NO. ML18269A318 ***via email**

OFFICE	DUWP	DUWP	DUWP	OGC	DUWP
NAME	HFelsher	CHolston	RChang*	AGendelman*	JTappert
DATE	09/27/18	09/27/18	09/27/18	12/10/18	12/18/18
OFFICE	NMSS				
NAME	MDapas				
DATE	12/19/18				

OFFICIAL RECORD COPY

Differing Views on Path Forward and Recommendations for Certain Low-Level Radioactive Waste Disposal Rulemakings

There are differing views among some of the U.S. Nuclear Regulatory Commission (NRC) staff on assertions made in the Commission paper, "Path Forward and Recommendations for Certain Low-Level Radioactive Waste (LLRW) Disposal Rulemakings" (henceforth referred to as "the Commission Paper"). The major point of disagreement is whether the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA) and the Atomic Energy Act of 1954, as amended (AEA) would allow greater than-Class C (GTCC) waste disposal to be regulated by Agreement States.[1] In addition, there are differing views on whether the NRC relinquished its GTCC regulatory authority to pre-1981 Agreement States.

LLRWPAA and AEA: Supports NRC's Exclusive Authority Over GTCC Waste

For more than 30-years, it was settled law and policy that GTCC waste disposal is a Federal responsibility requiring NRC-regulation under the LLRWPAA. The NRC worked closely with Congress to craft this legislation to include, among other things, the insertion and application of the phrase "NRC-regulated" to GTCC waste disposal. In testimony before Senate and House committees, Mr. Wayne Kerr, then-Director of the Office of State Programs, clearly articulated the Commission's position that GTCC waste disposal should be a Federal responsibility and should be "NRC-regulated."[2] Commissioner Baran noted this history in his vote on SECY-15-0094, "Historical and Current Issues Related to Disposal of Greater-Than-Class C Low-Level Radioactive Waste," in which the NRC staff recommended that the State of Texas be allowed to license the disposal of GTCC waste at the Waste Control Specialists (WCS) LLRW facility in Andrews, Texas. By citing numerous examples from the LLRWPAA's legislative history, the Commissioner's vote sheet clearly documents that Congress, States, and the NRC, all agreed, that the NRC is to be the exclusive licensing authority for all GTCC waste disposal. (See the NRC's Agencywide Documents Access and Management System [ADAMS] Accession No. ML15356A678). Commissioner Baran noted that:

> The staff paper and TCEQ [Texas Commission on Environmental Quality] letter pose the threshold question of how to interpret the GTCC-related provisions of the [Low-Level Radioactive Waste Policy] Amendments Act. Although it is a complex question, I believe the soundest reading of the Amendments Act is that it provides for exclusive NRC licensing of all GTCC waste disposal… Section 3(b)(1) of the Amendments Act states: 'The Federal Government shall be

Contact: Cardelia Maupin, NMSS/DUWP
301-415-4127

[1] This differing view does not address the NRC guidance," Concentration Averaging and Encapsulation Branch Technical Position," (80 FR 10165) that provided acceptable methods that can be used to perform concentration averaging of LLRW for the purpose of determining its waste class for disposal. However, it is notable that the Technical Position provides, "extreme measures to lower the waste classification should be avoided."

[2] The NRC testified on the proposed LLRWPAA before three Senate Committees, and to two House Committees. All of the NRC testimony indicated that GTCC disposal was to be NRC-regulated: (1) June 4, 1985 letter from NRC Chairman Nunzio J. Palladino to the Honorable Strom Thurmond, Chairman of the Committee on the Judiciary, (ADAMS Accession No. ML051720671); and (2) July 26, 1985 letter from Carlton Kammerer, Director of OCA, to the Honorable Morris Udall, Chairman of the Subcommittee on Energy and the Environment Committee on Interior and Insular Affairs, United States House of Representatives (ADAMS Accession No. ML051720672).

> responsible for the disposal of ... low-level radioactive waste with concentrations of radionuclides that exceed the limits established by the Commission for class C radioactive waste, as defined by section 61.55 of Title 10 of the *Code of Federal Regulations*, as in effect on January 26,1983]. This provision clearly establishes that disposal of GTCC waste is solely a federal responsibility. Section 3(b)(2) directly addresses the question of who licenses a GTCC waste facility. ... The plain language of the statute clearly indicates that NRC is the licensing authority for disposal of GTCC waste. There is nothing in the text of the provision that suggests that Congress contemplated or provided for Agreement State licensing of GTCC waste disposal facilities. ….
>
> Th[e] legislative history reinforces the plain language of the Amendments Act. … The statements of these key members of the Senate and House also show that Congress meant what it said in the statute: GTCC must be disposed of in an NRC-licensed facility. Conspicuously absent from all of these Congressional descriptions of the licensing responsibility for GTCC waste disposal is any mention of Agreement States or suggestion that Agreement States could license such a facility. ... It is difficult to believe that Congress intended to allow Agreement States to license GTCC waste disposal facilities without any legislators even hinting that this was the case.

The analysis in the Commissioner Baran's vote sheet is consistent with numerous NRC official statements, correspondence, and publications on GTCC waste disposal. They include, but are not limited to: (1) SECY-86-085," Low-Level Radioactive Waste Policy Amendments Act of 1985," dated March 11, 1986 (ADAMS Accession No. ML051730665); (2) Letter dated April 30, 1987 to the Honorable Quentin N. Burdick, Chairman, Committee on Environment and Public Works, United States Senate, from William C. Parler, NRC General Counsel, (ADAMS Accession No. ML051720675); (3) Transcript from the August 4, 1987, "Commission Briefing on the Management of Greater Than Class C (GTCC) Level Waste and the Low-Level Waste Program," (ADAMS Accession No. ML051720639); (4) NUREG/CP-0085, "Meeting With States on the Low-Level Radioactive Waste Policy Amendments Act (LLRWPAA) of 1985," June 24-25, 1986; (5) NUREG/BR –021, "Regulating the Disposal of Low-Level Waste, (ADAMS Accession No. ML120720225) published August 1989; (6) NUREG-1213, Rev. 1, "Plans and Schedules for Implementation of U.S. Nuclear Regulatory Commission Responsibilities Under the Low-Level Radioactive Waste Policy Amendments Act of 1985 (P.L. 99-240)," published August 1987; and (7) SECY-07-0180, "Strategic Assessment of Low-Level Radioactive Waste Regulatory Program," dated October 17, 2007 (ADAMS Accession No. ML071350299). This Assessment states, "NRC is responsible for reviewing a license application for a GTCC disposal facility."

In addition, Section 4(b)(3)(A) of the LLRWPAA states:

> Nothing contained in this Act or any compact may be construed to confer any new authority on any compact commission or State … to regulate the packaging, generation, treatment, storage, disposal, or transportation of low-level radioactive waste in a manner incompatible with the regulations of the Nuclear Regulatory Commission...

By the language in Section 4(b)(3)(A) and referencing the NRC's regulations at Section 61.55 of Title 10 of the *Code of Federal Regulations* (10 CFR) throughout the LLRWPAA, Congress

made it abundantly clear that the NRC is the exclusive regulatory authority for establishing requirements for disposal of all LLRW in the Nation, including GTCC waste disposal. The law also declares that the NRC's authority is not to be usurped by any compact or State.

NRC's Regulations: Supports NRC's Exclusive Authority Over GTCC Waste

In accordance with the LLRWPAA and the AEA, the NRC demonstrated its authority in the area of GTCC waste disposal by the promulgation of its final rule, "Disposal of Radioactive Wastes," (54 FR 22583, dated May 25, 1989). Throughout the Statement of Considerations (SOC) for the final rule, it is stated that GTCC wastes must be disposed of in a facility licensed by the NRC and that it is a Federal responsibility similar to high-level waste. Paragraph (e) of the SOC stated, "…GTCC wastes must be disposed of in a facility licensed by the NRC--a constraint imposed by the [LLRWPAA] LLWPAA." Moreover, the SOC for the final rule provided:

> First, by amending 10 CFR 61.55, it would henceforth require all greater-than-Class-C waste to be disposed of in a geologic repository unless an alternative proposal is approved by the Commission. Second, the jurisdictional reach of 10 CFR Part 61 would be extended to cover all activities of the Department of Energy that may be subject to the licensing and regulatory authority of the Commission. This is intended to reflect the policy of the Low-Level Radioactive Waste Policy Amendments Act, which provides that all commercially-generated waste with concentrations exceeding Class C limits shall be disposed of in a facility licensed by the Commission that the Commission determines is adequate to protect the public health and safety…

The language of the final rule implemented the NRC's authority over GTCC waste disposal in 10 CFR 61.55(a)(iv), which, among other things, provided:

> Waste that is not generally acceptable for near-surface disposal is waste for which form, and disposal methods must be different, and in general more stringent, than those specified for Class C waste. In the absence of specific requirements in this part, such waste must be disposed of in a geologic repository as defined in part 60 or 63 of this chapter unless proposals for disposal of such waste in a disposal site licensed pursuant to this part are approved by the Commission.

NRC's Compatibility Determinations: Supports NRC's Exclusive Authority Over GTCC Waste

As required by all Agreement States, the State of Texas acknowledged NRC's authority for GTCC waste disposal in its regulatory program by adopting regulations compatible with those of the NRC in 10 CFR 61.55 (a)(iv). The Texas Administrative Code 336.362(a)(2)(D), states:

> Waste that is not generally acceptable for near-surface disposal is waste for which form, and disposal methods must be different, and in general more stringent, than those specified for Class C waste. Disposal of this waste is regulated by the United States Nuclear Regulatory Commission.

The adoption of this regulatory language by the State of Texas was required by the NRC as a matter of compatibility in an October 2, 2003, letter from Mr. Paul H. Lohaus, Director of the

Office of State and Tribal Programs, to Ms. Susan Jablonski, Technical Advisor, TCEQ. (ADAMS Accession No. ML032760041). Mr. Lohaus specifically noted that:

> Texas is providing that Texas will regulate the disposal of GTCC waste. … Texas cannot regulate the disposal of such GTCC waste. The State needs to alter its definition [of Federal Facility Waste] to exclude GTCC that results from activities of NRC licensees to meet compatibility.

The October 2, 2003, letter was approved by the NRC Office of General Counsel (No Legal Objection) and the Office of Nuclear Material Safety and Safeguards through the NRC's concurrence process. The letter made it absolutely clear that the NRC did not relinquish its authority for the regulation of GTCC disposal to the State when the Texas Agreement was signed in 1963; otherwise the State would not have been directed to revise its proposed rule language to "meet compatibility." Thus, the letter was used as an enforcement vehicle for implementation of various provisions of Section 274 of the AEA that require Agreement State programs to be compatible with the NRC's regulatory program and require the NRC to periodically review Agreement State programs to ensure continued compliance.

Limits on Special Nuclear Material: Supports NRC's Exclusive Authority Over GTCC Waste

Another reason for the prohibition of Agreement State regulation of GTCC waste is that most of these waste streams contain special nuclear material (SNM), including strategic SNM (SSNM). Accordingly, Section 274(b)(3) of the AEA prohibits the NRC from relinquishing its authority for the regulation of SNM in critical mass quantities to an Agreement State. In addition, Section 274(m) of the AEA provides:

> No agreement entered into under subsection (b), and no exemption granted pursuant to subsection (f), shall affect the authority of the Commission under section 2201(b) or (i) of this title to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

Prevention of Criticality Accidents: Supports NRC's Exclusive Authority Over GTCC Waste

In addition, the high concentrations of SNM in GTCC waste streams raise concerns relative to potential criticality accidents at LLRW facilities. The NRC requirements that address these concerns are contained in 10 CFR 61.16 (b), *Safety information concerning criticality*. The adoption and enforcement of these regulations are reserved to the NRC and cannot be adopted by an Agreement State.

Protection of Common Defense and Security: Supports NRC's Exclusive Authority Over GTCC Waste

The authority for the protection of SSNM and SNM in critical mass quantities is related to the protection of the Nation's common defense and security and is reserved to the Federal government in accordance with the preamble of the Constitution of the United States of America. However, in spite of this reserved Federal authority, the NRC staff stated in the Commission paper:

> Additionally, for GTCC waste streams containing SSNM, the staff recommends exploring regulatory approaches that would allow for a single regulator for an Agreement State licensee disposing of GTCC waste in a land disposal facility, including potential amendment to 10 CFR 150.14 and 150.15.

As such, with these statements, the staff is indicating that they are considering relinquishing the NRC's reserved authority for the protection of the common defense and security to an "Agreement State" regarding SSNM and SNM through these "regulatory approaches." It is notable that an example of an "regulatory approach" of relinquishing NRC reserved authority is currently in place at WCS. Specifically, an NRC Order exempts WCS from a license for 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material; thereby allowing the LLRW facility to possess SNM in quantities equal to or greater than critical mass quantities without NRC inspection or enforcement. It is very likely that the NRC staff will consider a similar "regulatory approach" to relinquish the regulation of GTCC waste disposal at the facility. In that, the Federal Register notice, "Waste Control Specialists, LLC (WCS); Order to Exempt Waste Control Specialists, LLC From Requirements Relative to the Possession of Special Nuclear Material (SNM)," 66 FR 57489, provides:

> Pursuant to 10 CFR 70.14,'the Commission may * * * grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and common defense and security and are otherwise in the public interest'….WCS requested the exemption because it expects that **the current limits set forth in 10 CFR part 150 will severely impact its ability to compete in the mixed waste treatment market. (Emphasis added)**

The NRC Order indicates that the exemption was a measure to increase WCS's competitive edge in the waste market. Whereas, other operating LLRW facilities who are WCS's competitors, Hanford, WA and Barnwell, SC, were required to have an NRC license for SNM in critical mass quantities from 1970 to 1997. In 1997, Hanford and Barnwell decided to lower their SNM possession limits below critical mass quantities so they would no longer need an NRC license (64 FR 50779 dated September 20, 1999). However, it is questionable that WCS that is owned by the Lehman Brothers Holdings Inc. that is worth over $600.00 billion in assets requested and received an exemption from an NRC license to possess SNM in critical mass quantities solely to increase their profit margins.

In addition, the NRC Order created a potential "gap" in the regulation of SNM at the WCS facility -- a virtual regulatory "free zone." In that, the provisions in the Texas Agreement and the Texas regulations, in 336.1(b) prohibit the State from regulating the possession of SNM in critical mass quantities. The Texas regulations provide that the NRC has authority for SNM in critical mass quantities in the State in accordance with 10 CFR Part 150, "*Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274*." While, the State of Texas Agreement provides that the State can only regulate SNM "in quantities not sufficient to form a critical mass." Thus, the Texas Agreement and regulations indicate that NRC has the responsibility for SNM in quantities equal to or greater than critical mass quantities. However, the NRC has exempted WCS from its critical mass quantities regulations in 10 CFR Part 70. As a result, a potential regulatory gap has been created for non-regulation of SNM in in quantities equal to or greater than critical mass quantities at WCS. This type of regulatory arrangement is not consistent with the intents and purposes of Section 274 of the AEA and its legislative history. Specifically, the legislative history for Section 274 (g) of the AEA states:

> Subsection g. provides that the Commission is authorized and directed to cooperate with the States in the formulation of standards for the protection of public health and safety from radiation hazards and to assure that State and Commission programs for protection against radiation hazards will be coordinated and compatible. ... **in order to avoid conflict, duplication, or gaps**. JCAE Report to accompany H.R. 8755 (H.R. Report No. 1125, September 2, 1959, 86th Congress, 1s Session) at p. 9. **(Emphasis added)**

Avoidance of Dual Regulation: Supports NRC's Exclusive Authority Over GTCC Waste

In spite of the plain statutory language, clear legislative intent, longstanding administrative record, overwhelming evidence supporting GTCC as a Federal responsibility that is to be exclusively NRC-regulated, the Commission paper states:

> The staff recognizes that there are two possible interpretations …(1) a strict or "plain language" interpretation that would allow for NRC licensing of a GTCC waste disposal facility only, and (2) **a broad interpretation**, based upon the Amendments Act's legislative history and construing the Amendments Act together with AEA Section 274, that would allow for a willing Agreement State to license such a facility. **Both interpretations are legally valid**. **(Emphasis added)** The staff, however, continues to support the recommendation it made in SECY-15-0094, namely, that the Commission should adopt the broad interpretation allowing for Agreement State licensing…
>
> * * * * * * * * * * *
>
> The draft regulatory basis recommended certain regulatory changes to NRC's requirements in 10 CFR Part 150, "Exemptions and continued regulatory authority in agreement states and in offshore waters under Section 274," to accommodate Agreement State regulatory oversight of most GTCC waste disposal without any **dual regulation.** However, under the Commission's 1979 final rule on the security of Category III **quantities of SSNM, the agency stated such SSNM was subject to the Commission's interest in protecting the common defense and security. Under Section 274(m) of the AEA, such activities are reserved to the NRC and thus require dual regulation of this material (i.e., safety by the Agreement State and security by the NRC)**. **Accordingly, certain GTCC waste streams containing Category III quantities of SSNM would require NRC oversight of security activities, absent an explicit Commission reconsideration of the basis for the 1979 final rule. (Emphasis Added)**

The NRC staff's "broad interpretation" with its "construing" of laws would create a dual regulation framework that would allow Agreement State regulation of GTCC waste disposal. Thus, the staff is proposing to create a regulatory construct in direct conflict with the intents and purposes of Section 274 of the AEA and the provisions of 10 CFR 8.4*, "Interpretation by the General Counsel: AEC jurisdiction over nuclear facilities and materials under the Atomic Energy Act*." Specifically, Section 274 of the AEA, in the purpose section, paragraph (a)(3) provides that the law is, "to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials." In order to ensure this orderly regulatory pattern, the legislative

history indicates that “dual regulation” should be avoided. The creators of the legislation expressed concerns that dual regulation could cause ambiguous lines of authority between the State and the Federal government that could lead to adverse impacts on public health and safety. The avoidance of dual regulation was expressed by the Commission’s General Counsel, at the time, Mr. Robert Lowenstein, during the May 1959, Section 274 hearings as follows:

> We think it [concurrent jurisdiction] leads to divided responsibility and may lead to bad safety controls because you have too many cooks in the broth, so to speak, without any one level of government having a primary responsibility for it to assure that uses of materials are appropriately regulated.” (May 1959 hearings at page 315)

In addition, strong opposition to dual regulation was expressed in the Joint Committee on Atomic Energy (JCAE) Report that accompanied the final Section 274 bill as follows:

> It is not intended to leave any room for the exercise of dual or concurrent jurisdiction by States to control radiation hazards by regulating byproduct, source or special nuclear materials. The intent is to have the material regulated and licensed either by the Commission, or by the State and local governments, but not by both. (Federal-State Relations in the Atomic Energy Field, Hearings before the JCAE, September 2, 1959, 86th Congress, 1st Session, Report No. 1125, pp. 10-12.)

Federal Preemption: Supports NRC’s Exclusive Authority Over GTCC Waste

In the Commission paper, at footnote 6, it provides that the NRC’s authority for GTCC waste disposal was relinquished to pre-1981 Agreement States (i.e., those signed before the publication of the “Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement” published on January 23, 1981, 46 FR 7540). The term “GTCC waste” was not defined until after the publication of 10 CFR Part 61 on December 27, 1982 (47 FR 57446). Nevertheless, by these statements, the staff is declaring that an NRC policy statement and a State Agreement document has more authority than the LLRWPAA that was passed by Congress and signed into law by the President of the United States of America on January 15, 1986. Thus, the staff’s “broad interpretation” with its “construing” of laws conflicts with the Commission’s Federal preemptive authority as described in 10 CFR 8.4 (c) that states:

> The Atomic Energy Act of 1954 had the effect of preempting to the Federal Government the field of regulation of nuclear facilities and byproduct, source, and special nuclear material. Whatever doubts may have existed as to that preemption were settled by the passage of the Federal-State amendment to the Atomic Energy Act of 1954 in 1959.

In addition, the NRC’s staff’s “broad interpretation” granting GTCC waste regulatory authority to pre-1981 Agreement States is contrary to preemption case law. In that, footnote 2, SECY-05-0170, “Proposed Agreement Between the State of Minnesota and the Commission Pursuant to Section 274 of the Atomic Energy Act of 1954, as amended,” (ADAMS Accession No: ML0525704), provides:

> Case law establishes that Congress has preempted the field of nuclear safety. In Pacific Gas & Electric Co. V. State Energy Resources Conservation and

> Development Commission, 461 U.S. 190 (1983), the Court concluded that "State safety regulation is not pre- emptied only when it conflicts with Federal law. Rather, the Federal Government has occupied the entire field of nuclear safety concerns,…, When the Federal Government completely occupies a given field or an identifiable portion of it, … the test of pre-emption is whether 'the matter on which the State asserts the right to act is in any way regulated by the Federal Act.' Rice v. Santa Fe Elevator Corp. decided June 4, 1990, Slip Opinion No. 89-152, scrutinized the pre-emption theory of the field of nuclear safety concerns, and reaffirmed the holding in Pacific that the field of nuclear safety is pre-empted.

Moreover, *The Preemption under the Atomic Energy Act of 1954*, provides, "if Congress has declared 'unequivocally and expressly' that the authority it grants shall be exclusive, then concurrent or complementary state regulation within the occupied field is barred." This document also indicates that dual regulation cannot exist in an occupied field, i.e., GTCC waste regulation. https://digitalcommons.law.utulsa.edu/cgi/viewcontent.cgi?article=1336&context=tlr. Therefore, by the passage of Section 274 of the AEA and the LLRWPAA, Congress closed the door to Agreement State regulation of GTCC waste disposal. Congress declared that GTCC waste disposal: (1) is a preempted Federal responsibility; (2) must be disposed of in a facility licensed by the NRC; and (3) must be disposed of in a facility the NRC has determined is adequate to protect the public health and safety. In conclusion, in analyzing the dual regulation and preemption issues associated with the NRC staff's "broad interpretation," the Honorable Edward McGaffigan, Jr., who was the longest serving NRC Commissioner and who passed away in 2007 while in service to the Nation, provided insightful guidance on these issues. Commissioner McGaffigan wrote:

> … I too am a strong believer in preserving our [NRC] authority. NRC has spent significant resources over the last few years ensuring that other agencies do not encroach into our jurisdiction and attempt to apply inappropriate security requirements on our licensees. In the decommissioning area, we have expended a great deal of time and effort working with EPA to reduce dual regulation. This case should not be any different. [The case of GTCC waste disposal should not be any different] (SRM-SECY-0170 Vote Sheet).

Maxey Flats: The Case Against Pre-1981 Agreement State Authority for GTCC Waste

The case against pre-1981 Agreement State authority for GTCC waste disposal regulation is further bolstered by the Maxey Flats LLRW site. The history of the operation and performance concerns at Maxey Flats LLRW facility that was licensed by the State of Kentucky in 1963 provides overwhelming evidence demonstrating that NRC's policy of providing LLRW authority, including GTCC disposal, to all pre-1981 Agreement States is an outdated, arbitrary and capricious policy that is not commensurate with the protection of public health and safety and the environment. Like all other pre-1981 LLRW disposal sites, at the time the Maxey Flats facility was licensed, the term "GTCC" waste had not been defined, and performance standards for the land disposal of LLRW had not been established. As a result, the facility closed in the late 1970's because of significant performance problems, including offsite contamination in air, water and soil that continues to this day. Maxey Flats is on the U.S. Environmental Protection Agency's National Priorities List, which is comprised of hazardous waste sites to be remediated under the Comprehensive Environmental Response, Compensation, and Liability Act, also known as Superfund. The presence of GTCC waste at the site has contributed to it being considered non-reclaimable and it will have to be monitored and maintained in perpetuity.

Agreement State Program Revisions: The Case Against Pre-1981 Agreement State Authority for GTCC Waste

Another barrier to pre-1981 Agreement State authority for regulation of GTCC waste is that the NRC has made numerous revisions to the requirements for an adequate and compatible Agreement State regulatory program since 1981. These revisions include, but are not limited to:

1. The publication of 10 CFR Part 61 on December 27, 1982 (47 FR 57446) that provided licensing procedures, performance objectives, technical requirements and financial assurance requirements for the issuance of licenses for the land disposal of LLRW.
2. The publication of the Criteria Policy Statement on July 21, 1983, to establish requirements for an adequate and compatible Agreement State LLRW regulatory program in Criterion 9.
3. The completion of SECY-97-054, "Final Recommendations on Policy Statements and Implementing Procedures for the Agreement State Program and Policy Statement on the Adequacy and Compatibility of Agreement State Programs;'" on March 3, 1997.
4. The implementation of the Integrated Materials Performance Evaluation Program (IMPEP) in 2005 that established the integrated efforts of the NRC and the Agreement States to ensure the nationwide protection of public health, safety, security, and the environment from the hazards associated with radioactive material.

In spite of the numerous revisions to the programmatic elements needed for an adequate and compatible Agreement State Program, the NRC has continued to reference the outdated and superseded 1981 policy statement. Moreover, most, if not all, of these States that have pre-1981 LLRW authority will probably never use it. For example, the State of Florida with its high-water tables and coastal geography will probably never use its LLRW disposal authority. Nonetheless, the State continues to have this authority as documented in the Florida October 9, 2019 IMPEP Review Report that states:

> In 1981, the NRC amended its Policy Statement, “Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,” to allow a State to seek an amendment for the regulation of Low-Level Radioactive Waste as a separate category. Although Florida has authority to regulate a LLRW disposal, the NRC has not required States to have a program for licensing a disposal facility until such time as the State has been designated as a host State for a LLRW disposal facility. When an Agreement State has been notified or becomes aware of the need to regulate a LLRW disposal facility, it is expected to put in place a regulatory program that will meet the criteria for an adequate and compatible LLRW disposal program. There are no plans for a LLRW disposal facility in Florida. Accordingly, the review team did not review this indicator.

DOE and the EPAct: The Case Against Pre-1981 Agreement State Authority for GTCC Waste

The Energy Policy Act of 2005 (EPAct) eliminated any doubt that GTCC is a Federal responsibility. It further refutes the staff’s assertion that NRC relinquished GTCC disposal authority to pre-1981 Agreement States and “nailed the door shut” to Agreement State regulation of GTCC waste disposal. The Act directed the Department of Energy (DOE) to complete all activities necessary to provide a facility for the safe disposal of all GTCC waste. In

addition, Section 636 of the EPAct encouraged the DOE and the NRC to coordinate on regulatory matters relative to DOE's facilities, including those operated on the Department's behalf (i.e., a GTCC waste disposal facility). Thus, the NRC and the DOE have pivotal roles in implementing the Federal responsibilities for the management and regulation of GTCC waste disposal.

Comments on the GTCC Draft Regulatory Basis: The Case Against Agreement State Authority for GTCC Waste

The draft regulatory basis for GTCC waste disposal was noticed in the Federal Register on July 22, 2019 (84 FR 35037) for public review and comment. Over 7,000 comments were received that challenged NRC's conclusions in the document. The Commission paper states, "After an analysis of the public comments received, staff has determined that this preliminary conclusion remains valid." However, these statements are not factual because the NRC staff has not completed its analysis of the public comments. Rather, the NRC staff was directed to forge ahead with the completion of the Commission paper before analysis of the public comments. Many of the public comments provided technical challenges to the NRC staff's analysis and conclusions relative to GTCC disposal and Agreement State regulation. As such, the conclusions in the Commission paper were pre-established without the consideration and resolution of public comments. In that, the DOE comments raised numerous technical concerns with the draft regulatory basis especially their concerns that NRC staff's analysis did not include the full GTCC inventory information maintained by DOE. In addition, the Agreement State of Oregon and others challenged the NRC's conclusion that GTCC waste can be regulated by Agreement States with the following comments:

> We observed that even in the NRC's own technical support document for the GTCC Regulatory Basis, there was a significant difference between intruder modeling conducted by a contractor versus NRC staff. A single reduction factor in one of the models was implicated for the significant variation in dose to a future onsite receptor. The discovery of this factor was a result of in-depth analysis by NRC staff. **This difference between the NRC staff and contractor modeling results for the intruder illustrates the need for high technical rigor in the model development for this unique site- specific analysis. Consequently, we perceive a risk in allowing an Agreement State to have authority over the adequacy of such complex models without direct NRC technical oversight given their greater resources and experience in this highly specialized arena. (Emphasis added)**

Moreover, the NRC staff's conclusions in the Commission paper have not addressed the concerns in the September 30, 2020 letter from the Governor of Texas, Greg Abbott, to the Honorable Donald J. Trump, President of the United States, that stated:

> In an April 2019 letter to the Department of Energy and NRC regarding this issue, I expressed my opposition to forcing states with low-level radioactive waste to accept more highly radioactive waste and its accompanying hazards without the consent of the state. I reiterate this concern and my opposition to increasing the

amount or concentration of radioactive waste permitted to be disposed of in Texas without state approval.

Federal Responsibility for GTCC Waste: Many Splendid Benefits

Based upon the preceding discussions, the best course of action for the Nation would be for the NRC and the DOE to work together to implement the "plain" or "clear" statutory mandates in the LLRWPAA and the EPAct that designated GTCC as a Federal responsibility. Some of the many benefits of this course of action are:

1. It is consistent with Section 3(b)(2) of the LLWPAA that provides that disposal of GTCC is to be disposed licensed by the NRC.
2. It is consistent with Section 3(b)(2) of LLRWPAA that provides that DOE's GTCC-like waste is required to be disposed of in a facility licensed by the NRC.
3. It is the most cost-effective, resource saving, and technically sound path forward because of the NRC resources that have already been used to develop and implement the LLRWPAA since NRC's participation in its conception in 1985, revisions to 10 CFR Part 61 and the development of the regulatory basis for GTCC disposal.
4. It ensures the protection of the Nation's common defense and security commensurate with the federally reserved authority in the Constitution of the United States of America.
5. It ensures that NRC's Federal authority and responsibilities are not eroded and encroached upon.
6. It ensures no regulatory gaps or dual regulation of GTCC waste disposal.
7. It establishes a clear-cut, exclusive Federal licensing pathway for GTCC waste disposal consistent with the LLRWPAA and EPAct.
8. It provides the mechanism under LLRWPAA and EPAct for DOE and NRC to move forward with a site-specific solution to GTCC waste disposal with or without a rulemaking action.

Additional benefits of the "plain" or "clear" interpretation of the laws were presented in the Commission Baran's vote sheet and are briefly expounded upon below:

Commissioner Baran's Supporting Statement 1:

There is no question that the potential hazards posed by GTCC waste would support a Commission decision to retain authority to license GTCC waste disposal facilities. In 1989, the Commission finalized a rule requiring disposal of all GTCC waste in a deep geologic repository unless a non-repository alternative is explicitly approved by the Commission. This rule reflected the view that GTCC waste is "not generally acceptable" for near-surface disposal and warranted "more stringent" disposal methods. In fact, at the recent Commission meeting on GTCC waste, the NRC staff explained that, for all isotopes, the average radionuclide concentrations of the GTCC waste inventory are at least 50 times higher than those of the transuranic waste currently being disposed of at the WIPP [Waste Isolation Pilot Plant] deep geologic repository. Some GTCC concentrations are 12,000 times higher than the transuranic waste bound for WIPP.

Comment: The DOE, *Final Environmental Impact Statement for the Disposal of Greater-Than-Class C (GTCC) Low-Level Radioactive Waste and GTCC-Like Waste*, supports the Commissioner's statements, https://www.energy.gov/nepa/downloads/eis-0375-final-environmental-impact-statement.

Commissioner Baran's Supporting Statement 2:

There are strong reasons for the Commission to exercise its authority to license GTCC waste disposal. First, there is no meaningful litigation risk associated with this approach because NRC has clear legal authority under the Atomic Energy Act to retain the licensing responsibility. Although the Commission would be on solid legal footing if it were to interpret the [Low-Level Radioactive Waste Policy] Amendments Act to provide for exclusive NRC licensing authority for GTCC waste disposal, this interpretation potentially would be challenged in court. Alternatively, if the Commission were to interpret the Amendments Act to allow TCEQ to license a GTCC disposal facility, there would be significantly more litigation risk. The result could be TCEQ licensing slowed down by years of litigation with a significant chance that the federal courts would ultimately decide that NRC was required to conduct the licensing anyway.

Comment: The litigative risks from a "broad interpretation" providing for Agreement State licensing of GTCC waste disposal remain a valid and realistic concern.

Commissioner Baran's Supporting Statement 3:

Although I understand that TCEQ officials are familiar with the WCS site and already regulating WCS's Federal Waste Disposal Facility, the potential efficiencies of TCEQ conducting the GTCC waste disposal licensing would also be substantially diminished by the significant role NRC would need to play in approving any non-repository option pursuant to existing NRC regulations. Since NRC staff would be actively involved in assisting TCEQ with its review of a WCS application, it may well be more efficient for NRC to simply serve as the licensing agency. This is especially true if, in its final environmental impact statement, DOE presents multiple preferred alternatives, one or more of which NRC may have responsibility for licensing.

Comment:

As a result of developing the 10 CFR Part 61 regulation and all of its associated implementing guidance and developing the draft regulatory basis for GTCC waste disposal, NRC staff is best suited to conduct a review of a GTCC waste disposal license application.

Commissioner Baran's Supporting Statement 4:

WCS has expressed concerns about whether NRC licensing would require the company to have a separate NRC-licensed GTCC disposal cell instead of being able to dispose of GTCC waste in its existing TCEQ-licensed Federal Waste Disposal Facility [FWF] cell. However, there is no clear relationship between which agency conducts the GTCC waste disposal licensing and whether WCS will need a separate GTCC cell. NRC could decide that the existing cell could hold GTCC waste or TCEQ could decide that a separate cell is required, that the existing cell would need to be modified before it could accept GTCC waste, or that near-surface disposal of GTCC waste is not appropriate at the WCS site.

Comment: These statements are listed as a "con'" under Option 1 in SECY-15-0094 that provides for NRC regulation of GTCC waste disposal. The basis of the "con" is that NRC's review may result in a conclusion that the technical parameters at WCS are not be suitable for GTCC waste disposal and retrofitting the facility for acceptable standards may not be possible. As opposed to a "con," this should have been listed as a "pro." It is NRC's responsibility to ensure the safe disposal of GTCC waste without question or reservation.

RECOMMENDATIONS: Based upon the preceding discussions, the following recommendations are provided:

Recommendation 1: The NRC staff should provide the risk-informed basis for the proposed regulatory action of giving GTCC waste disposal to Agreement States, especially since no State has requested this authority.

Recommendation 2: The NRC staff should provide all supporting information for their "broad interpretation" allowing Agreement State licensing of GTCC waste. The "broad interpretation" should answer the following risk questions: (1) What are the risks from the "broad interpretation;" (2) What can go wrong from this interpretation; (3) How likely is something wrong to happen; and (4) What are the consequences of the "broad interpretation?"

Recommendation 3: The NRC staff should provide the criterion used to determine that Agreement States can license GTCC waste, especially since some Agreement States have returned basic Agreement authority back to the NRC, such as the regulation of sealed source and device reviews and approvals.

Recommendation 4: The NRC staff should explain how they determined that no legislation would be needed to authorize Agreement State licensing of GTCC waste including what are the risks associated with not changing the law. In that, DOE informed Congress in 2017 that legislation would be needed to allow Agreement State licensing of GTCC in "*Report to Congress: Alternatives for the Disposal of GTCC LLRW and GTCC-Like Waste*," https://www.energy.gov/sites/prod/files/2018/09/f55/GTCC-2017-Report-to-Congress-on-Disposal-Alternatives.pdf.

Recommendation 5: After analyzing the "broad interpretation," the NRC should proceed without reservation to align behind the "clear interpretation" of its responsibilities under the LLRWPAA for the regulation of GTCC disposal that is unambiguous and defensible, that eliminates dual regulation, that protects the Nation's common defense and security, and protects the public health and safety and the environment.

Recommendation 6: The NRC should ensure that no policy statements, agreements, arrangements, orders, regulations, licenses or other legal instruments are established that would erode or encroach upon its preemptive authority or render Federal laws without effect.

Recommendation 7: The NRC should no longer reference the outdated and superseded 1981 Criteria Policy Statement to convey LLRW authority, including GTCC waste disposal, upon Agreement States. It should implement and reflect in its IMPEP procedures and reports up-to-date policies and procedures to ensure that all Agreement State programs are adequate and compatible and to ensure that Agreement Programs are administered in a manner commensurate with the AEA, the LLRWPAA and the EPAct.

Recommendation 8: The NRC should work closely with the DOE in accordance with the provisions to LLRWPAA and EPAct to ensure the safe and secure disposal of all GTCC waste.

Recommendation 9: The NRC should carefully examine its practice of exempting LLRW operating sites that possess critical mass quantities of SNM and strategic SNM from an NRC Part 70 license.

Recommendation 10: The NRC should adhere to its Principles of Good Regulation in all its regulatory actions including but not limited to ensuring that public comments are thoroughly analyzed and considered as opposed to adhering to pre-established conclusions. Thus, the NRC should not use "alternative facts," "alternative technical conclusions," or "alternative legal interpretations" designed to benefit business interests at the expense of the protection of the common defense and security, public health and safety, and the environment.

Curriculum Vitae of Ms. Cardelia Maupin, Sr. Project Manager/Health Physicist, NMSS/ DUWP *– Substantiating Expert Level on Agreement State Issues and Credentials Relevant to Issues Discussed in Differing View*:

- Led development of GTCC LLRW regulatory basis effort
- Bachelors of Science in Biology, Clark Atlanta University, Atlanta, Ga.
- Master of Science in Radiological Science, Emory University, Atlanta, Ga.
- Residency in Health Physics at Argonne National Laboratory, Argonne, Ill.
- Began career at NRC in June 1984 (36 - faithful years)
- Over 21 years in NRC's Agreement State Program
- Developed first two comprehensive Policy Statements on Agreement State Programs
- Developed and implemented the NRC's first-ever Agreement State Allegation program
- Authored or co- authored over 28 NRC major papers on complex technical, regulatory, and policy issues relative to the Agreement States, LLRW, and nuclear regulation
- Publications relevant to Differing View, include but are not limited to:
    - NUREG/CP-0085, "Meeting With States on the Low-Level Radioactive Waste Policy Amendments Act (LLRWPAA) of 1985; June 24-25, 1986;"
    - SECY-06-0233, "State Laws that Appear to Regulate In Areas Reserved to the NRC," dated November 26, 2006;
    - SECY-91-039, "Evaluation of Agreement State Compatibility Issues;" dated February 12, 1991;
    - SECY-91-047, "Draft Proposal from Pennsylvania for a Limited Agreement to Regulate Low Level Waste Disposal;"
    - SECY-91-341,"Initial Response to Staff Requirements Memorandum M910611A on Compatibility dated June 25, 1991," dated October 24, 1991;
    - SECY-92-243, "Analysis of Comments on the Compatibility of Agreement State Programs and a Proposed Policy on the Compatibility of Agreement State Regulations for Low Level Waste Disposal;" dated July 14, 1992;
    - SECY-93-080, "Re-Evaluation of the Compatibility Divisions Assigned to the Performance Objectives in 10 CFR 61.41 through 61.44 and Evaluation of the Illinois 1 millirem Provision;" dated March 3, 1993;
    - SEC- 93-290, "Draft Policy Options on Compatibility," October 20, 1993;
    - SECY-93-349, "Draft Policy Statement for Agreement State Adequacy and Compatibility with NRC Regulatory Programs Necessary To Protect Public Health And Safety;" dated December 21, 1993;
    - SECY-94-025, "Additional Information On Issues Raised At January 24, 1994 Briefing on Draft Policy Statement For Agreement State Adequacy and Compatibility," dated February 4, 1994;

- SECY- 95-112, "Final Policy Statement on Adequacy and Compatibility of Agreement State Programs;" dated May 5, 1995;
- SECY-96-213, "Implementation Procedures for the Policy Statements: 'Statement of Principles and Policy for Agreement State Program' and 'Policy Statement on Adequacy and Compatibility of Agreement State Programs;'" dated October 3, 1996;
- SECY-97-054, "Final Recommendations on Policy Statements and Implementing Procedures for the Agreement State Program and Policy Statement on the Adequacy and Compatibility of Agreement State Programs;'" dated March 3, 1997;
- SECY-97-087, "Oklahoma Agreement State Negotiations: State Requests that Major Facilities Undergoing Site Decommissioning not be Relinquished to the State;"
- SECY-97-145, "The Evaluation of Current State Agreements," dated July 11, 1997;
- SECY-98-263, "Request by New Mexico to Relinquish Authority for Sealed Source and Device Evaluation and Approval;"
- SECY-05-0170, "Proposed Agreement Between the State of Minnesota and the Commission Pursuant to Section 274 of the Atomic Energy Act of 1954, as amended," dated September 20, 2005;
- *Federal Register* notice, "Greater-Than-Class C and Transuranic Waste," 83 FR 6475, February 14, 2018; and
- *Federal Register* notice, "Greater-Than-Class C and Transuranic Waste. "84 FR 35037 – 35040, dated July 22, 2019,

- **Ms. Maupin's 2003 NRC Meritorious Service Award provided**:

  The Nuclear Regulatory Commission's Meritorious Service Award is presented to Cardelia Harvey-Maupin in recognition her extraordinary initiative and diligence in enriching the quality, efficiency, and effectiveness of the agency's Agreement State Program. Ms. Maupin measurably enhanced the program through her astute development of sound policy and procedures to support the agency's statutory responsibility to determine the adequacy and compatibility of Agreement State implementations of agency regulations. This was a challenging task, which involved integrating hundreds of regulatory requirements and supporting program elements. Nonetheless, Ms. Maupin successfully balanced State interests for flexibility in adopting equivalent requirements with the agency's need for national coherence and consistency. In addition, she regularly leads State review teams and is instrumental in developing programs for handling Agreement State allegations.

Supporting Statement for Differing View on
"Path Forward and Recommendations for Certain Low-Level Radioactive Waste Disposal Rulemakings"

The Differing View to which this supporting statement is attached sets forth an impressively-researched, extensively-documented case, building on excerpts from Commissioner Baran's voting record on SECY-15-0094, that the staff should re-examine the legal defensibility and state-federal relations impacts of relinquishing NRC regulatory authority for GTCC waste disposal without requiring an amendment to any State Agreement for this purpose. These arguments alone provide ample grounds to give the staff pause about asking the Commission to embark on this uncharted course. But assuming away for the moment all the litigative risk of a novel legal theory and the programmatic risks of dual regulation and an unwelcome change in Agreement State policy, there is also the question of whether the reputational risk to the agency would be prudent.

The very survival of the many industrial uses of nuclear materials, and the sustainability of this agency as we know it, depend on the public's confidence that the safety and security of these materials are assured by an impartial, arm's length regulator. The NRC has long appreciated the importance of this reputational capital and has maintained credible efforts over decades to preserve and enhance it. One of those efforts is the agency's unswerving commitment to transparency. This alone has helped preserve our good standing by keeping us honest, and it has enabled most of us to be proud to work here. But even one decision that only appears to have been made preferentially and without a clear safety or security rationale can do serious and lasting damage to NRC's standing with its most important constituency. And in this instance, the most salient developments do not furnish convincing evidence of a safety-based rationale:

- A technically well-grounded, stakeholder-vetted, but unproven set of planned new NRC requirements that, according to Commissioner Baran, would permit the commercial near-surface disposal of a GTCC waste inventory in average radionuclide concentrations at least 50 times higher than those of the transuranic (TRU) wastes currently shipped for deep geologic repository disposed at the Waste Isolation Pilot Plant. Some GTCC waste concentrations, he noted, are 12,000 times higher than those of the TRU wastes bound for WIPP.

- A distant, comprehensively addressed, but memorable history of environmental failures that resulted from the application of unproven disposal requirements that turned out to be non-conservative.

- A creative but unadjudicated legal strategy expressly devised for the sole purpose of circumventing the plain language of the LLRWPAA mandate that NRC exercise exclusive, preemptive regulatory authority over the disposal of GTCC wastes. This strategy is also expected to obviate the need to amend any State Agreements to authorize state GTCC regulation, thereby facilitating the removal of NRC as the most technically-qualified regulator to oversee the implementation of its own rule on GTCC waste disposal.

CONTACT: Robert MacDougall, NMSS/REFS
301-415-5175

- A sitting Governor of the host state for the candidate GTCC disposal facility personally writing the Chair of the Commission to object to being forced to accept wastes with higher concentrations of radioactive material.

- The resounding silence of all other Agreement State Governors in the nation at the prospect of amending their State Agreements to obtain regulatory authority for GTCC waste disposal.

- An apparent constituency of one – WCS -- for Agreement State regulation of GTCC waste disposal. This constituent was also the beneficiary of a 2001 NRC Order exempting it from, among other things, Part 150 SNM possession requirements. In its *Federal Register* notice on the Order, NRC noted that WCS had requested the exemption "because it expects that the current limits set forth in 10 CFR part 150 will severely impact its ability to compete in the mixed waste treatment market." The FRN offered no other justification for the exemption.

All of which begs a fundamental question: who benefits from this set of circumstances? In the absence of a compelling safety case, the answer is all too apparent.

Undeniably, these circumstances add up to what is only an appearance of regulatory capture, and no doubt there are credible explanations for NRC's positions. But in the realm of reputational risk management, appearances matter, and the staff's currently-proposed path forward does not appear to have been the product of a safety- or security-conscious work environment.

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APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Date: 7/25/2021

Name: Vanessa Medina

Phone: 575-649-4788 (Home)
432-557-3405 (Business)

Address: 1908 Ward St.

Email: Vanessa@midlandhumane.org

Midland (City) TX (State) 79705 (Zip)

I am [✓] I am not [ ] a U.S. Citizen

Please tell us about yourself:

Are you a graduate of Midland 101? [ ] yes [✓] no

I have lived in Midland 7 years.

Occupation: Executive Director of Midland Humane Coalition

Professional and/or Community Activities:

Animal Rescue/Adoptions with Midland Humane Coalition

What is your personal vision for the City?

A city that is a no-kill community for its dogs & cats.

Please specify any time constraints you may have.

No Constraints

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Animal Services Advisory Commission

Please tell us why you are interested in serving on this board or commission.

I currenty work to help the public and its animals. Serving on this commission would allow me to do more for this city.

What contribution would you most like to make?

Advocating for the animals in our community.

Additional pertinent information or references:

Luann Morgan - luannmorgan@gmail.com

(2) Name of Board/Commission:

N/A

What contribution would you most like to make?

N/A

Additional pertinent information or references:

N/A

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Ken C. Medlin

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Date: July 2021

Name: Ryan Rampton

Phone: 501-626-9777 **(Home)**

Address: 3213 N. I St.

432-262-0802 **(Business)**

Midland TX 79705

Email: ryan.rampton@gcrcc.org

(City) **(State)** **(Zip)**

I am ____ I am not ____ a U.S. Citizen

Please tell us about yourself:

Are you a graduate of Midland 101? ____yes _____no

I have lived in Midland 7 **_____ years.**

Occupation: Connections Minister

Professional and/or Community Activities:

I am currently the connections minister at the Golf Course Road Church of Christ. I have previously served as the campus minister at Midland Christian School and as a youth minister at GCR Church of Christ.

I consistently volunteer with Mission Agape to help provide food for the Permian Basin community as well as with Opportunity Tribe, previously Unlock Ministeries, as a mentor/group leader for a group of junior high students. I am always looking for more opportunities for volunteerism in Midland.

In the fall, I will begin my second year of the Leadership Midland program.

What is your personal vision for the City?

I love Midland. I hope for Midland to be a place where people can love living because of the entrepreneurial spirit in the city, its top-notch parks, engaging activities and entertainment, and a strong community feeling. I want Midland to be a place that draws people in for more than oil. Midland has been and continues to be an excellent place for my family, and I want others to see Midland as a community to raise a strong family.

Please specify any time constraints you may have.

I have a pretty flexible schedule as a minister. So, it is easy to get away during the day for meetings. I am an organized person that works hard to fit all my commitments into my schedule.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Parks and Recreation Commission

Please tell us why you are interested in serving on this board or commission.

As a father of two young children (Lucy-5 & Lincoln-2), we frequently visit many parks in our community. I believe that parks and a vital part of the quality of place in Midland. I would love to be a part of servicing, improving, and developing parks in our community.

What contribution would you most like to make?

I can bring a perspective of a father of young children who uses the parks regularly. As a minister, I also have a pulse on a diverse group in the community so I think I can bring a variety of perspectives to the table. I also have a deep love for this city. I want to impact Midland positively, and I think parks and recreation are a great way to do that.

I am a hard-working, creative, and critical thinker that loves working in groups. I think I would be a valuable addition to this committee.

Additional pertinent information or references:

(2) Name of Board/Commission:

Midland Housing Authority Commission

What contribution would you most like to make?

I have a heart for those struggling in our city. A big part of my job is mobilizing our church to serve the community. So, a committee that seeks to provide housing for the vulnerable in our community is something that I think I could really excel in. The compassion I have for people shows through my decision-making and creative and critical problem-solving.

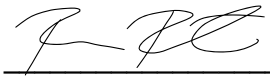
In my job, I am frequently looking at leases and fielding requests from community members for rental assistance, so I have a good pulse on the housing issues in our community.

Additional pertinent information or references:

Trisha Wall - Opportunity Tribe - she can speak to my compassion for the vulnerable in our community - trishawall@me.com

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Date: 6/3/2021

Name: Ken Sapien

Phone: 432-934-4084 **(Home)**

Address: 5010 Whitman Dr.

432-561-5780 **(Business)**

Midland Texas 79705

(City) (State) (Zip)

Email: KenSapien@BeyondET.com

I am [✔] **I am not** [ ] **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? [ ] **yes** [✔] **no**

I have lived in Midland 20 **years.**

Occupation: Executive -VP and Principal (engineering)

Professional and/or Community Activities:

Involved in Rotary, Assoiated General Contractors, American Society of Professional Engineers, Permian Basin Petroleum Associatic

Permiasn Basin Pipeliners Association. Have coached youth sports and developed a small company to mentor athletes throught the

recruiting process.

What is your personal vision for the City?

My vision would be for Midland to propser organically, with Safe communities, recreational offerings, a thriving economy and life long

learning oppurtunities that creat a synergy where all Midlanders can live healthy lives and continuously reinvent and prosper.

Please specify any time constraints you may have.

As an owner, I have the ability to make my own schedule, if im proactive about upcoming endeavors.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Any Available

Please tell us why you are interested in serving on this board or commission.

I would like to give back to this community as much as it has given to me. I believe I have good judgement and the

necessary skills to become an important assest to the board and serving its mission.

What contribution would you most like to make?

any contribution that would help the board or the commission to meet it's vision and goals

Additional pertinent information or references:

Served on the BOD for RRC Power and Energy (Bill Bong 512.538.8882), Beyond Engineering(Winter Yao 512.767.2809)

RRC Surveying (Gary Box 575.602.2424) and Calibration Solutions(Reggie Regimand 512.218.5988)

other refrences Andrew Mellen 432.262.0999, Dianne Anderson 432.684.4560

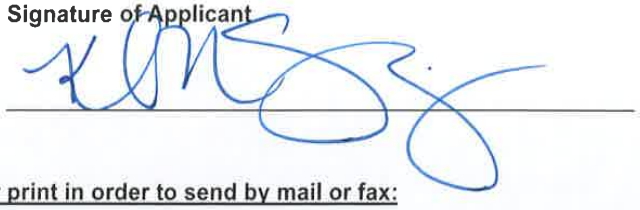
(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant



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Print Application

APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Date: 7/13/2021

Name: Sierra Strickland

Phone: 4325572132 **(Home)**

Address: 4408 St Andrews Drive

4322471425 **(Business)**

Midland TX 79705

Email: carteblanche247@gmail.com

(City) (State) (Zip)

I am [✔] **I am not** [ ] **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? [ ] **yes** [✔] **no**

I have lived in Midland 13 **years.**

Occupation: Owner/Manager of Legacy Emer Hospital

Professional and/or Community Activities:

I have worked in the veterinary field for 13 years, working closely with several local hospitals and their employees. I also worked inside the animal shelter as a contract employee of the Midland Humane Coalition for eight years. Along with shelter and rescue work, I took part in several community outreach programs, as community involvement is a huge passion of mine.

What is your personal vision for the City?

I believe the city has made giant strides in the right direction over the past years, but change is always around the corner and new ideas breathe new life into what should be considered "normal".

Please specify any time constraints you may have.

I make my own schedule so as long as I'm able to properly plan ahead, time restraints are few and far between. I have an amazing support team at work as well as at home.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Animal Advisory Committee

Please tell us why you are interested in serving on this board or commission.

I believe my knowledge in the field as well as my time in Midland throughout the many changes, will be beneficial in tracking progress and coming up with new ideas.

What contribution would you most like to make?

I would like to see more changes surrounding the amount of strays and unwanted pets in our community.

Additional pertinent information or references:

Tasha Sport - 432)528-5919

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant

Sierra Strickland Digitally signed by Sierra Strickland
Date: 2021.07.13 18:36:42 -05'00'

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City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

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APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Name: Welsey Webb

Address: 5913 Mile High Ln.

Midland (City) TX (State) 79706 (Zip)

Date: 9/20/2021

Phone: 432-889-3472 **(Home)**

432-247-5654 **(Business)**

Email: wes@macstexasbbq.com

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

I have lived in Midland 30 **years.**

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

Occupation: Owner/Managing Partner of Mac's BBQ & Catering

Professional and/or Community Activities:

Honored to own and operate a successful business in Midland called Mac's BBQ & Catering. We have been blessed to cater and dontate food to almost every local charity and non profit in West Texas, as well as local law enforcement and first responders. I'm an Eagle Scout from local troop 232 in Midland and currently enrolled in Leadership Midland through the Chamber of Commerce

What is your personal vision for the City?

My vision is to personally help Midland grow and still maintain the close knit feel of the community, I remember growing up in. I would like to see unity in the community and see people working together for the better good of our great city. Midland is constantly growing and it's important that we all work together to help everyone achieve their goals.

Please specify any time constraints you may have.

Nothing, unless George Bush, George Strait or Nolan Ryan request a catering from Mac's.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Airport Planning and Development Board

Please tell us why you are interested in serving on this board or commission.

I'm currently working on my private pilot certificate at Midland Airpark. Both my parents had their private pilot certificates when I was younger and I would like to see my daughter be able to get her private pilot certificate one day from Midland Airpark. Air travel is very

important to Midland and the money it brings to the city from Midland Airpark to Midland International is important for our community.

What contribution would you most like to make?

I would like to know that my daughter would one day fly as a private pilot out of Midland and know that I had a role in help making positive and impactful decisions for generations to come, for not only pilots in Midland/Odessa, but passengers as well.

Additional pertinent information or references:

Lissa Wagner - Said she would write a letter if needed

Nick McClure

Jared Blong

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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PLEASE TYPE OR PRINT CLEARLY:

Date: 06/15/2021

Name: Adrian Urquiola

Phone: (432)530-9517 (Home)

Address: 1210 Cerrillos Ave (Business)

Email: adrianu_81@yahoo.com

(City) (State) (Zip)

I am [X] I am not [ ] a U.S. Citizen

Please tell us about yourself:

Are you a graduate of Midland 101? [ ] yes [X] no

I have lived in Midland 33 years.

Occupation: HSE Consultant

Professional and/or Community Activities:

Part of "Communidad in Action", "John Norman City Council Advisory Committee", "Board Member of Midland Chamber of Commerce"

What is your personal vision for the City?

To have a healthy and balance lifestyle in this city for all families of Midland, TX

Please specify any time constraints you may have.

None just need a proper notice to plan accordingly

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Midland Housing Authority

Please tell us why you are interested in serving on this board or commission.

Coming from my background and living in poverty is something I know too ~~much~~ well. I want an opportunity to help come up w/ solutions to affordable housing.

What contribution would you most like to make?

My Time

Additional pertinent information or references:

References: Jack Ladd, Adrian Carrasco, John Norman, Morris Williams

(2) Name of Board/Commission:

Parks and Recreation

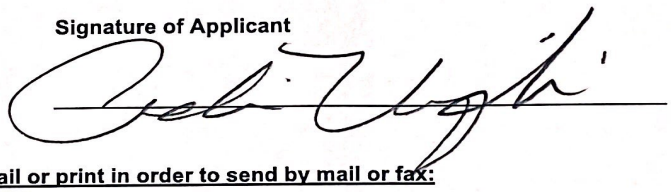
What contribution would you most like to make?

Help w/ communication from the citizens to city involving issues or lack of maintenance at our older parks in Midland

Additional pertinent information or references:

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Signature of Applicant



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PLEASE TYPE OR PRINT CLEARLY:

Date: 9/2/2021

Name: Kenneth Woods

Phone: (618)980-4323 **(Home)**

Address: 6000 Briarwood Q303

(432)520-4000 **(Business)**

Midland Tx 79707

Email: knnwoods@gmail.com

(City) (State) (Zip)

I am [✔] **I am not** [ ] **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? [ ] **yes** [✔] **no**

I have lived in Midland 11 **years.**

Occupation: Director of Operations

Professional and/or Community Activities:

I have worked and helped Midland in both my professional job and the gym I own. THe Kent compaines has help accross the board in all areas, but specifically I have worked with Mrs. Yarbourgh and South Elementry. The gym has also help quarterly Blood Drives as well, that greatly helped them during Covid last year

What is your personal vision for the City?

I want the people of midland to be proud of their city. I have moved many times in my younger years and I feel strongly that this is one of the greatest cities i have known. I want to help continue to improve Midland so all our residents have that same sense of pride that I do! Midland is great and we need to contnue to honor what we are to build for the future

Please specify any time constraints you may have.

I have control of my schedule so I am open

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Animal Services Advisory Commission

Please tell us why you are interested in serving on this board or commission.

I have always had a passion for animals. Since moving here I have teamed up with several organzations to help stray and abandonec animals. For midland to be great we need to ensure we are doing everything to curb stray animals and regulate what is acceptable

within city limits.

What contribution would you most like to make?

I want to serve to ensure we continue to take steps to curb stray animals. We need to provide resources our information to the citizen here in Midland on what they can do to become more responsible in keeping Midland great

Additional pertinent information or references:

I feel like my passion for helping, my passion for animals, and my overal background will do well serving this board. I am very proactive and forward thinking to make sure I become an asset on this commission

(2) Name of Board/Commission:

Park and Recreation Commission

What contribution would you most like to make?

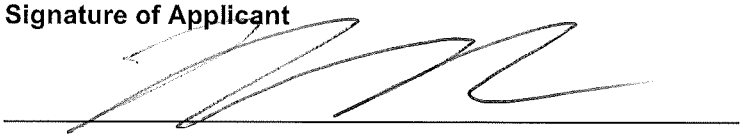
I want to see the continued growth for our city in this area. I love the outdoors and having great parks create avenues for new activities and attractions for our citizens to partake in. The more oppertunities we create for creation the better the city becomes

Additional pertinent information or references:

I think this is a huge step to support and grow Midland. Some of the greatest cities in the world are known for thier parks, this is a hug staple of any community. We have been blessed to get to this point and i wnat to see it contiue to grow!

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Signature of Applicant



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PLEASE TYPE OR PRINT CLEARLY:

Date: 9/7/2021

Name: Cameron Willmann

Phone: 432-978-4298 **(Home)**

Address: 1205 W Kansas Ave

432-704-5400 **(Business)**

Midland TX 79701

Email: cameron@hauspg.com

(City) (State) (Zip)

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

I have lived in Midland 14 **years.**

Occupation: Realtor

Professional and/or Community Activities:

Midland Community Theater volunteer and past production board member, Permian Basin Board of Realtors 2015 President, Leadership Midland speaker for Real Estate day for 2 years, Auction Planning Committee Volunteer for Museam of the Southwest, Texas Realtors Executive Board Appointee, National Association of Realtors Land Use and Environmental Committee Member

What is your personal vision for the City?

Smart Growth and maintenance while maintaning transparency and cooperation

Please specify any time constraints you may have.

My volunteer work with the Texas Association of Realtors and the National Association of Realtors requires time away from Midland for meetings and conferences, but if Zoom or a conference call is available for meetings, I can almost always step away

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Oil & Gas Advisory Board

Please tell us why you are interested in serving on this board or commission.

I am a partner with a builder and developer and sell almost 200 homes a year. I am intersted in the develoment of our community and the responsible oversight of the affect that Oil and gas may have on the real estate industry.

What contribution would you most like to make?

Thoughtful input on the impact drilling in the city has on neighborhoods and the people that live in them.

Additional pertinent information or references:

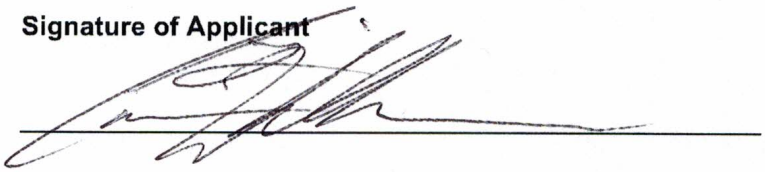
(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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PLEASE TYPE OR PRINT CLEARLY:

Date: 9/18/2021

Name: Aaron Kinsey

Phone: 979.492.0424 **(Home)**

979.492.0424 **(Business)**

Address: 4404 San Pedro Ct

Midland Texas 79707

(City) (State) (Zip)

Email: aaron.kinsey@gmail.com

I am [✓] **I am not** [ ] **a U.S. Citizen**

Are you a graduate of Midland 101? [ ] **yes** [✓] **no**

Please tell us about yourself:

I have lived in Midland 3 **years.**

Occupation: CEO of American Patrols (Aerial Patrol Company)

Professional and/or Community Activities:

CEO of American Patrols, the Permian Basin's largest aerial patrol service (flying 100+ flights per week); President of Skywest Airport; Partner in Bear Capital, small business investment firm; former VP of a San Antonio-based commercial real estate company; Former Air Force pilot/officer (9+ years); active member of Redeemer Church of Midland

What is your personal vision for the City?

A place where freedom, families and businesses flourish. Continued development of local resources to improve quality of life while maintaining small town, West Texas hospitality.

Please specify any time constraints you may have.

Full time job that can be flexible for required meetings.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Permian Basin Airport Board

Please tell us why you are interested in serving on this board or commission.

I am an active user of the local airports for traveling as a citizen and also a professional user due to my locally-based aviation company.

What contribution would you most like to make?

Ensure that the community's voice portrayed to city leadership. Help bring aviation, commercial real estate, and finance experience experience to the city's airports.

Additional pertinent information or references:

Pilot certifications: FAA Airline Transport Pilot including 737 type rating, Certified Flight Instructor for Instruments and Multi-Engine

Flight Exp.: >3,000 hrs of flight time including >950 instructor hrs; Business Exp.: executive in aviation and real estate industries

Personal References: Butch Morgan, Nick McClure

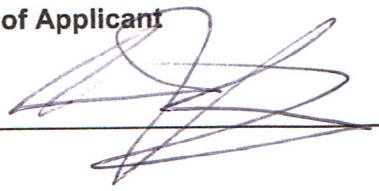
(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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FAX: (432) 685-7433

Submit Via Email

Print Application

AARON G. KINSEY
4404 San Pedro Ct, Midland, TX 79707
979.492.0424 | aaron.kinsey@gmail.com

experience

2018-present **AMERICAN PATROLS, INC.** **MIDLAND, TX**
Chief Executive Officer
American Patrols, Inc. has been providing aerial production patrol service in the West Texas and Southeast New Mexico area since 1987. We are the largest aerial patrol service in the Permian Basin area, for over 70 oil companies. Our efficient and low-cost service alerts operating companies to various types of leaks in the field while the leak is still small, thus minimizing cleanup costs and avoiding issues with environmental agencies.
- Led company through tripling of size in a three-year period
- Responsible for leadership of company, focusing on internal functions including finance, recruiting, training

2018-present **BEAR CAPITAL, LLC** **AUSTIN, TX**
Partner
Privately held investment firm focused on investments in micro-cap operating companies.

2017-2018 **SANTIKOS ENTERPRISES** **SAN ANTONIO, TX**
Vice President of Real Estate
Developed agile, 6-person team responsible for acquisitions, dispositions, leasing, and asset management for $450M portfolio consisting of retail, multi-family, hotel, industrial, and special use properties.
- Created enterprise-wide strategic planning framework and associated performance objectives for operations
- Negotiated corporate debt refinance including term loan and revolver (approx. a sixth of overall capitalization)
- Led leased space increase from 82% to 89% across a five-property, 700,000 sf retail center portfolio
- Underwrote three multi-family joint venture developments, two hotel value-add deals, and one medical office building for diversification of investment portfolio

summer 2016 **METLIFE REAL ESTATE INVESTORS** **MORRISTOWN, NJ**
Graduate Intern, Risk Research and Analytics
Performed research support, ad hoc reporting, and underwriting for a diversified real estate portfolio comprising $49B of commercial mortgages and $17B of equity investments.
- Assisted with underwriting for $23.5M multi-family preferred equity transaction and $20M retail acquisition
- Developed retail benchmarking database to assist underwriters in evaluation of over 250 nationwide retailers

2005-2014 **UNITED STATES AIR FORCE**
Instructor Training Flight Commander **SAN ANTONIO, TX**
Managed training program with 4 syllabi to develop 173 Air Force flight training instructors per year.
- Instructed officers on communication skills to a professional teaching environment in "train the trainer" role

Assistant Director of Squadron Flight Operations **COLUMBUS, MS**
Managed budgeting, resource planning, and daily operations of $61M flying program. Supervised 7 personnel to develop 216 pilots per year in #1 of 21 AF flight training squadrons.
- Supervised daily flights of base's $1.27B fleet; rated in top 3% of 261 junior officers
- Streamlined processes to overcome 50% instructor shortfall, transforming 46-person unit from worst to squadron benchmark within 4 months; graduated 69 students; ranked #1 of 8 Flight Commanders by supervisor

Assistant Flight Commander & Executive Officer **LITTLE ROCK, AR**
Commanded 6-person crew on $35M C-130. Executed 566 combat flights in Afghanistan/Iraq. Promoted to Captain.

education

2015-2017 **HARVARD BUSINESS SCHOOL** **BOSTON, MA**
Master in Business Administration, May 2017. Elected Harvard Business School Student Senator. Veterans Club CFO. Free Enterprise Club Co-President. Republican Club Co-President. Immersion experience in China.

2000-2005 **TEXAS A&M UNIVERSITY** **COLLEGE STATION, TX**
Master of Science degree in Finance. Bachelor of Business Administration degree, *summa cum laude*, in Accounting. Certificate in Leadership Study and Development. Deputy Corps Commander, Texas A&M Corps of Cadets. Mays Business Fellow and Professional Program in Accounting. Gathright Scholar (top academic performer in college).

personal Enjoy swimming, music, and family. MavPac Forty-40 Winner. Texas A&M Distinguished Young Alumnus. Active in local church. San Antonio Chamber of Commerce Leadership San Antonio - Class 43.

APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Date: 9/20/2021

Name: Laura Retzer

Phone: 4323126762 **(Home)**

Address: 3217 Durant Drive

4326847755 **(Business)**

Midland TX 79705

Email: retzerml@sbcglobal.net

(City) (State) (Zip)

I am [✓] **I am not** [ ] **a U.S. Citizen**

Please tell us about yourself:

Are you a graduate of Midland 101? [ ] **yes** [✓] **no**

I have lived in Midland 10 **years.**

Occupation: Business Manager

Professional and/or Community Activities:

I am the Business Manager for COM Aquatics, Inc. since 2013 and oversee all aspects of operations at COM Aquatics.

I volunteer with Breaking Bread Ministries, Keep Midland Beautiful, High Sky Children's Ranch, and for MISD PTA organizations.

I am a native West Texan, born in Odessa Texas, and have been back in Midland since 2011.

What is your personal vision for the City?

Midland is a vibrant and growing place. I hope that the city continues to develop quality programs for our residents, top notch schooling for our children, and employment opportunities for families who want to plant roots in Midland.

Please specify any time constraints you may have.

I work full time, and am active with my daughter's school and extracurricular activities. However, with notice, I am able to effectively manage my schedule.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Airport Planning and Development Board.

Please tell us why you are interested in serving on this board or commission.

I'd like to help with the planning and development of the Midland airport, as this is a key component for the City of Midland. I believe the airport has a lot to contribute to the citizens of Midland, and can offer a great first impression to visitors of Midland.

What contribution would you most like to make?

Assist with the growth and development of the airport and associated properties, and secure the airport's place in the heart of the community by showcasing all it has to offer to citizens of the Permian Basin and visitors to the area.

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Garrett Donnelly

Address: 10 Amhurst Ct.

Midland TX 79705

(City) (State) (Zip)

Date: 9/20/2021

Phone: 432-559-3684 **(Home)**

432-683-6293 **(Business)**

Email: gdonnelly@eastlandoil.com

I am ☑ **I am not** ☐ **a U.S. Citizen**

Please tell us about yourself:

I have lived in Midland 35 **years.**

Are you a graduate of Midland 101? ☐ **yes** ☑ **no**

Occupation: Vice President - Oil and Gas Operator

Professional and/or Community Activities:

Commissioner on Texas Historical Commission, Advistory Board for Texas Tech Health Science Center, Board Member for Safe Place

What is your personal vision for the City?

I would like to see a growing city capable of continuing our leadership position in the Energy Industry.

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at *www.midlandtexas.gov*)

(1) Name of Board/Commission:

Airport Planning and Development Board

Please tell us why you are interested in serving on this board or commission.

My family has been in aviation for many years and I am interested in learning more about the Airports role in West Texas.

_____

What contribution would you most like to make?

_____

_____

_____

Additional pertinent information or references:

_____

_____

_____

(2) Name of Board/Commission:

_____

_____

_____

What contribution would you most like to make?

_____

_____

_____

Additional pertinent information or references:

_____

_____

_____

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