CITY OF MIDLAND, TEXAS
AGENDA FOR CITY COUNCIL MEETING
October 22, 2024 - 10:00 AM
300 North Loraine
Midland, Texas
Council Chamber - City Hall

A quorum of the City Council intends to be physically present at the aforementioned location.

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

OPENING ITEMS

1. Invocation – Pastor Andrew Adams, Midland Bible Church

2. Pledge of Allegiance

PRESENTATIONS

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

   3a. Presentation of Proclamation for “Disability Employment Awareness Month”.

   3b. Presentation of Proclamation for “2024 Uptown Midland BPW Woman of Achievement – Krista Escamilla”.

   3c. Presentation from the Permian Basin Metropolitan Planning Organization on the Forward50 MTP draft.

   4c. Presentation from Director of Engineering Services Gabe McClelland regarding City/County Partnership for the Development of Roadways.

CONSENT AGENDA

4. MOTION APPROVING THE FOLLOWING MINUTES:

   4a. SPECIAL SESSION OF OCTOBER 8, 2024

   4b. REGULAR SESSION OF OCTOBER 8, 2024

5. 2024-166 – RESOLUTION AWARDING A FOOD AND BEVERAGE CONCESSION CONTRACT TO O’MULLIGAN’S 19TH HOLE FOR CONCESSION MANAGEMENT

SERVICES AT HOGAN PARK GOLF COURSE **(DISTRICT 2) (GENERAL SERVICES) (QUALITY OF LIFE AND PLACE)**

6. 2024-167 – RESOLUTION AUTHORIZING THE PURCHASE OF A TR400 VOYAGER CAMERA SYSTEM FOR THE ENGINEERING SERVICES DEPARTMENT FROM ARIES INDUSTRIES, INC. THROUGH SOURCEWELL FOR A TOTAL COST OF $136,171.00 **(DISTRICT: NONE) (GENERAL SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**

7. 2024-168 – RESOLUTION APPROVING THE PURCHASE OF SIXTY (60) BUNKER COATS AND SIXTY (60) BUNKER PANTS FROM DOOLEY TACKABERRY, INC., TROUGH BUYBOARD AT A TOTAL COST OF $206,052.84 **(DISTRICT: NONE) (GENERAL SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**

8. 2024-169 – RESOLUTION AWARDING A CONTRACT FOR THE LANDFILL ACCESS ROAD PROJECT TO REECE ALBERT, INC., FOR A COST OF $3,664,036.08; APPROVING $732,807.00 FOR CONTINGENCIES; AND APPROPRIATING FUNDS **(DISTRICT: NONE) (GENERAL SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)**

9. 115-2024 – MOTION REJECTING ALL STATEMENTS OF QUALIFICATIONS SUBMITTED IN RESPONSE TO THE ADVERTISEMENT OF A REQUEST FOR QUALIFICATIONS FOR ARCHITECTURAL AND ENGINEERING SERVICES ASSOCIATED WITH THE MULTIMODAL WILDCATTER TRAIL – CHAMPIONS, TRADEWINDS, AND DEAUVILLE PROJECT **(DISTRICT: NONE) (GENERAL SERVICES) (QUALITY OF LIFE AND PLACE)**

10. 2024-170 – RESOLUTION AWARDING A CONTRACT FOR THE PEGGY-SUE DRAINAGE IMPROVEMENTS TO DUFRANE CONSTRUCTION LLC FOR A COST OF $89,950.00; APPROVING $17,990.00 FOR CONTINGENCIES; AND TRANSFERRING AND APPROPRIATING FUNDS **(DISTRICT: 4) (GENERAL SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**

11. 116-2024 – MOTION AUTHORIZING THE EXECUTION OF A 2025 ROUTINE AIRPORT MAINTENANCE PROGRAM AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION, WHICH PROVIDES FOR THE CITY OF MIDLAND'S RECEIPT OF CERTAIN GRANT FUNDING TO BE UTILIZED ON CERTAIN AIRSIDE AND LANDSIDE IMPROVEMENTS AND GENERAL MAINTENANCE COSTS AT MIDLAND AIRPARK AIRPORT; APPROPRIATING $100,000.00 FROM THE AIRPORT OPERATING FUND (500500) CURRENT YEAR FEDERAL UNAPPROPRIATED FUND BALANCE TO A PROJECT ESTABLISHED BY THE CITY OF MIDLAND FINANCE DEPARTMENT; AND APPROPRIATING $11,111.11 FROM THE AIRPORT OPERATING FUND (500500) UNAPPROPRIATED FUND BALANCE TO A PROJECT ESTABLISHED BY THE CITY OF MIDLAND FINANCE DEPARTMENT **(DISTRICT 1) (AIRPORTS) (TRANSPARENT & CONSISTENT COMMUNICATION)**

12. 117-2024 – MOTION APPROVING A PROMOTIONAL AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND MIDLAND HISPANIC CHAMBER OF COMMERCE, INC., TO ADVERTISE OR PUBLICIZE THE CITY OF MIDLAND FOR THE PURPOSE OF DEVELOPING NEW AND EXPANDED BUSINESS ENTERPRISES **(DISTRICT: ALL) (CITY MANAGER) (STRONG ECONOMY WITH MORE QUALITY JOBS)**

13. 118-2024 – MOTION APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND MOTRAN ALLIANCE, INC. **(DISTRICT: ALL) (CITY MANAGER) (STRONG ECONOMY WITH MORE QUALITY JOBS)**

14. 2024-171 – RESOLUTION APPROVING THE ISSUANCE OF PERMITS TO COG OPERATING, LLC ("OPERATOR") TO DRILL TEN OIL AND GAS WELLS LOCATED IN SECTION 11, BLOCK X, H.P. HILLIARD SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 1,630 FEET AND 1,810 FEET EAST OF NORTH A STREET AND 5,040 FEET NORTH OF MOCKINGBIRD LANE); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT **(DISTRICT 1) (DEVELOPMENT SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)**

15. 2024-172 – RESOLUTION APPROVING THE ISSUANCE OF PERMITS TO COG OPERATING, LLC ("OPERATOR") TO DRILL FOUR OIL AND GAS WELLS LOCATED IN SECTION 11, BLOCK X, H.P. HILLIARD SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 490 FEET AND 550 FEET EAST OF NORTH A STREET AND 5,005 FEET NORTH OF MOCKINGBIRD LANE); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT **(DISTRICT 1) (DEVELOPMENT SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)**

16. 2024-173 – RESOLUTION AUTHORIZING THE EXECUTION OF COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACTS WITH CASA DE AMIGOS OF MIDLAND, TEXAS, INCORPORATED, THE SALVATION ARMY OF MIDLAND, THE MIDLAND COUNTY HOSPITAL DISTRICT, SENIOR LIFE MIDLAND, INC., MISSION HEALTH CARE, INC.,THRIVING UNITED, INC., CHURCH ON WHEELS, INC., WEST TEXAS FOOD BANK, AND MIDLAND HABITAT FOR HUMANITY; AUTHORIZING THE FUNDING OF COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAMS; AND APPROPRIATING AND ALLOCATING FUNDS **(DISTRICT: ALL) (DEVELOPMENT SERVICES) QUALITY OF LIFE AND PLACE**

17. 119-2024 – MOTION APPROVING, WITH STAFF'S RECOMMENDED CONDITIONS, A PRELIMINARY PLAT OF ENTRADA BUSINESS PARK ADDITION, SECTION 4, BEING A PLAT OF A 146.12-ACRE TRACT OF LAND OUT OF THE SOUTHWEST QUARTER OF SECTIONS 17 AND 20, BLOCK 40, T-2-S, T&P RR CO. SURVEY, IN PART, AND A REPLAT OF LOT 2, BLOCK 3, ENTRADA BUSINESS PARK ADDITION, SECTION 3, IN PART, COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST

CORNER OF THE INTERSECTION OF SOUTH FM 1788 AND WEST INTERSTATE 20) **(DISTRICT: NONE) (DEVELOPMENT SERVICES) QUALITY OF LIFE AND PLACE**

18. 120-2024 – MOTION APPROVING, WITH STAFF'S RECOMMENDED CONDITIONS, A PRELIMINARY PLAT OF GOLD SANDS ADDITION, BEING A 125.04-ACRE TRACT OF LAND OUT OF THE SOUTHEAST PART OF SECTION 24, BLOCK 40, T-2-S, T&P RR CO. SURVEY, COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH COUNTY ROAD 1232, APPROXIMATELY ONE-HALF MILE NORTH OF WEST COUNTY ROAD 140) **(DISTRICT: NONE) (DEVELOPMENT SERVICES) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

19. 121-2024 – MOTION RATIFYING THE PLANNING AND ZONING COMMISSION'S APPROVAL OF AN INSTRUMENT VACATING THE PLAT OF LONGVIEW SUBDIVISION, SECTION 3, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF NORTH COUNTY ROAD 1275 AND WEST COUNTY ROAD 50) **(DISTRICT: NONE) (DEVELOPMENT SERVICES) QUALITY OF LIFE AND PLACE**

20. 122-2024 – MOTION AUTHORIZING THE ACCEPTANCE OF GRANT FUNDS IN THE AMOUNT OF $150,358.00 FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES TO ASSIST THE CITY OF MIDLAND HEALTH SERVICES DIVISION WITH THE FUNDING AND DELIVERY OF 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) (FIRE) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**

21. 123-2024 – MOTION AUTHORIZING THE ACCEPTANCE OF A DONATION OF VARIOUS EQUIPMENT FROM PBEX, LLC, TO THE MIDLAND POLICE DEPARTMENT SWAT TEAM BREACHING UNIT **(DISTRICT: NONE) (POLICE) (SET THE STANDARD FOR A SAFE AND SECURE CITY)**

SECOND READINGS

22. 10570 – AN ORDINANCE VACATING AND ABANDONING THE PUBLIC RIGHT-OF-WAY ON A CITY-OWNED 0.497-ACRE TRACT OF LAND LOCATED ADJACENT TO LOT 4, BLOCK 5, MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED APPROXIMATELY 365 FEET EAST OF THE INTERSECTION OF PLISKA DRIVE AND NORTH SERVICE ROAD); RETAINING A NONEXCLUSIVE UTILITY EASEMENT; PROVIDING THAT THE CITY SHALL RETAIN OWNERSHIP OF THE AFOREMENTIONED TRACT; AND ORDERING RECORDATION BY THE CITY SECRETARY (FIRST READING HELD OCTOBER 8, 2024) **(DISTRICT 4) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

23. 10571 – AN ORDINANCE VACATING AND ABANDONING THE PUBLIC RIGHT-OF-WAY

ON A CITY-OWNED 0.611-ACRE TRACT OF LAND LOCATED ADJACENT TO LOT 1A, BLOCK 13, MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED NORTHEAST OF THE INTERSECTION OF LA FORCE BOULEVARD AND SLOAN FIELD BOULEVARD); RETAINING A NONEXCLUSIVE UTILITY EASEMENT; PROVIDING THAT THE CITY SHALL RETAIN OWNERSHIP OF THE AFOREMENTIONED TRACT; AND ORDERING RECORDATION BY THE CITY SECRETARY (FIRST READING HELD OCTOBER 8, 2024) **(DISTRICT 4) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

24. 10572 – AN ORDINANCE AMENDING TITLE III, "DEPARTMENTS", CHAPTER 1, "WATER DEPARTMENT", SECTION 2, "RATES", SECTION 25, "TERMINATION PROCEDURES", AND SECTION 27, "SEPTAGE WASTE HAULER DISCHARGES AND FEES", OF THE CITY CODE OF MIDLAND, TEXAS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION (FIRST READING HELD OCTOBER 8, 2024) **(DISTRICT: ALL) (UTILITIES) (TRANSPARENT & CONSISTENT COMMUNICATION)**

PUBLIC HEARINGS

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

25. 10573 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 6, BLOCK 62, PARK AVENUE HEIGHTS 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 ON THE WEST SIDE OF SOUTH MADISON STREET, APPROXIMATELY 200 FEET NORTH OF CLOVERDALE 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 2) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

26. 10574 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 3, BLOCK 61, PARK AVENUE HEIGHTS 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 ON THE WEST SIDE OF SOUTH TYLER STREET, APPROXIMATELY 120 FEET SOUTH 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) (QUALITY OF LIFE AND PLACE)**

27. 10575 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 3, BLOCK 20, GREENWOOD ADDITION, THIRD, FOURTH, AND 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 WEST SIDE OF SOUTH TILDEN STREET,

APPROXIMATELY 110 FEET SOUTH OF EAST WASHINGTON 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) (QUALITY OF LIFE AND PLACE)**

28. 10576 – AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 18, BLOCK 61, PARK AVENUE HEIGHTS 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 ON THE EAST SIDE OF SOUTH LEE STREET, APPROXIMATELY 171 FEET SOUTH 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) (QUALITY OF LIFE AND PLACE)**

MISCELLANEOUS

29. 124-2024 – MOTION GRANTING PRINCE SIGNS, LLC'S APPEAL AND REVERSING THE BUILDING OFFICIAL'S DENIAL OF A SIGN PERMIT FOR LOT 1D, BLOCK 1, PAVILION PARK, SECTION 14, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH BIG SPRING STREET AND PAVILION PARKWAY) **(DISTRICT 1) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

PUBLIC COMMENT

30. 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

31. 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 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.

Respectfully Submitted,

Tommy Gonzalez
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.

CITY OF MIDLAND, TEXAS
MIDLAND CITY COUNCIL
SPECIAL MINUTES
October 8, 2024

The City Council convened in **Special** Session in the City Hall Council Chamber, Midland, Texas, at 9:00 AM, Tuesday, October 8, 2024.

Council Members present:	Eric Davidson, Amy Stretcher Burkes, Robin Poole, Lori Blong, Scott Dufford, John Norman
Council Members absent:	Jack Ladd
Staff members present:	City Manager Tommy Gonzalez, City Attorney John Ohnemiller, Deputy City Manager Morris Williams Jr., Assistant City Manager Jose Ortiz

The meeting was called to order at 9:02 a.m.

SPECIAL SESSION

1. Receive and discuss a presentation from Parkhill, Smith & Cooper, Inc., DBA Parkhill, on the Downtown Master Plan.

   Mayor Blong called the Special City Council meeting to order at 9:02 a.m.

   Midland Development Corporation Chairman P. Lourcey Sams called the Midland Development Corporation meeting to order at 9:03 a.m.

   Parkhill Director of Planning Michael Howard, gave a brief introduction of the presentation.

   Julio Carrillo, Senior Planner, Parkhill, gave a presentation on the Parkhill Master Plan through 2050. Mr. Carrillo provided a timeline of implementation, completion and tracking of success. He also introduced a Midland Downtown Master Plan Implementation Dashboard.

   Discussion along with questions and answers ensued among City Council Members, Midland Development Corporation Board members and Parkhill staff.

All the business at hand having been completed, the meeting adjourned at 9:46 a.m.

PASSED AND APPROVED October 22, 2024.

DRAFT

Lori Blong, Mayor

ATTEST:

Marcia Bentley-German
City Governance Officer/City Secretary

DRAFT

MIDLAND CITY COUNCIL
MINUTES
October 8, 2024

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., October 08, 2024.

Council Members present:	Eric Davidson, Amy Stretcher Burkes, Robin Poole, Lori Blong, Scott Dufford, Jack Ladd, John Norman
Council Members absent:	None
Staff members present:	City Manager Tommy Gonzalez, City Attorney John Ohnemiller, Deputy City Manager Morris Williams Jr., Assistant City Manager Jose Ortiz

The meeting was called to order at 10:04 a.m.

OPENING ITEMS

1. Invocation – Pastor Phil Teaney, Home Line Baptist Church

2. Pledge of Allegiance

PRESENTATIONS

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

   3a. Presentation of Proclamation for “Municipal Court Week”.

CONSENT AGENDA

4. MOTION APPROVING THE FOLLOWING MINUTES:

   4a. REGULAR SESSION OF SEPTEMBER 24, 2024

6. 2024-158 – RESOLUTION APPROVING THE PURCHASE OF A SPARTAN CAFS PUMPER ON A METRO STAR CHASSIS AND ASSOCIATED EQUIPMENT FROM METRO FIRE APPARATUS SPECIALISTS, INC., THROUGH SOURCEWELL FOR A TOTAL COST OF $1,991,053.00; AND APPROPRIATING AND TRANSFERRING FUNDS **(DISTRICT: NONE) (GENERAL SERVICES) (PROVIDE SOUND**

DRAFT

GOVERNANCE & FISCAL MANAGEMENT)

7. 2024-159 – RESOLUTION APPROVING THE PURCHASE OF THREE (3) AMBULANCES AND ASSOCIATED EQUIPMENT FROM STERLING MCCALL FORD THROUGH THE HOUSTON-GALVESTON AREA COUNCIL FOR A TOTAL COST OF $1,194,295.00 **(DISTRICT: NONE) (GENERAL SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)**

8. 2024-160 – RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH JONES BROS. DIRT & PAVING CONTRACTORS, INC., IN THE AMOUNT OF $19,995,195.40 FOR THE MIDLAND AIRPARK AIRFIELD IMPROVEMENTS PROJECT AT MIDLAND AIRPARK AIRPORT; AND APPROPRIATING AND TRANSFERRING FUNDS FOR SAID PROJECT **(DISTRICT 1) (AIRPORTS) (TRANSPARENT & CONSISTENT COMMUNICATION)**

9. 2024-161 – RESOLUTION AUTHORIZING THE FINANCE DIRECTOR TO VERIFY AND ATTEST TO THE SUFFICIENCY OF CERTAIN FUND BALANCES HELD BY THE CITY OF MIDLAND DEPARTMENT OF AIRPORTS; AUTHORIZING THE CITY ATTORNEY TO CERTIFY THAT THE PROCEEDINGS AND MANNER OF ACCEPTANCE AND EXECUTION OF THE GRANT AGREEMENT COMPLY WITH APPLICABLE LAW; SAID VERIFICATION, ATTESTATION, AND CERTIFICATION SHALL BE MADE FOR THE PURPOSE OF EFFECTUATING THE CITY OF MIDLAND'S PARTICIPATION IN THE AIRPARK AIRFIELD IMPROVEMENTS PROJECT AT MIDLAND AIRPARK AIRPORT; AND AUTHORIZING THE DIRECTOR OF AIRPORTS TO EXECUTE, ON BEHALF OF THE CITY OF MIDLAND, ALL CONTRACTS AND AGREEMENTS WITH THE STATE OF TEXAS, REPRESENTED BY THE TEXAS DEPARTMENT OF TRANSPORTATION, AND SUCH OTHER PARTIES AS SHALL BE NECESSARY AND APPROPRIATE FOR THE IMPLEMENTATION OF THE AIRFIELD IMPROVEMENTS PROJECT AT MIDLAND AIRPARK AIRPORT **(DISTRICT 1) (AIRPORTS) (TRANSPARENT & CONSISTENT COMMUNICATION)**

11. 2024-162 – RESOLUTION AUTHORIZING THE SUBMISSION OF A JOINT APPLICATION WITH MIDLAND COUNTY FOR FISCAL YEAR 2024 BUREAU OF JUSTICE ASSISTANCE EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT FUNDS TOTALING $40,515.00, WITH THE CITY OF MIDLAND TO RECEIVE $30,515.00 AND MIDLAND COUNTY TO RECEIVE $10,000.00; RATIFYING THE EXECUTION OF AN AGREEMENT REGARDING THE DIVISION OF SAID GRANT FUNDS; AUTHORIZING THE MAYOR AND THOSE HOLDING THE TITLE OF "GRANT WRITER" OR "COMPLIANCE MANAGER" TO ACCEPT, REJECT, ALTER, OR TERMINATE SAID GRANT FUNDING; AND AUTHORIZING THE EXECUTION OF ALL NECESSARY DOCUMENTS FOR THE ACCEPTANCE OF SAID GRANT FUNDING **(DISTRICT: ALL) (POLICE) (SET THE STANDARD FOR A SAFE AND SECURE CITY)**

12. 113-2024 – MOTION AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY LICENSE (24-329-014) BETWEEN THE CITY OF MIDLAND AND TARGA PIPELINE MID-CONTINENT WESTEX LLC; REGARDING CITY-OWNED PROPERTY DESCRIBED AS COTTON FLAT ROAD BETWEEN SECTIONS 3 AND 4, BLOCK 39, T-2-S, T&P RR CO.

DRAFT

SURVEY, MIDLAND COUNTY, TEXAS **(DISTRICT 2) (UTILITIES) (STRONG ECONOMY WITH MORE QUALITY JOBS)**

John Norman moved to approve Consent Agenda items 4-12, excluding items 5 & 10; seconded by Jack Ladd.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

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

5. 111-2024 – MOTION ALLOCATING THE SUM OF $100,000 FROM THE 2024 OPERATING BUDGET OF THE GENERAL FUND TO A PROJECT FOR DOWNTOWN REVITALIZATION

Assistant City Manager Jose Ortiz gave a brief overview of the item noting approval of this motion will set aside funds for numerous downtown projects consistent with the master plan; an example is the Wall Street lighting project.

City Manager Tommy Gonzalez gave a brief report on some of the upcoming developments for downtown such as lighting during Christmas and new signage. There are also other developments in the works.

Eric Davidson moved to approve Motion No. 111-2024; seconded by Amy Stretcher Burkes.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

10. 112-2024 – MOTION AUTHORIZING THE ACCEPTANCE OF A FUTURE DONATION OF A CEDRIC BENSON STATUE TO BE PLACED INSIDE ASTOUND BROADBAND STADIUM AT THE SCHARBAUER SPORTS COMPLEX; AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE ALL NECESSARY DOCUMENTS AND INSTRUMENTS FOR THE ACCEPTANCE OF SAID FUTURE DONATION

Parks and Recreation Director Laurie Williams gave a brief overview and presentation of the item noting John A. White III would like to donate a bronze statue in honor of Cedric Benson as an excellent professional athlete.

Discussion of the location of the statute ensued and Council voted to amend the motion language so that if desired, the statue could be placed inside or around Astound Stadium.

DRAFT

John Norman moved to approve Motion No. 112-2024 as amended removing or changing the location; seconded by Eric Davidson.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

PUBLIC HEARINGS

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

13. 10570 – AN ORDINANCE VACATING AND ABANDONING THE PUBLIC RIGHT-OF-WAY ON A CITY-OWNED 0.497-ACRE TRACT OF LAND LOCATED ADJACENT TO LOT 4, BLOCK 5, MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED APPROXIMATELY 365 FEET EAST OF THE INTERSECTION OF PLISKA DRIVE AND NORTH SERVICE ROAD); RETAINING A NONEXCLUSIVE UTILITY EASEMENT; PROVIDING THAT THE CITY SHALL RETAIN OWNERSHIP OF THE AFOREMENTIONED TRACT; AND ORDERING RECORDATION BY THE CITY SECRETARY **(DISTRICT 4) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10570.

Planning & Development Officer Elizabeth Triggs gave a brief overview noting items 13 and 14 are related. They are both vacations of right of ways to make room for the new addition to the terminal at the airport.

Mayor Blong opened the public hearing at 10:24 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Robin Poole moved to approve the first of two readings of Ordinance No. 10570; seconded by Eric Davidson.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

14. 10571 – AN ORDINANCE VACATING AND ABANDONING THE PUBLIC RIGHT-OF-WAY ON A CITY-OWNED 0.611-ACRE TRACT OF LAND LOCATED ADJACENT TO LOT 1A, BLOCK 13, MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED NORTHEAST OF THE INTERSECTION OF LA FORCE BOULEVARD AND SLOAN FIELD BOULEVARD); RETAINING A NONEXCLUSIVE UTILITY EASEMENT; PROVIDING THAT THE CITY SHALL RETAIN OWNERSHIP OF THE AFOREMENTIONED TRACT; AND ORDERING RECORDATION BY THE CITY SECRETARY **(DISTRICT 4) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

DRAFT

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10571.

Planning & Development Officer Elizabeth Triggs gave a brief overview of the item noting it is related to the previous item (number 13). The subject Right of Way is located south of the terminal and utilities will need to be relocated. Staff recommends approval.

Mayor Blong opened the public hearing at 10:26 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Robin Poole moved to approve the first of two readings of Ordinance No. 10571; seconded by Amy Stretcher Burkes.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

15. 114-2024 – THE PROPOSED GRANTING OF OIL AND GAS WELL PERMITS TO COG OPERATING, LLC ("OPERATOR") FOR THE DRILLING OF THE FOLLOWING OIL AND GAS WELLS: MASK HZ UNIT #1001BH; MASK HZ UNIT #1001JH; MASK HZ UNIT #1002LH; MASK HZ UNIT #1003BH; MASK HZ UNIT #1003JH; MASK HZ UNIT #1004LH; MASK HZ UNIT #1004MH; MASK HZ UNIT #1006JH; MASK HZ UNIT #1007LH; MASK HZ UNIT #1008JH; AND MASK HZ UNIT #1008MH; SAID WELLS BEING GENERALLY LOCATED BETWEEN 1,365 FEET AND 2,045 FEET WEST OF NORTH A STREET EXTENSION AND BETWEEN 1,057 FEET AND 1,097 FEET NORTH OF PASSAGE WAY EXTENSION - PUBLIC HEARING ONLY **(DISTRICT 1) (DEVELOPMENT SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)**

Planning & Development Officer Elizabeth Triggs gave a brief overview of the item noting this is for 11 new oil and gas well permits that will be granted to COG LLC.

Oil & Gas Officer Garrick Clayton reported on the traffic plan that comes off of Hwy 349. No public streets will be utilized.

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

PUBLIC HEARING ONLY; NO ACTION TAKEN.

MISCELLANEOUS

16. 2024-163 – RESOLUTION APPROVING A CONTRACT WITH HENTHORN COMMERCIAL CONSTRUCTION, LLC, THROUGH BUYBOARD, FOR THE PURCHASE AND INSTALLATION OF DOORBELL SECURITY SYSTEMS FOR THE DOORBELL SECURITY SYSTEMS PROJECT FOR A TOTAL COST OF $182,339.40 **(DISTRICT 2) (GENERAL SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)**

DRAFT

ITEM PULLED BY STAFF; NO ACTION TAKEN.

Council Member Ladd shared concerns about the price of the Ring doorbell system and would like more details.

17. 2024-164 – RESOLUTION APPROVING A CONTRACT WITH FIELDTURF USA, INC., THROUGH THE EQUALIS GROUP PURCHASING PROGRAM, FOR THE RENOVATION OF THE DOUG RUSSELL BATH HOUSE AND PARKING LOT FOR A TOTAL COST OF $6,563,439.45; APPROVING $328,172.00 FOR PROJECT RELATED EXPENSES; AND APPROPRIATING FUNDS FOR SAID PROJECT **(DISTRICT 3) (GENERAL SERVICES) (QUALITY OF LIFE AND PLACE)**

Planning & Development Officer Elizabeth Triggs gave a brief overview of the item noting this is a request for City Council to approve the contract with the contractor. Mrs. Triggs reported the Doug Russell Bath House will now be called the Doug Russell Aquatic Center. Mrs. Triggs also reviewed the community impact this will have, the history of the pool which was constructed in 1962, the cost to renovate in past years and the revised quote of the Aquatic Center which is now $6.1M.

Parks and Recreation Director Laurie Williams reported they are ready to get started and can break ground as soon as possible.

Justin Gilmore, Level 5 Architect, spoke on the existing parking lot which now allows cars to flow through to the other side lot without going back into traffic.

Eric Davidson moved to approve Resolution No. 2024-164; seconded by Scott Dufford.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

18. 10572 – AN ORDINANCE AMENDING TITLE III, “DEPARTMENTS”, CHAPTER 1, “WATER DEPARTMENT”, SECTION 2, “RATES”, SECTION 25, “TERMINATION PROCEDURES”, AND SECTION 27, “SEPTAGE WASTE HAULER DISCHARGES AND FEES”, OF THE CITY CODE OF MIDLAND, TEXAS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION **(DISTRICT: ALL) (UTILITIES) (TRANSPARENT & CONSISTENT COMMUNICATION)**

Deputy City Secretary Jan Hamilton read the caption of Ordinance No. 10572.

Utilities Director Carl Craigo gave a brief overview of the item noting the rates, such as water rates, will be separated to make the processes cleaner.

Scott Dufford moved to approve the first of two readings of Ordinance No. 10572; seconded by Jack Ladd.

DRAFT

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

19. 2024-165 – RESOLUTION NOMINATING A CANDIDATE FOR THE MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS; AND DIRECTING THE CITY MANAGER TO DELIVER A COPY OF THIS RESOLUTION TO THE MIDLAND CENTRAL APPRAISAL DISTRICT **(DISTRICT: NONE) (FINANCE) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**

City Council went into Executive Session to discuss this item and reconvened at 11:44 a.m. to vote on this item.

Scott Dufford moved to approve Resolution No. 2024-165 by nominating John Scharbauer to the Midland Central Appraisal District Board of Directors; seconded by Jack Ladd.

The motion passed by the following vote:
AYE: Davidson, Stretcher Burkes, Poole, Blong, Dufford, Ladd, Norman
NAY: None
ABSTAIN: None
ABSENT: None

PUBLIC COMMENT

20. 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.)

Mark Wagner, 2806 Ann Drive, shared comments regarding the golf course.

EXECUTIVE SESSION

21. 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:

Mayor Blong recessed the City Council Meeting at 10:56 a.m. to go into Executive session and discuss item number 19.

a. Section 551.074, Personnel Matters

a.1. Deliberate the nomination of a member to the Midland Central Appraisal District board of directors.

All the business at hand having been completed, the meeting adjourned at 11:45 a.m.

DRAFT

PASSED AND APPROVED October 22, 2024.

Lori Blong, Mayor

ATTEST:

Marcia Bentley-German
City Governance Officer/City Secretary

DRAFT

City Council Meeting

Item Number: 5

Meeting Date: October 22, 2024

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AWARDING A FOOD AND BEVERAGE CONCESSION CONTRACT TO O'MULLIGAN'S 19TH HOLE FOR CONCESSION MANAGEMENT SERVICES AT HOGAN PARK GOLF COURSE (DISTRICT 2) (GENERAL SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

Resolution awarding a contract to the sole proposer for concession management services at the Hogan Park Golf Course.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the Golf Course FY25 operating budget.

Strategic Priority:

(Quality of Life and Place)

Discussion:

Request for proposals for concession management services at Hogan Park Golf Course were issued to sixteen (16) firms. We received one (1) proposal from the current vendor, O'Mulligans 19th Hole. After review of the proposal, staff recommends awarding a contract to O'Mulligans 19th Hole. Please see the attached memo from Laurie Williams, Community Services Director, for further discussion.

Therefore, please consider a resolution awarding a contract for concession management

services at Hogan Park Golf Course to O'Mulligans 19th Hole of Midland, Texas.

Morris Williams Jr.

City Manager's Office

Hogan Park Golf Course Division
Interoffice Memorandum

Date: October 10, 2024
To: Jose Ortiz, Assistant City Manager
From: Laurie M. Williams, Parks and Recreation Director
Subject: Hogan Golf Course Concessionaire– Award Contract

Requests for Proposals to engage a Concessionaire to provide Concession Management Services for the City of Midland Hogan Park Golf Course were issued on September 19, 2024. This service would include providing food, drinks, alcohol, and snacks, at the Hogan Park Golf Course Clubhouse and for scheduled tournaments and events at the golf course.

Proposals were opened on October 7. Parks and Recreation recommends awarding the contract to O'Mulligan's 19th Hole. This company has successfully operated concessions at Hogan Park Golf Course for approximately twenty years. The new contract would initially be for 5 years, with an option to renew for five (5) periods of one (1) year, for a total of ten (10) years.

No City of Midland funds will be expended in awarding this Concessionaire contract.

RESOLUTION NO. _____

RESOLUTION AWARDING A FOOD AND BEVERAGE CONCESSION CONTRACT TO O'MULLIGAN'S 19TH HOLE FOR CONCESSION MANAGEMENT SERVICES AT HOGAN PARK GOLF COURSE

WHEREAS, the City of Midland developed specifications and issued an advertisement for proposals for concession management services at Hogan Park Golf Course; and

WHEREAS, the sole proposal received was submitted by O'Mulligan's 19th Hole; and

WHEREAS, the City Council finds the proposal submitted by O'Mulligan's 19th Hole for concession management services at Hogan Park Golf Course to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a food and beverage concession contract to O'Mulligan's 19th Hole for concession management services at Hogan Park Golf Course;

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

SECTION ONE. That the City Manager and the City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a food and beverage concession contract to O'Mulligan's 19th Hole for concession management services at Hogan Park Golf Course. Said contract being in a form substantially similar to that of Exhibit A, which is attached hereto and incorporated herein for all purposes.

SECTION TWO. That funding shall be available in the Golf Course FY25 operating budget.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay O'Mulligan's 19th Hole pursuant to the terms of said food and beverage concession contract 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., 2024, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

_____
Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

S:\Resolutions\Purchase\2024\Contracts\Award Contract - Hogan Park Golf Course Concession Services.wpd

FOOD AND BEVERAGE CONCESSION CONTRACT

HOGAN PARK GOLF COURSE

25000017

THIS CONTRACT, effective this 23rd day of October 2024 (the "*Effective Date*"), by and between the City of Midland, Texas ("*City*"), and O'Mulligans 19th Hole, ("*Contractor*"). City and Contractor are collectively referred to herein as the "*Parties*" and individually as a "*Party*."

RECITALS

WHEREAS, City owns, operates, and maintains certain golf courses and related facilities for the general public, which are collectively known as the Hogan Park Municipal Golf Course (the "*Golf Course*"); and

WHEREAS, City desires to make food and beverages available to the general public and patrons of the Golf Course so as to provide such accommodations and all associated benefits thereof to the general public; and

WHEREAS, Contractor is in the business of providing food and beverages for sale and seeks to provide the same to the patrons of the Golf Course on an on-going basis and in accordance with the provisions of this Contract;

NOW THEREFORE, in consideration of the covenants and conditions contained herein, the Parties hereby agree as follows:

1. Services to be Provided: Contractor shall operate and maintain food and beverage concessions (consisting of the sale of food, beverages, candy, refreshments, and other similar items) within the designated concession area of the Golf Course club house for the benefit and convenience of Golf Course patrons. Additionally, Contractor shall provide mobile food and beverage concessions throughout the courses and facilities comprising the Golf Course for the benefit of and convenience of patrons during their rounds of play. For purposes of this Contract, the designated concession area of the club house and the points-of-sale for the mobile food and beverage concessions shall be referred to herein as the "*Concession Sites*."

2. Contract Term: This Contract shall be effective for an initial term of five (5) years beginning on the Effective Date. Thereafter, this Contract may be extended for an additional term of five additional (1) year renewals upon the Parties mutual agreement to such extension at least thirty (30) days prior to

the expiration of the initial 5-year term.

3. Contractor's Use of Golf Course Facilities: Contractor is permitted to access the Golf Course for the exclusive purpose of operating and maintaining concessions in accordance with the provisions of this Contract; Contractor shall not utilize the access or rights granted herein for any other purpose without the written consent of City's Parks and Recreation Director. If Contractor requests City's permission to access the Golf Course or its facilities for any other purpose and City consents to such use, Contractor shall pay a flat fee of $100.00 to the City for each such approved activity. Notwithstanding the foregoing, Contractor is expressly prohibited from utilizing the Golf Course in a manner that constitutes a nuisance or violates any statute, ordinance, rule, or regulation applicable to the Golf Course or the Concession Site.

4. Hours of Operation: The opening and closing hours of the Concession Sites shall coincide with the opening and closing hours of the Golf Course's pro shop. However, in any event, Contractor shall not open before 6:00 a.m. and shall close before midnight. Mobile concession units shall be open and available to patrons during the hours of 12:00 p.m. to 5:00 p.m. (at a minimum), unless weather conditions prohibit their operation.

5. Mobile Concession Units: Contractor shall operate at least one (1) mobile concession unit at the Golf Course for the sale of food, beverages, and concessions as set forth in this Contract. Such mobile concession units shall be self-contained as to water supply. The design and construction of the mobile concession units shall be subject to the approval of City's Parks and Recreation Director; the same shall also meet any applicable requirements of City's Health Department, including disposal of waste after the unit has been in service. Contractor may operate additional mobile concession units at the Golf Course upon obtaining the written approval of City's Parks and Recreation Director. All locations of said mobile units, when open for business, shall be approved by City's Parks and Recreation Director. Mobile concession units shall be maintained in a clean and sanitary condition.

6. Menu and Prices: Concessions sold by Contractor shall be standard, nationally-advertised products of first-class standard grades. Contractor must offer hot food service during all hours of operation. Set forth below is a minimum list of items that Contractor must offer for sale during all hours of operation:

A. Hamburgers - Hamburger patties shall be of beef, ground chuck, 100% U.S.D.A good grade, prepared in accordance with best practices, and shall be separated

individually by prepared papers. No meat trimmings shall be used. Patties containing utility canned and cutter grade beef shall not be sold or provided. Patties shall each be at least one-quarter (1/4) pound in weight; buns shall each be at least four (4) inches in diameter.

B. Hotdogs – Hotdog links shall be skinless, U.S.D.A No. 1 grade, and comprised of 100% meat with no filler. Minimum link size shall equate to ten (10) links per pound.

C. Candy Selection – Contractor must offer at least six (6) different types of candy of standard size.

D. Soda Selection and Beverages– Contractor must offer at least four (4) different types of soda. All beverages, regardless of the type of original container, must be dispensed in a proper cup or can before being provided to patrons. When beverages are served with ice, the cup or can shall not be filled with more than one-half (1/2) part ice unless specifically requested by the patron.

E. Dairy and Meat – All dairy and meat products shall be obtained from recognized, reputable suppliers.

F. Sandwiches (exclusive of hamburgers and hotdogs) – Contractor must offer at lease three (3) types of sandwiches; provided, however, that other similar items may be offered in lieu of the minimum three (3) types of sandwiches subject to the written approval of City's Parks and Recreation Director.

Contractor shall maintain at least one (1) vending machine at the Golf Course that dispenses a minimum of four (4) flavors of soda. Contractor shall also maintain at least one (1) vending machine at the Golf Course that dispenses at least six (6) types of candy. The location of said vending machines and the furnishing of additional vending machines above the minimum set forth herein shall be approved in writing by City's Parks and Recreation Director.

Contractor shall not sell any alcoholic beverages other than beer and wine. Contractor shall not sell beer or wine anywhere except at the Golf Course. Beer and wine must be dispensed in paper cups or cans.

Contractor must permanently and conspicuously display a complete price list of all concessions offered for sale.

7. Use of Equipment: Contractor may use City-owned facilities and equipment in its business operations on the Golf Course; provided that such usage is approved by City's Parks and Recreation Director. Within a reasonable time following the Effective Date, Contractor and Parks and Recreation Director (or her designee) shall cooperate in preparing a complete inventory of all City-owned equipment and property to be used by Contractor in its operations at the Golf Course. Upon the termination of this

Contract, Contractor shall be responsible for the delivery of said equipment and property to City of all such equipment in as good a condition as existed on the Effective Date, reasonable and ordinary wear and tear excepted.

Contractor may furnish additional equipment, furniture, supplies, and materials necessary to its operations. Such equipment, furniture, supplies, and materials shall remain the property of Contractor and may be removed by Contractor from the Golf Course premises at any time Contractor desires. As long as such equipment, furniture, supplies and materials remain at the Golf Course, such shall be replaced, repaired, or restored by the Contractor as necessary so that such remains in good operating order and appearance. The determination as to whether such equipment, furniture, supplies, and materials are in good operating order and appearance shall be in the sole discretion of City.

Contractor shall furnish all additional equipment (e.g., refrigerators, stoves, etc.) necessary to Contractor's operations at the Golf Course, and which are not currently owned or furnished by City. Such additional equipment furnished by Contractor must be modern in design, comprised of first-class materials and construction, and shall be sufficient in number and quality to satisfy the demands of Golf Course patrons.

Contractor understands and agrees that all personal property placed upon the Golf Course premises by Contractor shall be done at the sole risk and expense of Contractor; City shall not be liable to Contractor or to any other person for any loss, theft, vandalism, damage such property, or injury to persons caused by the use or malfunction of such property.

8. Buildings, Structures, and Improvements: Contractor acknowledges that it had an opportunity to examine the Concession Site(s) and portion of the Golf Course premises that it intends to use in performance under this Contract. Furthermore, as a result of such examination opportunity, Contractor acknowledges that nothing dangerous to life, limb, or health exists on the Golf Course. **CONTRACTOR HEREBY WAIVES ANY CLAIM FOR DAMAGES THAT MAY ARISE FROM ANY SUCH ALLEGED DEFECT FOLLOWING THE EFFECTIVE DATE. CONTRACTOR'S OCCUPANCY OF SUCH PREMISES SHALL BE CONCLUSIVE OF CONTRACTOR'S ACCEPTANCE THEREOF IN GOOD ORDER AND SATISFACTORY CONDITION, AND CONTRACTOR HEREBY ACCEPTS THE PREMISES IN ITS PRESENT CONDITION AS SUITABLE FOR ITS BUSINESS OPERATIONS. THE CONTRACTOR ACCEPTS THE CONCESSION SITE(S) AND PORTION OF THE GOLF COURSE PREMISES THAT IT INTENDS TO USE IN PERFORMANCE UNDER THIS CONTRACT AS IS AND WITH ALL**

FAULTS.

Unless specifically stated herein, Contractor agrees that no representation regarding the condition of the Golf Course, and City and its agents have not made any promise to decorate, alter, repair, or improve the Golf Course.

Contractor shall not alter any existing structure or provide for the addition of any structures or facilities prior to obtaining the written approval of City's Parks and Recreation Director. Contractor shall provide all furnishings, equipment, and personal property reasonably necessary for the maintenance and upkeep of the Concession Sites, including but not limited to lighting, and ownership of said property shall pass to City upon installation or placement at the Golf Course. Contractor shall maintain all Concession Sites in as good a condition as existed as of the Effective Date, reasonable and ordinary wear and tear excepted.

All improvements and fixtures that are permanently attached to a structure on the Golf Course that cannot be removed without damage to such structure shall become the property of City upon installation and shall not be removed by Contractor upon the termination of this Contract. Written consent from the City's Parks and Recreation Director must be obtained by Contractor prior to the installation of any such improvements or fixtures at the Golf Course. Contractor assumes all risk in the installation of such improvements and fixtures.

9. Maintenance: Contractor shall keep the Concession Sites in a clean and sanitary condition at all times. This shall include sweeping and mopping the floors each day that the Concession Sites are open for business and preventing an accumulation of debris, trash, and waste. Contractor shall ensure that all garbage, trash and litter and other waste is disposed of in accordance with City's applicable garbage, sanitary and health regulations. Contractor shall furnish an appropriate number of garbage containers to adequately serve patrons and the Concession Sites, and Contractor shall move such garbage in appropriate containers to and from established pickup areas. Contractor shall also maintain the restrooms at the club house in a clean and sanitary condition, including sweeping and mopping floors and removing the garbage every day Contractor conducts business at the Golf Course. Contractor shall also keep all fixtures, equipment, and personal property at the Concession Site in the club house in a clean, sanitary, and orderly condition at all times. Contractor shall keep those portions of the Golf Course surrounding the mobile concession units and any other portions on which Contractor operates clear of empty cups, cans, paper wrappers, and all similar debris as directed by City's Parks and Recreation Director from time to time. Contractor is solely responsible for the maintenance of those portions of the Golf Course on which Contractor regularly operates in a clean condition and free from the accumulation of trash

incident to Contractor's operation. Cleaning products and paper goods for kitchen and bathrooms shall be the sole responsibility of Contractor.

10. Utilities: City shall provide utilities, telephone and internet service excepted, consisting of water, electricity, and normal heat and illumination, except that in no event shall there be an increase in utilities services as they exist on the Effective Date without prior approval of City's Parks and Recreation Director. Any additional utilities required by Contractor, and approved by City's Parks and Recreation Director, shall be installed at Contractor's sole cost and expense. Any special utility equipment, such as water heaters or water purifiers, shall be purchased and installed at the expense of Contractor. All connections to City owned lines and utilities must be made in compliance with the Midland City Code.

11. Exclusive Rights: Contractor shall be the sole sale of concessions at the Golf Course. City shall not contract with any other person or entity for the sale of concessions at the Golf Course so long as Contractor is faithfully executing its duties pursuant to this Contract. City shall enforce current Golf Course regulations forbidding any other person or entity from selling concessions at the Golf Course. However, City does not warrant that it is capable of strictly enforcing such regulations. It is hereby agreed that City shall bear no liability to Contractor for any failure to strictly enforce any regulation against the sale concessions by any other party. City's failure to strictly enforce regulations against the sale of Concessions at the Golf Course by any third party shall not be deemed a breach of this Contract.

12. Contractor Payments: As consideration for the rights granted to Contractor herein, Contractor agrees to make yearly payments to City in accordance with the following schedule:

Amount	Due Date
$5,000.00	January 31
$5,000.00	April 30
$12,500.00	July 31
$12,500.00	October 31

Additionally, on or before October 31 of each year during the term of the Contract, Contractor shall pay to City an amount equal to seven percent (7%) of all its gross revenues above $35,000.00 and less than $175,000.00 for the twelve (12) preceding months. Furthermore, on or before October 31 of each year during the term of the Contract, Contractor shall also pay to City an amount equal to ten percent (10%) of all revenues exceeding $175,000.00, which shall be placed into a discretionary fund for capital improvements to the Concession Sites at the sole discretion of City. All such payments shall be made in lawful money of the United States to the City of Midland, Texas, at the Accounting Division of the City

located at 300 North Loraine, Midland, Texas, or at the mailing address of P. O. Box 1152, Midland, Texas, 79702.

The term "*gross revenues*" means revenues and receipts from concession sales, whether evidenced by check, credit, charge account, exchange, or otherwise. Gross revenues do not include the amount of any sales, use, or gross receipts tax imposed by any federal, state, municipal, or other governmental authority directly on sales, and collected from customers, provided that the amount of tax is added to or absorbed in the selling price and paid by Contractor. No franchise or capital stock tax and no income or similar tax based on income or profits as such shall be deducted from gross revenues. Each charge or credit is to be treated as a sale for the full price in the month during which the charge or sale is made, irrespective of when Contractor receives payment.

13. Rules and Regulations: Contractor shall observe the following rules and regulations during the term of this Contract:

G. Contractor's operations shall be conducted in a quiet, orderly manner and shall observe and comply with all laws, ordinances, and regulations applicable to Contractor's business.

H. No advertisements, signs, decorations, or displays shall be placed in, on, or about the Golf Course without the prior written approval of the City's Parks and Recreation Director.

I. Discrimination on account of race, color, sex, age, national origin, or any other protected class of individuals, whether directly or indirectly, in Contractor's use of the Golf Course is prohibited.

J. Contractor shall take immediate appropriate remedial action, including, but not limited to, the removal of an employee from employment at the Golf Course upon notice by City to Contractor that said employee is deemed to be discourteous or objectionable in the sole and absolute discretion of City's Parks and Recreation Director.

K. Contractor shall not cause or permit any charges, liens, mortgages, or other such encumbrances to be filed against the Golf Course or the equipment located at or on the Golf Course.

14. Tournaments: Contractor shall allow for tournament food and beverage service as follows:

L. Tournament organizers shall be allowed by Contractor to access facilities necessary for the cooking and serving of food for the hosting of City-approved tournaments and similar events. In consideration for such access, Contractor may charge a maximum of $5.00 per person.

M. Contractor shall retain an exclusive right to provide beer and wine service for attendees

of tournaments and similar events at lesser prices than established menu rates.

15. City's Inspection Rights: Contractor shall permit City and its agents, representatives, or employees to enter any Concession Site for the purposes of inspecting, maintaining, repairing, or altering the Concession Site, or determining whether Contractor is in compliance with the terms of this Contract.

16. Contractor's Responsibilities: Unless otherwise stipulated, Contractor shall provide and pay for all supplies, equipment, tools, superintendence, labor, insurance, transportation, and all other items necessary for Contractor's performance and satisfaction of the obligations referenced in this Contract. Contractor shall ensure that its employees shall be fully qualified and trained to complete the work contemplated in this Contract.

17. Records and Audits: Contractor shall maintain, in accordance with Generally Accepted Accounting Principles, full, complete, and accurate records and accounts of all sums of money paid or payable to Contractor for, on account of, or arising out of Contractor's business operation at the Golf Course for each day of the term of this Contract. Such records may not be purged or destroyed by Contractor at any time during the term of this Contract, regardless of any conflict between Contractor's document retention policies and this Contract. Contractor shall keep records based upon the following three revenue sources: snack bar, beverage carts, and tournaments. Contractor shall maintain daily receipts for the revenue sources and turn them in with the daily recap to the City's designated representative. Contractor shall provide the City Treasurer monthly reports of all receipts from business transactions and sales under this Contract. Such reports shall be prepared according to accounting methods prescribed by the City Treasurer and shall show all income and expenses. Such reports shall be submitted on or before the tenth (10th) day of the month immediately following the month being reported. Contractor agrees to give City access during reasonable hours to such records and accounts required to be maintained under this Contract upon City's request.

Following the completion of every calendar quarter, Contractor shall within twenty (20) days thereafter submit to the City Treasurer a statement prepared from an audit of all books of account, bank statements, documents, records, returns, papers, and files of Contractor relating to gross receipts and business transacted under this Contract. The statement shall be signed by licensed or certified public accountant, together with any amount due to City under the provisions of this Contract due to any discrepancy between the audit and the previously furnished monthly statements.

18. Reservations: City reserves the right to close all or a portion of the Golf Course for any or no

reason without liability. If City exercises its right to close all or a portion of the Golf Course, City shall not be liable to Contractor for any loss of revenue during such closure and this Contract shall continue in effect with the Contractor resuming operations upon reopening of the Golf Course or portion thereof. **CONTRACTOR HEREBY WAIVES ANY CLAIM FOR DAMAGES THAT MAY ARISE FROM ANY SUCH CLOSURE OF ALL OR A PORTION OF THE GOLF COURSE.** The decision to close the Golf Course or any portion thereof shall rest in sole and absolute discretion of City. By executing this Contract, Contractor assumes the risk that City may close the Golf Course or any portion thereof at any time prior to the termination of this Contract and that, in such event, Contractor shall not be entitled to any damages, offsets, repayments, or refunds as a result of such closure.

19. Performance Assurance: Contractor agrees to deposit funds in the amount of Twelve Thousand Five Hundred and No/100 Dollars ($12,500.00) with a reputable financial institution no later than fourteen (14) days following the Effective Date. Such deposit shall ensure Contractor's full and faithful performance of all the covenants, terms, and conditions of this Contract and stand as security for payment by Contractor of all valid claims by City. Contractor shall provide evidence of such deposit to City's Parks and Recreation Director.

20. Events of Default; Termination: The following events shall be deemed to be events of default by Contractor under this Contract:

A. Contractor's failure to timely pay any installment or payment required by this Contract;

B. Contractor's failure to comply with any term, provision, or covenant of this Contract (except for timely payments) and such failure is not cured within thirty (30) days following the issuance of written notice to Contractor; and

C. The taking by a court of competent jurisdiction of Contractor's assets pursuant to proceedings under the provisions of any federal or state reorganization code or act, insofar as the following enumerated remedies for default are provided for or permitted in such code or act.

Upon the occurrence of an event of default as heretofore provided, City may, at its option, elect to terminate this Agreement. Upon City electing to terminate, this Agreement shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof. City may resume possession of the premises.

Any such termination of this Agreement shall not relieve Contractor from the payment of any sum or sums that shall then be due and payable or become due and payable to City hereunder or any

claim for damages then or thereafter accruing against Contractor, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from Contractor for any default thereunder. All rights, options and remedies of City contained in this Agreement, shall be cumulative of the other, and the City shall have the right to pursue any one or all such remedies or any other remedy or relief available at law or in equity, whether or not stated in this Agreement. No waiver by City of a breach of any other covenants, conditions or restrictions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same of any other covenant, condition or restriction herein contained.

Upon any such expiration or termination of this Agreement, Contractor shall quit and peacefully surrender the premises to City, and City upon or at any time after such expiration or termination, may without further notice, enter upon and re-enter the premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess Contractor and remove Contractor and all other persons or property from the premises.

21. Contractor is a Licensee: Notwithstanding any contrary provision contained herein, Contractor shall not be deemed to have become the tenant of the City by virtue of executing this Contract, nor to have been given or accorded as against City the possession of any portion of the Golf Course; Contractor shall be deemed merely to be a licensee permitted to enter the Golf Course for the purpose of exercising the rights and privileges granted by this Contract. Upon any termination of this Agreement, City shall have the right through such means as it sees fit to remove and exclude therefrom Contractor and any of Contractor's agents without being deemed guilty of any unlawful entry, trespass or injury of any sort whatever.

22. Termination At Will: City may terminate this Contract at will, for any or no reason upon giving at least ninety (90) days' written notice to Contractor. The Parties understand and agree that it is in City's sole and absolute discretion to cancel this Contract during the term without penalty. Contractor has no expectation and has received no guarantees that this Contract will not be terminated before the end of the Contract term. The Parties bargained for the flexibility of terminating this Contract upon tender of the requisite notice at any time during the Contract term. All work and services under the Contract shall be suspended upon termination of the Contract becoming effective.

23. Extra Work: All minor details of Contractor's obligation not specifically mentioned in this Contract but obviously necessary for the satisfaction of Contractor's obligations shall be considered as incidental to and a part of those obligations referenced herein. Contractor shall not be entitled to any

additional compensation therefor unless specifically stated otherwise.

24. Waiver of Damages: Contractor hereby expressly waives any and all claims for compensation for any and all damages sustained by reason of any defect, deficiency, or impairment of the water supply system, drainage or heating systems, or electrical wires leading to the Concession Sites, or by reason of any loss resulting from failure of any water supply, heat, or current that may occur from time to time from any cause, or for any loss resulting from water; for any loss, damage or claim resulting from the cancellation, interruption, or termination by City for any reason of any event scheduled for public or private attendance at any of the Concession Sites; and Contractor hereby expressly releases and discharges City and its agents from any and all damages, claims, action and causes of action arising from any of the above causes.

25. Taxes, Permits, and Licenses: Contractor shall promptly and timely pay all taxes, excise, and license fees applicable to its operations contemplated herein, and shall take out and keep current all permits or licenses required by municipal, state or federal law, rule, regulation, or ordinance for the conduct of the business, and further shall not permit any of said taxes, excise, or license fees to be late or delinquent. Contractor shall, at its sole expense, obtain all permits, certifications, 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 Contractor's performance under this Contract, including all environmental laws and regulations.

26. Notices: Any notice given under the terms of this Contract shall, unless otherwise provided herein, be in writing and either delivered by hand or sent by United States Registered or Certified Mail, postage prepaid:

To City: (If mailed)	City of Midland, Texas P. O. Box 1152 Midland, Texas 79702
(If hand delivered)	300 North Loraine Suite 220 Midland, Texas 79701
To Contractor:	O'Mulligans 19th Hole 3210 Apperson Dr Midland, Texas 79705

The above addresses may be changed at any time by providing written notice to the other Party.

27. Indemnity: CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S COUNCIL MEMBERS, 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 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 CONTRACTOR, ITS AGENTS, 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 CONTRACTOR SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS THAT MAY BE OBTAINED AGAINST CITY OR ANY OF ITS COUNCIL MEMBERS, OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY FEES.

CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S COUNCIL MEMBERS, 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 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 COUNCIL MEMBERS, 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 CONTRACTOR OR CONTRACTOR'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 CONTRACTOR SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS THAT MAY BE OBTAINED AGAINST CITY OR ANY OF ITS COUNCIL MEMBERS, OFFICERS, AGENTS, OR EMPLOYEES, INCLUDING ATTORNEY FEES.

CONTRACTOR 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 CONTRACT. WHEN CITY SO DESIRES, CONTRACTOR SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED, OR WAIVED. CONTRACTOR, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY, AND SAVE HARMLESS CITY AND ALL OF ITS COUNCIL MEMBERS, 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 CONTRACTOR OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND CONTRACTOR SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS THAT MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY FEES.

28. 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 the Parties 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.

29. Amendments: This Contract may not be altered, changed, or amended except by an instrument in writing signed by the Parties.

30. Entire Agreement: This Contract and all incorporated Contract documents constitute the entire agreement among City and Contractor; no prior written or contemporaneous oral promises or representations shall be binding.

31. Prompt Pay Act: City and Contractor agree that Texas Government Code, Chapter 2251, Payment for Goods and Services does not waive governmental immunity.

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

33. Waiver of Attorney Fees: BY EXECUTING THIS CONTRACT, CONTRACTOR 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 IS IN ANY WAY RELATED TO THIS CONTRACT, OR THE CONSTRUCTION, INTERPRETATION, OR BREACH OF THIS CONTRACT. CONTRACTOR SPECIFICALLY AGREES THAT IF CONTRACTOR 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, CONTRACTOR AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY FEES TO WHICH CONTRACTOR MIGHT OTHERWISE BE ENTITLED.

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

INTERPRETED AS A WAIVER OR GOVERNMENTAL IMMUNITY AND SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

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

34. 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, Contractor 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 said 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 Contractor shall settle, the physical and mailing addresses of Contractor at the time and date the claim was presented and the physical and mailing addresses of Contractor for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Contractor 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 Contractor that Contractor'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, Contractor's failure to comply with the requirements of this Section shall perpetually bar Contractor'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. Contractor agrees that the requirements of this entire Contract are reasonable. The provisions and obligations of this Section shall survive the termination of this Contract.

35. Assignments: Contractor 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 decision

regarding whether to grant consent to an assignment shall be in the sole discretion of City.

36. 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.

37. Independent Contractor: Contractor shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of City. Contractor 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. Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors and subcontractors. Nothing in this Contract shall be construed as creating a partnership or joint enterprise between City and Contractor. No person performing any of the work and services described hereunder by Contractor 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.

38. 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.

39. Insurance: Contractor 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 Contractor 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 Contractor shall inure to the benefit of employees injured during the course and scope of their employment by Contractor 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 an occurrence basis. City shall be provided the notice by Contractor's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

Contractor 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 and policies that name City as an additional insured on an occurrence basis (except workers' compensation).

The Parties agree that, prior to the execution of the Contract, Contractor 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.

Contractor certifies that the certificate of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code.

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

41. State-Mandated Verifications: To the extent that Sections 2271.002, 2274.002 and 2276.002 of the Texas Government Code (collectively, the "*Anti-Boycott Statutes*") apply to this Contract,

Contractor hereby verifies:

- that Contractor does not boycott Israel and will not boycott Israel during the term of this Contract;
- that Contractor does not boycott energy companies and will not boycott energy companies during the term of this Contract; and
- that Contractor 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 Contractor shall be deemed to have not made such verification.

42. 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, Contractor 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 Contractor 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 Contractor; or (b) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to City.

43. Public Information: To the extent that this Contract is a contract described by Section 552.371 of the Texas Government Code, Contractor 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 Contractor agrees that the contract can be terminated if Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

44. 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.

45. If applicable, Contractor 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.

46. **Severability:** In case any one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this contract shall be considered as if such invalid, illegal or unenforceable provision had never been contained in this contract.

[Signature Pages Follow]

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

_____
Tommy Gonzalez, City Manager

ATTEST

_____
Marcia Bentley-German, City Secretary/Governance Officer

APPROVED AS TO FORM ONLY

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF_____§
§
COUNTY OF_____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 2024, personally appeared, _____, an officer of O'Mulligans 19th Hole, 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 _____, 2024.

_____
Notary Public, State of _____

Date: 9/19/2024

MIDLAND
Purchasing Division

300 NORTH LORAINE
P. O. BOX 1152
MIDLAND, TX 79702

BID NO: 25000017

CLOSING DATE:

October 9, 2024

CLOSING TIME:

3:00 PM

BIDS WILL BE RECEIVED UNTIL **3:00 PM** on **10/9/2024** THROUGH BONFIRE FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO: **Hogan Park Golf Course 3600 N Fairgrounds Rd, Midland, TX 79705**

DESCRIPTION
Proposal for Concession Management Services at Hogan Park Golf Course

NOTICE TO BIDDERS:

1. FAILURE TO RESPOND WITH EITHER A BID OR "NO BID" WILL SUBJECT YOUR FIRM TO REMOVAL FROM THE BID LIST FOR THIS TYPE OF MATERIAL, EQUIPMENT OR SUPPLY ITEM.
2. IF THE SELECTED BIDDER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF CONTRACT, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER.
3. IMPORTANT NOTICE: IF THE CONTRACT DOCUMENTS REQUIRE WORKER'S COMPENSATION INSURANCE, BIDDER/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.
4. BIDDER/CONTRACTOR/COMPANY IS RESPONSIBLE FOR ACQUIRING AND ACKNOWLEDGING ALL ADDENDA.
5. **PUBLIC INFORMATION:** To the extent that Bidder is submitting a bid for a contract described by Section 552.371 of the Texas Government Code, Bidder 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 bid, and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

FOR ADDITIONAL INFORMATION, CONTACT (432) 685-7234 OR EMAIL PURCHASING@MIDLANDTEXAS.GOV

NOTE: EACH BIDDER IS TO INDICATE BRAND NAME PRODUCT NUMBER AND ATTACH DESCRIPTIVE LITERATURE CLEARLY MARKED TO SHOW EACH ITEM ON THIS BID.THE UNDERSIGNED HEREBY OFFERS TO FURNISH AND DELIVER THE ARTICLES OR SERVICE AS SPECIFIED ABOVE AT THE PRICES AND TERMS HEREIN STATED AND IN STRICT ACCORDANCE WITH THE SPECIFICATIONS AND CONDITIONS OF BIDDING ALL WHICH ARE MADE A PART OF THIS OFFER. THIS OFFER IS NOT SUBJECT TO WITHDRAWAL WITHOUT PERMISSION.

COMPANY NAME: O'mulligan's 19th Hole
ADDRESS: 3600 N. Fairgrounds rd
CITY: Midland STATE: Texas ZIP 79702
PHONE NO: 432 687-3441 EMAIL: grbck@aol.com
DELIVERY CAN BE MADE: Yes
AUTHORIZED SIGNATURE: Kristi Grebeck

A Message for Our Vendors

The City of Midland, Texas has developed a strategic plan with long-term objectives, new mission and vision statements, and a course of action to carry out goals established by and for our community. This includes strategic priorities that will address our economy, infrastructure, quality of life, standards for a safe and secure city, plus much more that's detailed below. We hope you join us on this exciting journey and to be part of the energy toward a successful and prosperous Midland!

Vision Statement

The City of Midland will be the premier and safest city in West Texas by providing world-class municipal services through operational excellence and a culture of innovation.

Mission Statement

Deliver exceptional services and promote a high quality of life and place for ALL our citizens.

Guiding Principles: I-FORCE

Integrity
Financial Stewardship
Outstanding Service
Respect
Collaboration
Excellence

City Council Key Focus Areas

Communication • Customer Service
Economic Development
Fiscal Responsibility & Accountability
High-Performing City Team • Legislation
Quality of Place • Technology Improvements

Core Values

Commitment: Duty to the public good.
Engagement: Foster partnerships and collaboration.
Excellence: Practice continuous improvement.
Innovation: Embrace creativity and cutting-edge solutions.
Integrity: Operate with transparency and accountability.
Inclusivity: Ensure all voices are heard and valued.

Vendor & Contractor Communication

In order to ensure smooth coordination and effective communication between contractors and the City of Midland**, it is imperative that contractors provide adequate advance notice before commencing work on specific projects**. The city requires ten (10) days' notice on commencement of project. This advance notice requirement serves to notify all relevant city departments, ensuring proper preparation and coordination of resources. Additionally, it facilitates timely dissemination of information to the public, if necessary, thereby minimizing potential disruptions and maximizing transparency throughout the project lifecycle. **By adhering to this protocol, contractors demonstrate their commitment to fostering productive partnerships with the City of Midland and upholding standards of efficient project management and community engagement. This commitment is a part of our strategic plan, with direct ties to Goal 4: Transparent and Consistent Communication and Strategies 4.4 and 4.5.**

Strategic Plan

1. Strong Economy with More Quality Jobs

1.1 Increase the Midland Sales Tax Base: Develop strategies to expand the tax base by attracting businesses and supporting local commerce.
1.2 Enhance Visitor Revenue Opportunities: Boost tourism through marketing and infrastructure improvements.
1.3 Continue Downtown and West Midland Redevelopment: Promote revitalization efforts for a vibrant downtown.
1.4 Nurture Development Districts: Establish key action plans honed to enhance Development Districts.
1.5 Grow the Core Business of Air Transportation: Develop and transform the Midland airport system.
1.6 Diversify Midland's Economy: Support initiatives that diversify the local economy and enhance resilience.
1.7 Expand Opportunities and Programming for General and Small Business: Foster the growth, retention, and expansion of local small businesses as well as business in general.
1.8 Improve Speed to Market for Citizens, Builders, Developers, and Contractors: Reduce wait times for permit review/approval and inspection process of permitted work.
1.9 Establish Our Community as a Premier Destination for Retail and Entertainment: Offer unique and compelling experiences that draw visitors, ultimately driving economic growth and community vibrancy, while increasing tourism and business development.

2. Set the Standard for a safe and secure City

2.1 Enhance public safety programs.
2.2 Improve Pedestrian and Motorist Safety: Invest in traffic management and infrastructure.
2.3 Implement Effective Code Enforcement Strategies: Address nuisances to improve overall health and safety.
2.4 Revitalize Neighborhoods: Utilize best practices to support the redevelopment of neighborhoods.
2.5 Enhance Animal Services: Ensure the welfare of pets and wildlife in the city.
2.6 Grow and Retain Public Safety Resources: Expand law enforcement presence as well as fire reduction and prevention programs while reducing attrition.

3. Quality of Life and Place

3.1 Enhance Community Engagement: Champion innovative recreational, educational, and cultural programs that enrich residents' lives in partnership with the business community.
3.2 Foster Relationships with Foundations and Outside Businesses: Collaborate to create world-class facilities and amenities.
3.3 Create an Attractive and Inclusive Living Environment: Develop and enhance live, work, and play opportunities for our citizens.
3.4 Establish Beautification Programs: Implement initiatives to make the community clean and bright.
3.5 Nurture and Promote a Healthy Community: Increase healthy community living and education opportunities for citizens of all ages.
3.6 Build the Best Parks System in Our Region: Offer diverse, accessible, and enjoyable green spaces, tournament-ready ball fields, safe playgrounds, and unique recreational opportunities that enhance the quality of life/quality of place for our community.

4. Transparent and Consistent Communication

4.1 Set a Climate of Respect, Collaboration, and Team Spirit: Cultivate a culture of openness and respect.
4.2 Enhance Communication Efficiency and Effectiveness: Leverage and expand the use of technology to facilitate the exchange of information.
4.3 Elevate Internal Communication and Employee Engagement: Strengthen information flow and collaboration among city staff.
4.4 Advance Two-Way Communication of Key Messages: Engage effectively with external stakeholders; foster community engagement.
4.5 Strengthen Messaging Opportunities Through Various Media Outlets: Communicate the city's achievements and initiatives.

5. Provide Sound Governance and Fiscal Management

5.1 Recruit and Retain a Skilled and Diverse Workforce: Invest in talent and diversity; grow our local pipeline of skilled employees.
5.2 Enhance Citizen Experience: Improve employee working conditions to better serve citizens.
5.3 Hone Public Servant Proficiency: Cultivate a culture of professional growth, skilled mastery, and information exchange.
5.4 Implement Cutting-Edge Practices: Harness automation and Artificial Intelligence technology for efficient resource utilization.
5.5 Promote a Well-Balanced Customer Service Philosophy: Consistently deliver excellent service to residents.
5.6 Deliver Services Timely and Efficiently: Prioritize continuous improvement.
5.7 Ensure Continued Financial Stability and Accountability: Maintain financial transparency.
5.8 Deliver Effective and Efficient Processes: Maximize value in procurement.
5.9 Ensure Reliability and Safety: Maintain existing assets and develop new city asset opportunities, including parks

and other facilities, with a standard of excellence.

5.10 Create a Work Environment that Supports Bleeding-Edge Practices: Encourage bleeding-edge practice that then cultivates an environment where employees can learn from their experiences and improve processes; thus, becoming a learning organization.

6. Strengthen and Sustain Our Infrastructure

6.1 Provide Reliable and Sustainable Utilities: Guarantee water supply and distribution systems security and longevity.

6.2 Enhance Infrastructure for Economic Growth: Improve competitiveness through infrastructure investments that includes collaboration with neighboring jurisdictions and exemplary peer agencies.

6.3 Streamline and Consolidate City Facilities: Create synergy for improved services.

6.4Standardize Infrastructure Processes Across the City: Ensure consistency, timeliness, and accountability in infrastructure development.

6.5 Implement a Funding Stream for Infrastructure: Establish reliable funding for continual improvements.

6.6 Strategize for and Monitor City Growth: Develop proactive responses to growth rather than reactive.

6.7 Develop and Implement Comprehensive Road Planning and Maintenance Initiatives: Ensure safe and maintained roads for existing and new developing areas and main thoroughfares.

Request for Proposals

RFP 25000017

for

Hogan Park Golf Course Concession Management

Proposals for this requirement will be accepted until 10:00 A.M. on October 7, 2024

Proposals May be Submitted Electronically on Bonfire, Mailed or Delivered to:

City Secretary
City of Midland
Suite 330
P.O. BOX 1152
Midland, Texas 79702-1153
(300 N. Loraine, Suite 330 Midland, TX 79701)

No Late Proposals Will Be Accepted

NOTICE TO PROPOSERS:

1. **IMPORTANT NOTICE** – IF THE AGREEMENT DOCUMENTS REQUIRE WORKER'S COMPENSATION INSURANCE, PROPOSER/AGREEMENTOR MUST CARRY WORKER'S COMPENSATION INSURANCE TO BE ELIGIBLE FOR THIS AGREEMENT. IF YOU CANNOT PROVIDE WORKER'S COMPENSATION INSURANCE AS REQUIRED BY STATE OF TEXAS STATUTE WE RESPECTFULLY REQUEST THAT YOU "NO BID" THIS WORK

2. 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.

3. **PUBLIC INFORMATION.** TO THE EXTENT THAT PROPOSER IS SUBMITTING A PROPOSAL FOR A AGREEMENT DESCRIBED BY SECTION 552.371 OF THE TEXAS GOVERNMENT CODE, PROPOSER 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 PROPOSAL, AND THE AGREEMENTOR OR VENDOR AGREES THAT THE AGREEMENT CAN BE TERMINATED IF THE AGREEMENTOR OR VENDOR KNOWINGLY OR INTENTIONALLY FAILS TO COMPLY WITH A REQUIREMENT OF THAT SUBCHAPTER.

SCHEDULE OF EVENTS

RFP 25000017

For

Hogan Park Golf Course Concession Management RFP

Event	Date*
RFP Released	9/21/2024
Cutoff Date for inquiries and clarification	10/2/2024
Proposal Due Date	10/7/2024
Notification of Vendor Interviews / Product Demonstrations	To Be Determined
Intended Date for Agreement Award	10/22/2024

*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 offeror's. 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 agreement. 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 agreement for the requirement contained in this RFP. However, the City is not obligated to award a agreement 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 a 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 agreement 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 agreement 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 agreement shall be exclusively in Midland County, Texas. The parties agree that all performance under this agreement shall take place in Midland, County, Texas. The Contractor and City agree that all payments made under this agreement shall take place in Midland County, Texas.

10. This obligation and undertakings of each of the parties to this agreement shall be deemed to have been performed in Midland County, Texas.

1. GENERAL INFORMATION

1.1. INTRODUCTION

The City of Midland (hereinafter referred to as "the City") is pleased to invite you to submit a proposal for Concession Management Services at Hogan Park Golf Course 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 an agreement 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 AGREEMENT 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. TRADE SECRETS

1.6.1. All information received in response to this RFP will be available to the public except for:

1.6.1.1. trade secrets meeting the requirements of Texas Government Code Title 5, Chapter 552, Subchapter C, § 552.110; and

1.6.1.2. matters involving individual safety as determined by the department.

1.6.2. In order for an offeror to claim trade secret material, the following conditions must be met. Information to be withheld must be clearly marked and separated from the rest of the proposal.

1.6.2.1. The proposal may not contain trade secret matter in the cost or price.

1.6.2.2. An affidavit from the offeror's legal counsel attesting to and explaining the validity of the trade secret claim must be attached to each proposal containing trade secrets. In

addition, offerors submitting a proposal containing trade secrets must be prepared to pay all legal costs and fees associated with defending the claim for trade secret protection in the event of an open records request from another party.

1.6.3. Documents not meeting all of the requirements of (1) and (2) will be available for public inspection, including copyrighted materials.

1.7. 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.

1.8. 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.

1.8.1 Offerors shall promptly notify the City of any ambiguity, inconsistency or error, which they may discover upon examination of this RFP.

1.9. 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 or on Bonfire 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
P.O. Box 1152
Midland, TX 79702

FAX: (432) 685-0523

OR

e-mail: purchasing@midlandtexas.gov

1.10. 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.

1.11. 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.

1.12. 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.

1.13. OFFER PRICING

Offerors must respond to this RFP by utilizing the RFP requirements. The RFP requirements section 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.

1.14. ALTERNATE PROPOSALS

Offerors may submit, at their option, multiple proposals, in which case each proposal shall be evaluated as a separate document.

1.15. SUBMITTING A SEALED PROPOSAL

1.15.1. Number of copies and Location:

1.15.1.1. Offerors must submit one electronic sealed proposal on Bonfire. 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.

1.15.1.2. 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.

1.15.2. Each Offeror who submits a proposal represents that:

1.15.2.1. The proposal is based upon an understanding of the specifications and requirements described in this RFP.

1.15.2.2. 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.

1.15.2.3. 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.

1.15.3. The proposals must be signed in ink by an individual authorized to legally bind the business submitting the proposal.

1.15.4. 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.

1.16. RIGHTS RESERVED

While the City has every intention to award an agreement as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the City of Midland to award an agreement. 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 agreement if the City determines adequate City funds are not available.

1.17. 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.

1.18. SUBCONTRACTING

1.18.1. 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.

1.18.2. 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 agreement documents created as a result of any agreement awards derived from this RFP shall create any contractual relationships between any subcontractor and the City.

1.19. INSURANCE REQUIREMENTS

See Agreement provisions and terms.

1.20. 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.

1.21. 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.

1.22. AGREEMENT PROVISIONS AND TERMS

1.22.1. Agreement Execution

1.22.1.1. The City will execute an agreement 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 agreement documents.

1.22.2. Terms and Conditions

Agreement that will be executed by the successful offeror and the City.

1.22.3. Exceptions to Agreement Terms & Conditions

Offerors should notify the City of any terms within the sample agreement that either precludes them from responding to the RFP or add unnecessary cost.

1.22.4. The initial agreement term will be awarded for a term of five (5) years, with five (5) one-year extensions.

1.22.5. Agreement Extension

The offeror agrees that, through the term of the initial agreement 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.

1.22.6. Escalation

Annual pricing adjustments to agreement extensions following the initial agreement 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 agreement 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 agreement 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 CITY REGARDING THE AWARD OR ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THIS PROPOSAL, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS PROPOSAL. OFFEREOR SPECIFICALLY AGREES THAT IF OFFEROR BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS PROPOSAL, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS PROPOSAL, 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, 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. OFFEROR ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS PROPOSAL. OFFEROR FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND OFFEROR. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OR GOVERNMENTAL IMMUNITY AND SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.

2.3. OFFEROR IS RELYING ON ITS OWN JUDGMENT. OFFEROR HAD THE OPPORTUNITY TO DISCUSS THESE PROPOSAL DOCUMENTS WITH COMPETENT LEGAL COUNSEL PRIOR TO SUBMISSION OF THE PROPOSAL OR EXECUTION OF THE AGREEMENT.

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 AGREEMENT DOCUMENTS;

2.5.3. ACCEPTANCE OR REJECTION OF ANY PROPOSALS; OR

2.5.4. AWARD OF THE AGREEMENT.

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

To provide concession management services to the patrons of the City of Midland's Municipal Golf Course to include Hogan Park Golf Course, 3600 North Fairgrounds Road, Midland, Texas. The Contractor would be required to provide concessions at a minimum while open to the general public.

3.1. GENERAL INFORMATION

3.1.1. Minimum Qualification Criteria

3.1.1.1. Terms of Agreement

3.1.1.2. The City will grant the selected Proposer a five (5) year contract term. In addition, the contract will contain five (5) one-year options which may be exercised by the City at its sole discretion.

3.1.2. Concession Agreement

3.1.3. Rent

3.1.4. Additional Information

3.1.4.1. The City of Midland will not be responsible for any oral instructions given with regard to the completion and submission of any proposal.

3.1.4.2. A Proposer may withdraw its proposal prior to the time set for receipt of proposals, provided its request is in writing and is received by Erika Martinez, Purchasing Manager, before the date and time set for the receipt of proposals. After this date and time, no Proposer may withdraw its proposal except with the consent of the City. Corrections to errors made by the Proposer in the proposal will not be accepted after submission of the proposal.

3.1.4.3. The City reserves the right to reject any or all proposals.

3.1.4.4. The City reserves the right to waive any irregularities.

3.1.5. Confidentiality

3.1.5.1. All documents submitted in connection with the proposal become the property of the City of Midland upon opening. All documents received in connection with this proposal will remain confidential and will not be released or distributed in any form until such time that an Award of an Agreement is made by the City of Midland. At that time, all documents, with the exception of proprietary or confidential financial records of unsuccessful proposers, will be subject to examination and release in accordance with Texas Public Record laws.

4. REQUIREMENTS

NOTE: Complete the attached Hogan Golf Course Concession Management Worksheet.

5. VENDOR QUALIFICATIONS

5.1. 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.

5.2. 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 agreement.

5.3. 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):

5.3.1. References

5.3.1.1. Offeror shall provide a minimum of three (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 agreement. Negative references may be grounds for proposal disqualification.

5.3.2. Vendor Stability

5.3.2.1. Offerors shall demonstrate their financial stability to supply, install and support the services specified.

5.3.2.2. Provide financial statements, preferably audited, for the two (2) consecutive years immediately preceding the issuance of this RFP.

5.3.2.3. Provide copies of any quarterly financial statements that have been prepared since the end of the period reported by your most recent annual report.

5.3.2.4. Offerors shall specify how long the company submitting the proposal has been in business doing Concessions with a minimum of five (5) years' experience is required.

6. EVALUATION PROCESS

6.1. EVALUATION PROCEDURE

6.1.1. Committee Actions

6.1.1.1. The evaluation committee will separate proposals into "responsive" and "non-responsive" proposals. Non-responsive proposals will be eliminated from further consideration.

6.1.1.2. The evaluation committee will evaluate the remaining proposals and determine whether to award the agreement to the best proposal or to seek a best and final offer before awarding a agreement. Selection and award will be based on the offeror's proposal and other items outlined in this RFP.

6.1.1.3. 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.

6.2. EVALUATION CRITERIA

This Contract will be awarded to the bidder who provides goods or services at the best value for the City of Midland. The evaluation committee will review and evaluate the offers according to

the following criteria:

6.2.1. Company Service Qualifications- Capability to perform the required services for the Concession Management **(25%)**

6.2.2. **Quality of concession goods to be provided-** Vendor must provide approach to performance and quality assurance of services **(20%)**

6.2.3. Years in concession business- Reputation, personal and professional experience in Concession Management **(15%)**

6.2.4. **Cost of concession goods to consumer analysis -**Price will be evaluated for fairness and reasonable costs **(15%)**

6.2.5. Funding percentage allocation to the City of Midland- Percentage that will be allocated to the City of Midland to perform Concession Management **(15%)**

6.2.6. **References -** Vendors shall submit (3) business references, preferably from current customers **(10%).**

7. PROPOSAL CONTENTS

The following items constitute the RFP submittal in response to the request herein:

7.1. THE RFP

7.2. CONCESSION MANAGEMENT WORKSHEET

7.3. REQUESTED ATTACHMENTS

7.3.1. References

7.3.2. Financial Information

7.4. ADDITIONAL INFORMATION (SUCH AS MENU)

8. TEXAS PUBLIC INFORMATION ACT

Notwithstanding any other provisions, this request for proposals, along with any associated agreement, is subject to the Texas Public Information Act.

MIDLAND
Be the Energy!

Hogan Golf Course Concession Management Worksheet
25000017

Please list the food and beverage items below as requested.

Featured Item	Consumer Cost Per Item	City %	Additional Detail
Prepared Food			
Burger	$7.50	5	Cooked to Order
BBL Burger	$9.50	5	Cooked to Order
Deluxe Club	$9.25	5	
Chicken Strip Basket	$9.00	5	
Grilled Cheese	$6.00	5	
Philly Cheese Steak	$8.75	5	Cooked to Order
Deluxe Frito Pie	$8.25	5	
Prepackaged Foods			
Chips	$1.75	5	
Pastries	$2.00	5	
Peanuts	$2.00	5	
Trail mix	$2.00	5	
Candy	$1.75	5	
Crackers	$1.50	5	

Featured Item	Consumer Cost Per Item	City %	Additional Detail
Drinks (Bottled, Canned, Fountain, Draft Beer, and/or Canned Beer)			
Fountain Drinks (sm, med, lg, x large	$1.75 - $3.50	5	
Bottle water	$2.00	5	
Gatorade	$2.00	5	
Energy Drink	$4.25	5	
Domestic Can Beer	$3.50	5	
Import Can Beer	$4.25	5	
Six Pack can Beer	$19.00	5	
White Claw, Truely	$5.00	5	
Beers on Tap 16oz - 24oz	$4.75 - $5.50	5	
Snacks			
Ham/turkey & cheese Sandwich	$4.00	5	
Hot Dogs	$4.00	5	
Jalapeno Sausage Dog	$4.50	5	
Basket of Fries	$5.00	5	
Frito Pie	$5.50	5	
Taquitos	$5.50	5	
Hot Wings	$12.50	5	
Onion Rings	$5.00	5	
Chili Dog	$5.50	5	

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 Agent
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 with 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).

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

O'Mulligan's 19th Hole
Company Name

Kristi Grebeck
Authorized Signature

Kristi Grebeck
Print Above Name

Oct. 4, 2024
Date

432 889-6916
Phone

Fax

NOTICE TO BIDDERS

IF THIS PURCHASE REQUIRES A CONTRACT, THE ATTACHED **CONTRACT AND INSURANCE REQUIREMENTS ARE NON-NEGOTIABLE**. MODIFICATIONS BY BIDDER/CONTRACTOR OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE BID. NON-RESPONSIVE BIDS WILL BE REJECTED. BIDDER/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.

IF THE SELECTED BIDDER/CONTRACTOR 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/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.

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.

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 Kristie Grebeck

Signature of vendor doing business with the governmental entity

10/5/24

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.

CITY OF MIDLAND

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: O'mulligan's 19th Hole

Local Address (must be within the City limits): 3600 N. Fairgrounds rd. Midland, TX 79702

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? 19
3. Year your business was established in the City of Midland: 2004
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: Kristi Grebeck Date: Oct. 4, 2024

Printed Name and Title: Kristi Grebeck

----- Forwarded Message -----
From: Delgado, Edgar E <edgar.e.delgado@conocophillips.com>
To: Kristi Grebeck <grbck@aol.com>
Cc: Day, Amanda <amanda.day@conocophillips.com>; Delgado, Edgar E <edgar.e.delgado@conocophillips.com>
Sent: Thursday, October 3, 2024 at 09:47:06 AM CDT
Subject: ConocoPhillips Yearly Tournament

To: Whom it May concern

We started our **Permian Mini Masters COP Golf Tournament** this past year and realized that partnering up with Omulligans was a huge part of our success.
COP was able to raise over $100K for the United Way of Midland.

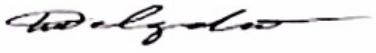
Mrs. Grebeck was very fair in costs of the services and they were extremely professional with our staff as well as our invited guests to the tournament.
They were also instrumental in advising us on how a tournament needs to be run and helped us with various logistic items.

In addition to this, her staff is second to none, they are amazing and extremely helpful & professional.

They provided COP with top service and took care of any problems that came up immediately.

Should you have any questions feel free to contact me either via cell or email.

Because of the success we plan on having this tournament again in 2025 (scheduled for 4/11/25).



Ed Delgado | **Production Technology Manager** | ConocoPhillips

O: 432-221-0300 | **C**: 432-230-8174 | 600 W. Illinois Avenue, Midland, TX 79701

Knights of Columbus Midland Council 3071

10/2/2024

To: Whom it may concern

The Knights of Columbus Golf League would highly recommend that O'Mulligans and Kristi Grebeck stay on as the concession vendor for Hogan Park Golf Course. Kristi is always there for our Monday Night League and the pre-season Sullivan Memorial Tournament we have every year. There are plenty of people working to make things run smoothly. The food is very good and the prices are more than fair and competitive. The golf cart girls are always fully stocked and the bathrooms are always clean.

When we started our league it was at Nueva Vista and we moved the league to Hogan Park because of the service was so bad at Nueva Vista. After the first meeting with Kristi we knew we made the right choice and even though we had been asked to move back we have stayed at Hogan Park for all the good people including the golf staff.

I hope Kristi is awarded the contract because she has surely made our Monday Night Golf League an enjoyable place to be.

If you have any question please don't hesitate to give me a call.

Sincerely,

Bob Weidner

10-3-2024

To Whom it May Concern

I am writing to express our strong support for O'Mulligans in their application to renew their license as concessionaire at Hogan Golf Course. Over the past 20 years, they have demonstrated exceptional management of the concessions, consistently providing high-quality services to patrons.

Under the leadership of Kristi, O'Mulligans has exemplified honesty and integrity in all aspects of their operations. Their commitment to the Midland community is evident through their dedication to maintaining excellent standards and fostering a welcoming environment for all visitors.

As a valued customer, O'Mulligans has set high benchmarks in service and professionalism. We have been consistently impressed with their attention to detail and their proactive approach to meeting the needs of the golf course and its guests.

We fully support O'Mulligans' efforts to continue as the concessionaire at Hogan Golf Course. We are confident that their continued partnership will greatly benefit the facility and the community it serves.

Please feel free to contact me if you require any additional information.

Sincerely,

Jess Walker

Sales Manager

Standard Sales Odessa

(432) 550-7380

Dear City of Midland,

Thank you for your consideration and appraisal on our bid for continuing contract to provide concessions at Hogan Park Golf Course. We have found a love for the golf course and providing our services to the patrons who frequent the property. It is in our opinion that we have continued to offer an above standard level consistency and professionalism while managing a record number of rounds, patrons, tournaments and events. We hope to continue and grow along with the City of Midland and Hogan Park Golf Course.

Thank You

Kristi Grebeck
Owner
O'Mulligans 19th Hole

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.

15. Public Information. To the extent that Bidder is submitting a bid for a contract described by Section 552.371 of the Texas Government Code, Bidder 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 bid, and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

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. <u>RELEASE</u> - 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.

FOOD AND BEVERAGE CONCESSION CONTRACT

HOGAN PARK GOLF COURSE

25000017

THIS CONTRACT, effective this 22nd day of October 2024 (the "*Effective Date*"), by and between the City of Midland, Texas ("*City*"), and O'Mulligans 19th Hole, ("*Contractor*"). City and Contractor are collectively referred to herein as the "*Parties*" and individually as a "*Party*."

RECITALS

WHEREAS, City owns, operates, and maintains certain golf courses and related facilities for the general public, which are collectively known as the Hogan Park Municipal Golf Course (the "*Golf Course*"); and

WHEREAS, City desires to make food and beverages available to the general public and patrons of the Golf Course so as to provide such accommodations and all associated benefits thereof to the general public; and

WHEREAS, Contractor is in the business of providing food and beverages for sale and seeks to provide the same to the patrons of the Golf Course on an on-going basis and in accordance with the provisions of this Contract;

NOW THEREFORE, in consideration of the covenants and conditions contained herein, the Parties hereby agree as follows:

1. Services to be Provided: Contractor shall operate and maintain food and beverage concessions (consisting of the sale of food, beverages, candy, refreshments, and other similar items) within the designated concession area of the Golf Course club house for the benefit and convenience of Golf Course patrons. Additionally, Contractor shall provide mobile food and beverage concessions throughout the courses and facilities comprising the Golf Course for the benefit of and convenience of patrons during their rounds of play. For purposes of this Contract, the designated concession area of the club house and the points-of-sale for the mobile food and beverage concessions shall be referred to herein as the "*Concession Sites*."

2. Contract Term: This Contract shall be effective for an initial term of five (5) years beginning on the Effective Date. Thereafter, this Contract may be extended for an additional term of five additional (1) year renewals upon the Parties mutual agreement to such extension at least thirty (30) days prior to

the expiration of the initial 5-year term.

3. Contractor's Use of Golf Course Facilities: Contractor is permitted to access the Golf Course for the exclusive purpose of operating and maintaining concessions in accordance with the provisions of this Contract; Contractor shall not utilize the access or rights granted herein for any other purpose without the written consent of City's Parks and Recreation Director. If Contractor requests City's permission to access the Golf Course or its facilities for any other purpose and City consents to such use, Contractor shall pay a flat fee of $100.00 to the City for each such approved activity. Notwithstanding the foregoing, Contractor is expressly prohibited from utilizing the Golf Course in a manner that constitutes a nuisance or violates any statute, ordinance, rule, or regulation applicable to the Golf Course or the Concession Site.

4. Hours of Operation: The opening and closing hours of the Concession Sites shall coincide with the opening and closing hours of the Golf Course's pro shop. However, in any event, Contractor shall not open before 6:00 a.m. and shall close before midnight. Mobile concession units shall be open and available to patrons during the hours of 12:00 p.m. to 5:00 p.m. (at a minimum), unless weather conditions prohibit their operation.

5. Mobile Concession Units: Contractor shall operate at least one (1) mobile concession unit at the Golf Course for the sale of food, beverages, and concessions as set forth in this Contract. Such mobile concession units shall be self-contained as to water supply. The design and construction of the mobile concession units shall be subject to the approval of City's Parks and Recreation Director; the same shall also meet any applicable requirements of City's Health Department, including disposal of waste after the unit has been in service. Contractor may operate additional mobile concession units at the Golf Course upon obtaining the written approval of City's Parks and Recreation Director. All locations of said mobile units, when open for business, shall be approved by City's Parks and Recreation Director. Mobile concession units shall be maintained in a clean and sanitary condition.

6. Menu and Prices: Concessions sold by Contractor shall be standard, nationally-advertised products of first-class standard grades. Contractor must offer hot food service during all hours of operation. Set forth below is a minimum list of items that Contractor must offer for sale during all hours of operation:

A. Hamburgers - Hamburger patties shall be of beef, ground chuck, 100% U.S.D.A good grade, prepared in accordance with best practices, and shall be separated

individually by prepared papers. No meat trimmings shall be used. Patties containing utility canned and cutter grade beef shall not be sold or provided. Patties shall each be at least one-quarter (1/4) pound in weight; buns shall each be at least four (4) inches in diameter.

B. Hotdogs – Hotdog links shall be skinless, U.S.D.A No. 1 grade, and comprised of 100% meat with no filler. Minimum link size shall equate to ten (10) links per pound.

C. Candy Selection – Contractor must offer at least six (6) different types of candy of standard size.

D. Soda Selection and Beverages– Contractor must offer at least four (4) different types of soda. All beverages, regardless of the type of original container, must be dispensed in a proper cup or can before being provided to patrons. When beverages are served with ice, the cup or can shall not be filled with more than one-half (1/2) part ice unless specifically requested by the patron.

E. Dairy and Meat – All dairy and meat products shall be obtained from recognized, reputable suppliers.

F. Sandwiches (exclusive of hamburgers and hotdogs) – Contractor must offer at lease three (3) types of sandwiches; provided, however, that other similar items may be offered in lieu of the minimum three (3) types of sandwiches subject to the written approval of City's Parks and Recreation Director.

Contractor shall maintain at least one (1) vending machine at the Golf Course that dispenses a minimum of four (4) flavors of soda. Contractor shall also maintain at least one (1) vending machine at the Golf Course that dispenses at least six (6) types of candy. The location of said vending machines and the furnishing of additional vending machines above the minimum set forth herein shall be approved in writing by City's Parks and Recreation Director.

Contractor shall not sell any alcoholic beverages other than beer and wine. Contractor shall not sell beer or wine anywhere except at the Golf Course. Beer and wine must be dispensed in paper cups or cans.

Contractor must permanently and conspicuously display a complete price list of all concessions offered for sale.

7. Use of Equipment: Contractor may use City-owned facilities and equipment in its business operations on the Golf Course; provided that such usage is approved by City's Parks and Recreation Director. Within a reasonable time following the Effective Date, Contractor and Parks and Recreation Director (or her designee) shall cooperate in preparing a complete inventory of all City-owned equipment and property to be used by Contractor in its operations at the Golf Course. Upon the termination of this

Contract, Contractor shall be responsible for the delivery of said equipment and property to City of all such equipment in as good a condition as existed on the Effective Date, reasonable and ordinary wear and tear excepted.

Contractor may furnish additional equipment, furniture, supplies, and materials necessary to its operations. Such equipment, furniture, supplies, and materials shall remain the property of Contractor and may be removed by Contractor from the Golf Course premises at any time Contractor desires. As long as such equipment, furniture, supplies and materials remain at the Golf Course, such shall be replaced, repaired, or restored by the Contractor as necessary so that such remains in good operating order and appearance. The determination as to whether such equipment, furniture, supplies, and materials are in good operating order and appearance shall be in the sole discretion of City.

Contractor shall furnish all additional equipment (e.g., refrigerators, stoves, etc.) necessary to Contractor's operations at the Golf Course, and which are not currently owned or furnished by City. Such additional equipment furnished by Contractor must be modern in design, comprised of first-class materials and construction, and shall be sufficient in number and quality to satisfy the demands of Golf Course patrons.

Contractor understands and agrees that all personal property placed upon the Golf Course premises by Contractor shall be done at the sole risk and expense of Contractor; City shall not be liable to Contractor or to any other person for any loss, theft, vandalism, damage such property, or injury to persons caused by the use or malfunction of such property.

8. Buildings, Structures, and Improvements: Contractor acknowledges that it had an opportunity to examine the Concession Site(s) and portion of the Golf Course premises that it intends to use in performance under this Contract. Furthermore, as a result of such examination opportunity, Contractor acknowledges that nothing dangerous to life, limb, or health exists on the Golf Course. **CONTRACTOR HEREBY WAIVES ANY CLAIM FOR DAMAGES THAT MAY ARISE FROM ANY SUCH ALLEGED DEFECT FOLLOWING THE EFFECTIVE DATE. CONTRACTOR'S OCCUPANCY OF SUCH PREMISES SHALL BE CONCLUSIVE OF CONTRACTOR'S ACCEPTANCE THEREOF IN GOOD ORDER AND SATISFACTORY CONDITION, AND CONTRACTOR HEREBY ACCEPTS THE PREMISES IN ITS PRESENT CONDITION AS SUITABLE FOR ITS BUSINESS OPERATIONS. THE CONTRACTOR ACCEPTS THE CONCESSION SITE(S) AND PORTION OF THE GOLF COURSE PREMISES THAT IT INTENDS TO USE IN PERFORMANCE UNDER THIS CONTRACT AS IS AND WITH ALL**

FAULTS.

Unless specifically stated herein, Contractor agrees that no representation regarding the condition of the Golf Course, and City and its agents have not made any promise to decorate, alter, repair, or improve the Golf Course.

Contractor shall not alter any existing structure or provide for the addition of any structures or facilities prior to obtaining the written approval of City's Parks and Recreation Director. Contractor shall provide all furnishings, equipment, and personal property reasonably necessary for the maintenance and upkeep of the Concession Sites, including but not limited to lighting, and ownership of said property shall pass to City upon installation or placement at the Golf Course. Contractor shall maintain all Concession Sites in as good a condition as existed as of the Effective Date, reasonable and ordinary wear and tear excepted.

All improvements and fixtures that are permanently attached to a structure on the Golf Course that cannot be removed without damage to such structure shall become the property of City upon installation and shall not be removed by Contractor upon the termination of this Contract. Written consent from the City's Parks and Recreation Director must be obtained by Contractor prior to the installation of any such improvements or fixtures at the Golf Course. Contractor assumes all risk in the installation of such improvements and fixtures.

9. Maintenance: Contractor shall keep the Concession Sites in a clean and sanitary condition at all times. This shall include sweeping and mopping the floors each day that the Concession Sites are open for business and preventing an accumulation of debris, trash, and waste. Contractor shall ensure that all garbage, trash and litter and other waste is disposed of in accordance with City's applicable garbage, sanitary and health regulations. Contractor shall furnish an appropriate number of garbage containers to adequately serve patrons and the Concession Sites, and Contractor shall move such garbage in appropriate containers to and from established pickup areas. Contractor shall also maintain the restrooms at the club house in a clean and sanitary condition, including sweeping and mopping floors and removing the garbage every day Contractor conducts business at the Golf Course. Contractor shall also keep all fixtures, equipment, and personal property at the Concession Site in the club house in a clean, sanitary, and orderly condition at all times. Contractor shall keep those portions of the Golf Course surrounding the mobile concession units and any other portions on which Contractor operates clear of empty cups, cans, paper wrappers, and all similar debris as directed by City's Parks and Recreation Director from time to time. Contractor is solely responsible for the maintenance of those portions of the Golf Course on which Contractor regularly operates in a clean condition and free from the accumulation of trash

incident to Contractor's operation. Cleaning products and paper goods for kitchen and bathrooms shall be the sole responsibility of Contractor.

10. Utilities: City shall provide utilities, telephone and internet service excepted, consisting of water, electricity, and normal heat and illumination, except that in no event shall there be an increase in utilities services as they exist on the Effective Date without prior approval of City's Parks and Recreation Director. Any additional utilities required by Contractor, and approved by City's Parks and Recreation Director, shall be installed at Contractor's sole cost and expense. Any special utility equipment, such as water heaters or water purifiers, shall be purchased and installed at the expense of Contractor. All connections to City owned lines and utilities must be made in compliance with the Midland City Code.

11. Exclusive Rights: Contractor shall be the sole sale of concessions at the Golf Course. City shall not contract with any other person or entity for the sale of concessions at the Golf Course so long as Contractor is faithfully executing its duties pursuant to this Contract. City shall enforce current Golf Course regulations forbidding any other person or entity from selling concessions at the Golf Course. However, City does not warrant that it is capable of strictly enforcing such regulations. It is hereby agreed that City shall bear no liability to Contractor for any failure to strictly enforce any regulation against the sale concessions by any other party. City's failure to strictly enforce regulations against the sale of Concessions at the Golf Course by any third party shall not be deemed a breach of this Contract.

12. Contractor Payments: As consideration for the rights granted to Contractor herein, Contractor agrees to make yearly payments to City in accordance with the following schedule:

Amount	Due Date
$5,000.00	January 31
$5,000.00	April 30
$12,500.00	July 31
$12,500.00	October 31

Additionally, on or before October 31 of each year during the term of the Contract, Contractor shall pay to City an amount equal to seven percent (7%) of all its gross revenues above $35,000.00 and less than $175,000.00 for the twelve (12) preceding months. Furthermore, on or before October 31 of each year during the term of the Contract, Contractor shall also pay to City an amount equal to ten percent (10%) of all revenues exceeding $175,000.00, which shall be placed into a discretionary fund for capital improvements to the Concession Sites at the sole discretion of City. All such payments shall be made in lawful money of the United States to the City of Midland, Texas, at the Accounting Division of the City

located at 300 North Loraine, Midland, Texas, or at the mailing address of P. O. Box 1152, Midland, Texas, 79702.

The term "*gross revenues*" means revenues and receipts from concession sales, whether evidenced by check, credit, charge account, exchange, or otherwise. Gross revenues do not include the amount of any sales, use, or gross receipts tax imposed by any federal, state, municipal, or other governmental authority directly on sales, and collected from customers, provided that the amount of tax is added to or absorbed in the selling price and paid by Contractor. No franchise or capital stock tax and no income or similar tax based on income or profits as such shall be deducted from gross revenues. Each charge or credit is to be treated as a sale for the full price in the month during which the charge or sale is made, irrespective of when Contractor receives payment.

13. Rules and Regulations: Contractor shall observe the following rules and regulations during the term of this Contract:

G. Contractor's operations shall be conducted in a quiet, orderly manner and shall observe and comply with all laws, ordinances, and regulations applicable to Contractor's business.

H. No advertisements, signs, decorations, or displays shall be placed in, on, or about the Golf Course without the prior written approval of the City's Parks and Recreation Director.

I. Discrimination on account of race, color, sex, age, national origin, or any other protected class of individuals, whether directly or indirectly, in Contractor's use of the Golf Course is prohibited.

J. Contractor shall take immediate appropriate remedial action, including, but not limited to, the removal of an employee from employment at the Golf Course upon notice by City to Contractor that said employee is deemed to be discourteous or objectionable in the sole and absolute discretion of City's Parks and Recreation Director.

K. Contractor shall not cause or permit any charges, liens, mortgages, or other such encumbrances to be filed against the Golf Course or the equipment located at or on the Golf Course.

14. Tournaments: Contractor shall allow for tournament food and beverage service as follows:

L. Tournament organizers shall be allowed by Contractor to access facilities necessary for the cooking and serving of food for the hosting of City-approved tournaments and similar events. In consideration for such access, Contractor may charge a maximum of $5.00 per person.

M. Contractor shall retain an exclusive right to provide beer and wine service for attendees

of tournaments and similar events at lesser prices than established menu rates.

15. City's Inspection Rights: Contractor shall permit City and its agents, representatives, or employees to enter any Concession Site for the purposes of inspecting, maintaining, repairing, or altering the Concession Site, or determining whether Contractor is in compliance with the terms of this Contract.

16. Contractor's Responsibilities: Unless otherwise stipulated, Contractor shall provide and pay for all supplies, equipment, tools, superintendence, labor, insurance, transportation, and all other items necessary for Contractor's performance and satisfaction of the obligations referenced in this Contract. Contractor shall ensure that its employees shall be fully qualified and trained to complete the work contemplated in this Contract.

17. Records and Audits: Contractor shall maintain, in accordance with Generally Accepted Accounting Principles, full, complete, and accurate records and accounts of all sums of money paid or payable to Contractor for, on account of, or arising out of Contractor's business operation at the Golf Course for each day of the term of this Contract. Such records may not be purged or destroyed by Contractor at any time during the term of this Contract, regardless of any conflict between Contractor's document retention policies and this Contract. Contractor shall keep records based upon the following three revenue sources: snack bar, beverage carts, and tournaments. Contractor shall maintain daily receipts for the revenue sources and turn them in with the daily recap to the City's designated representative. Contractor shall provide the City Treasurer monthly reports of all receipts from business transactions and sales under this Contract. Such reports shall be prepared according to accounting methods prescribed by the City Treasurer and shall show all income and expenses. Such reports shall be submitted on or before the tenth (10th) day of the month immediately following the month being reported. Contractor agrees to give City access during reasonable hours to such records and accounts required to be maintained under this Contract upon City's request.

Following the completion of every calendar quarter, Contractor shall within twenty (20) days thereafter submit to the City Treasurer a statement prepared from an audit of all books of account, bank statements, documents, records, returns, papers, and files of Contractor relating to gross receipts and business transacted under this Contract. The statement shall be signed by licensed or certified public accountant, together with any amount due to City under the provisions of this Contract due to any discrepancy between the audit and the previously furnished monthly statements.

18. Reservations: City reserves the right to close all or a portion of the Golf Course for any or no

reason without liability. If City exercises its right to close all or a portion of the Golf Course, City shall not be liable to Contractor for any loss of revenue during such closure and this Contract shall continue in effect with the Contractor resuming operations upon reopening of the Golf Course or portion thereof. **CONTRACTOR HEREBY WAIVES ANY CLAIM FOR DAMAGES THAT MAY ARISE FROM ANY SUCH CLOSURE OF ALL OR A PORTION OF THE GOLF COURSE.** The decision to close the Golf Course or any portion thereof shall rest in sole and absolute discretion of City. By executing this Contract, Contractor assumes the risk that City may close the Golf Course or any portion thereof at any time prior to the termination of this Contract and that, in such event, Contractor shall not be entitled to any damages, offsets, repayments, or refunds as a result of such closure.

19. Performance Assurance: Contractor agrees to deposit funds in the amount of Twelve Thousand Five Hundred and No/100 Dollars ($12,500.00) with a reputable financial institution no later than fourteen (14) days following the Effective Date. Such deposit shall ensure Contractor's full and faithful performance of all the covenants, terms, and conditions of this Contract and stand as security for payment by Contractor of all valid claims by City. Contractor shall provide evidence of such deposit to City's Parks and Recreation Director.

20. Events of Default; Termination: The following events shall be deemed to be events of default by Contractor under this Contract:

A. Contractor's failure to timely pay any installment or payment required by this Contract;

B. Contractor's failure to comply with any term, provision, or covenant of this Contract (except for timely payments) and such failure is not cured within thirty (30) days following the issuance of written notice to Contractor; and

C. The taking by a court of competent jurisdiction of Contractor's assets pursuant to proceedings under the provisions of any federal or state reorganization code or act, insofar as the following enumerated remedies for default are provided for or permitted in such code or act.

Upon the occurrence of an event of default as heretofore provided, City may, at its option, elect to terminate this Agreement. Upon City electing to terminate, this Agreement shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof. City may resume possession of the premises.

Any such termination of this Agreement shall not relieve Contractor from the payment of any sum or sums that shall then be due and payable or become due and payable to City hereunder or any

claim for damages then or thereafter accruing against Contractor, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from Contractor for any default thereunder. All rights, options and remedies of City contained in this Agreement, shall be cumulative of the other, and the City shall have the right to pursue any one or all such remedies or any other remedy or relief available at law or in equity, whether or not stated in this Agreement. No waiver by City of a breach of any other covenants, conditions or restrictions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same of any other covenant, condition or restriction herein contained.

Upon any such expiration or termination of this Agreement, Contractor shall quit and peacefully surrender the premises to City, and City upon or at any time after such expiration or termination, may without further notice, enter upon and re-enter the premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess Contractor and remove Contractor and all other persons or property from the premises.

21. Contractor is a Licensee: Notwithstanding any contrary provision contained herein, Contractor shall not be deemed to have become the tenant of the City by virtue of executing this Contract, nor to have been given or accorded as against City the possession of any portion of the Golf Course; Contractor shall be deemed merely to be a licensee permitted to enter the Golf Course for the purpose of exercising the rights and privileges granted by this Contract. Upon any termination of this Agreement, City shall have the right through such means as it sees fit to remove and exclude therefrom Contractor and any of Contractor's agents without being deemed guilty of any unlawful entry, trespass or injury of any sort whatever.

22. Termination At Will: City may terminate this Contract at will, for any or no reason upon giving at least ninety (90) days' written notice to Contractor. The Parties understand and agree that it is in City's sole and absolute discretion to cancel this Contract during the term without penalty. Contractor has no expectation and has received no guarantees that this Contract will not be terminated before the end of the Contract term. The Parties bargained for the flexibility of terminating this Contract upon tender of the requisite notice at any time during the Contract term. All work and services under the Contract shall be suspended upon termination of the Contract becoming effective.

23. Extra Work: All minor details of Contractor's obligation not specifically mentioned in this Contract but obviously necessary for the satisfaction of Contractor's obligations shall be considered as incidental to and a part of those obligations referenced herein. Contractor shall not be entitled to any

additional compensation therefor unless specifically stated otherwise.

24. Waiver of Damages: Contractor hereby expressly waives any and all claims for compensation for any and all damages sustained by reason of any defect, deficiency, or impairment of the water supply system, drainage or heating systems, or electrical wires leading to the Concession Sites, or by reason of any loss resulting from failure of any water supply, heat, or current that may occur from time to time from any cause, or for any loss resulting from water; for any loss, damage or claim resulting from the cancellation, interruption, or termination by City for any reason of any event scheduled for public or private attendance at any of the Concession Sites; and Contractor hereby expressly releases and discharges City and its agents from any and all damages, claims, action and causes of action arising from any of the above causes.

25. Taxes, Permits, and Licenses: Contractor shall promptly and timely pay all taxes, excise, and license fees applicable to its operations contemplated herein, and shall take out and keep current all permits or licenses required by municipal, state or federal law, rule, regulation, or ordinance for the conduct of the business, and further shall not permit any of said taxes, excise, or license fees to be late or delinquent. Contractor shall, at its sole expense, obtain all permits, certifications, 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 Contractor's performance under this Contract, including all environmental laws and regulations.

26. Notices: Any notice given under the terms of this Contract shall, unless otherwise provided herein, be in writing and either delivered by hand or sent by United States Registered or Certified Mail, postage prepaid:

To City: (If mailed)	City of Midland, Texas P. O. Box 1152 Midland, Texas 79702
(If hand delivered)	300 North Loraine Suite 220 Midland, Texas 79701
To Contractor:	O'Mulligans 19th Hole 3210 Apperson Dr Midland, Texas 79705

The above addresses may be changed at any time by providing written notice to the other Party.

27. Indemnity: CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S COUNCIL MEMBERS, 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 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 CONTRACTOR, ITS AGENTS, 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 CONTRACTOR SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS THAT MAY BE OBTAINED AGAINST CITY OR ANY OF ITS COUNCIL MEMBERS, OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY FEES.

CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S COUNCIL MEMBERS, 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 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 COUNCIL MEMBERS, 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 CONTRACTOR OR CONTRACTOR'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 CONTRACTOR SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS THAT MAY BE OBTAINED AGAINST CITY OR ANY OF ITS COUNCIL MEMBERS, OFFICERS, AGENTS, OR EMPLOYEES, INCLUDING ATTORNEY FEES.

CONTRACTOR 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 CONTRACT. WHEN CITY SO DESIRES, CONTRACTOR SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED, OR WAIVED. CONTRACTOR, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY, AND SAVE HARMLESS CITY AND ALL OF ITS COUNCIL MEMBERS, 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 CONTRACTOR OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND CONTRACTOR SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS THAT MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY FEES.

28. 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 the Parties 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.

29. Amendments: This Contract may not be altered, changed, or amended except by an instrument in writing signed by the Parties.

30. Entire Agreement: This Contract and all incorporated Contract documents constitute the entire agreement among City and Contractor; no prior written or contemporaneous oral promises or representations shall be binding.

31. Prompt Pay Act: City and Contractor agree that Texas Government Code, Chapter 2251, Payment for Goods and Services does not waive governmental immunity.

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

33. Waiver of Attorney Fees: BY EXECUTING THIS CONTRACT, CONTRACTOR 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 IS IN ANY WAY RELATED TO THIS CONTRACT, OR THE CONSTRUCTION, INTERPRETATION, OR BREACH OF THIS CONTRACT. CONTRACTOR SPECIFICALLY AGREES THAT IF CONTRACTOR 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, CONTRACTOR AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY FEES TO WHICH CONTRACTOR MIGHT OTHERWISE BE ENTITLED.

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

INTERPRETED AS A WAIVER OR GOVERNMENTAL IMMUNITY AND SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

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

34. 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, Contractor 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 said 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 Contractor shall settle, the physical and mailing addresses of Contractor at the time and date the claim was presented and the physical and mailing addresses of Contractor for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Contractor 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 Contractor that Contractor'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, Contractor's failure to comply with the requirements of this Section shall perpetually bar Contractor'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. Contractor agrees that the requirements of this entire Contract are reasonable. The provisions and obligations of this Section shall survive the termination of this Contract.

35. Assignments: Contractor 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 decision

regarding whether to grant consent to an assignment shall be in the sole discretion of City.

36. 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.

37. Independent Contractor: Contractor shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of City. Contractor 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. Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors and the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors and subcontractors. Nothing in this Contract shall be construed as creating a partnership or joint enterprise between City and Contractor. No person performing any of the work and services described hereunder by Contractor 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.

38. 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.

39. Insurance: Contractor 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 Contractor 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 Contractor shall inure to the benefit of employees injured during the course and scope of their employment by Contractor 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 an occurrence basis. City shall be provided the notice by Contractor's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

Contractor 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 and policies that name City as an additional insured on an occurrence basis (except workers' compensation).

The Parties agree that, prior to the execution of the Contract, Contractor 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.

Contractor certifies that the certificate of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code.

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

41. State-Mandated Verifications: To the extent that Sections 2271.002, 2274.002 and 2276.002 of the Texas Government Code (collectively, the "*Anti-Boycott Statutes*") apply to this Contract,

Contractor hereby verifies:

- that Contractor does not boycott Israel and will not boycott Israel during the term of this Contract;
- that Contractor does not boycott energy companies and will not boycott energy companies during the term of this Contract; and
- that Contractor 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 Contractor shall be deemed to have not made such verification.

42. 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, Contractor 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 Contractor 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 Contractor; or (b) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to City.

43. Public Information: To the extent that this Contract is a contract described by Section 552.371 of the Texas Government Code, Contractor 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 Contractor agrees that the contract can be terminated if Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

44. 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.

45. If applicable, Contractor 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.

46. **Severability:** In case any one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this contract shall be considered as if such invalid, illegal or unenforceable provision had never been contained in this contract.

[Signature Pages Follow]

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

_____
Tommy Gonzalez, City Manager

ATTEST

_____
Marcia Bentley-German, City Secretary/Governance Officer

APPROVED AS TO FORM ONLY

_____
John Ohnemiller, City Attorney

COMPANY:

By: _____

Name: _____

Title: _____

STATE OF_____§
§
COUNTY OF_____§

BEFORE ME, the undersigned authority, on this ____ day of _____, 2024, personally appeared, _____, an officer of O'Mulligans 19th Hole, 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 _____, 2024.

_____
Notary Public, State of _____

Date: 9/19/2024

MIDLAND
Purchasing Division

300 NORTH LORAINE
P. O. BOX 1152
MIDLAND, TX 79702

BID NO: 25000017

CLOSING DATE:

October 9, 2024

CLOSING TIME:

3:00 PM

BIDS WILL BE RECEIVED UNTIL **3:00 PM** on **10/9/2024** THROUGH BONFIRE FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO: **Hogan Park Golf Course 3600 N Fairgrounds Rd, Midland, TX 79705**

DESCRIPTION
Proposal for Concession Management Services at Hogan Park Golf Course

NOTICE TO BIDDERS:

1. FAILURE TO RESPOND WITH EITHER A BID OR "NO BID" WILL SUBJECT YOUR FIRM TO REMOVAL FROM THE BID LIST FOR THIS TYPE OF MATERIAL, EQUIPMENT OR SUPPLY ITEM.
2. IF THE SELECTED BIDDER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF CONTRACT, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER.
3. IMPORTANT NOTICE: IF THE CONTRACT DOCUMENTS REQUIRE WORKER'S COMPENSATION INSURANCE, BIDDER/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.
4. BIDDER/CONTRACTOR/COMPANY IS RESPONSIBLE FOR ACQUIRING AND ACKNOWLEDGING ALL ADDENDA.
5. **PUBLIC INFORMATION:** To the extent that Bidder is submitting a bid for a contract described by Section 552.371 of the Texas Government Code, Bidder 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 bid, and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

FOR ADDITIONAL INFORMATION, CONTACT (432) 685-7234 OR EMAIL PURCHASING@MIDLANDTEXAS.GOV

NOTE: EACH BIDDER IS TO INDICATE BRAND NAME PRODUCT NUMBER AND ATTACH DESCRIPTIVE LITERATURE CLEARLY MARKED TO SHOW EACH ITEM ON THIS BID.THE UNDERSIGNED HEREBY OFFERS TO FURNISH AND DELIVER THE ARTICLES OR SERVICE AS SPECIFIED ABOVE AT THE PRICES AND TERMS HEREIN STATED AND IN STRICT ACCORDANCE WITH THE SPECIFICATIONS AND CONDITIONS OF BIDDING ALL WHICH ARE MADE A PART OF THIS OFFER. THIS OFFER IS NOT SUBJECT TO WITHDRAWAL WITHOUT PERMISSION.

COMPANY NAME: O'mulligan's 19th Hole
ADDRESS: 3600 N. Fairgrounds rd
CITY: Midland STATE: Texas ZIP 79702
PHONE NO: 432 687-3441 EMAIL: grbck@aol.com
DELIVERY CAN BE MADE: Yes
AUTHORIZED SIGNATURE: Kristi Grebeck

A Message for Our Vendors

The City of Midland, Texas has developed a strategic plan with long-term objectives, new mission and vision statements, and a course of action to carry out goals established by and for our community. This includes strategic priorities that will address our economy, infrastructure, quality of life, standards for a safe and secure city, plus much more that's detailed below. We hope you join us on this exciting journey and to be part of the energy toward a successful and prosperous Midland!

Vision Statement

The City of Midland will be the premier and safest city in West Texas by providing world-class municipal services through operational excellence and a culture of innovation.

Mission Statement

Deliver exceptional services and promote a high quality of life and place for ALL our citizens.

Guiding Principles: I-FORCE

Integrity
Financial Stewardship
Outstanding Service
Respect
Collaboration
Excellence

City Council Key Focus Areas

Communication • Customer Service
Economic Development
Fiscal Responsibility & Accountability
High-Performing City Team • Legislation
Quality of Place • Technology Improvements

Core Values

Commitment: Duty to the public good.
Engagement: Foster partnerships and collaboration.
Excellence: Practice continuous improvement.
Innovation: Embrace creativity and cutting-edge solutions.
Integrity: Operate with transparency and accountability.
Inclusivity: Ensure all voices are heard and valued.

Vendor & Contractor Communication

In order to ensure smooth coordination and effective communication between contractors and the City of Midland**, it is imperative that contractors provide adequate advance notice before commencing work on specific projects**. The city requires ten (10) days' notice on commencement of project. This advance notice requirement serves to notify all relevant city departments, ensuring proper preparation and coordination of resources. Additionally, it facilitates timely dissemination of information to the public, if necessary, thereby minimizing potential disruptions and maximizing transparency throughout the project lifecycle. **By adhering to this protocol, contractors demonstrate their commitment to fostering productive partnerships with the City of Midland and upholding standards of efficient project management and community engagement. This commitment is a part of our strategic plan, with direct ties to Goal 4: Transparent and Consistent Communication and Strategies 4.4 and 4.5.**

Strategic Plan

1. Strong Economy with More Quality Jobs

1.1 Increase the Midland Sales Tax Base: Develop strategies to expand the tax base by attracting businesses and supporting local commerce.

1.2 Enhance Visitor Revenue Opportunities: Boost tourism through marketing and infrastructure improvements.

1.3 Continue Downtown and West Midland Redevelopment: Promote revitalization efforts for a vibrant downtown.

1.4 Nurture Development Districts: Establish key action plans honed to enhance Development Districts.

1.5 Grow the Core Business of Air Transportation: Develop and transform the Midland airport system.

1.6 Diversify Midland's Economy: Support initiatives that diversify the local economy and enhance resilience.

1.7 Expand Opportunities and Programming for General and Small Business: Foster the growth, retention, and expansion of local small businesses as well as business in general.

1.8 Improve Speed to Market for Citizens, Builders, Developers, and Contractors: Reduce wait times for permit review/approval and inspection process of permitted work.

1.9 Establish Our Community as a Premier Destination for Retail and Entertainment: Offer unique and compelling experiences that draw visitors, ultimately driving economic growth and community vibrancy, while increasing tourism and business development.

2. Set the Standard for a safe and secure City

2.1 Enhance public safety programs.

2.2 Improve Pedestrian and Motorist Safety: Invest in traffic management and infrastructure.

2.3 Implement Effective Code Enforcement Strategies: Address nuisances to improve overall health and safety.

2.4 Revitalize Neighborhoods: Utilize best practices to support the redevelopment of neighborhoods.

2.5 Enhance Animal Services: Ensure the welfare of pets and wildlife in the city.

2.6 Grow and Retain Public Safety Resources: Expand law enforcement presence as well as fire reduction and prevention programs while reducing attrition.

3. Quality of Life and Place

3.1 Enhance Community Engagement: Champion innovative recreational, educational, and cultural programs that enrich residents' lives in partnership with the business community.

3.2 Foster Relationships with Foundations and Outside Businesses: Collaborate to create world-class facilities and amenities.

3.3 Create an Attractive and Inclusive Living Environment: Develop and enhance live, work, and play opportunities for our citizens.

3.4 Establish Beautification Programs: Implement initiatives to make the community clean and bright.

3.5 Nurture and Promote a Healthy Community: Increase healthy community living and education opportunities for citizens of all ages.

3.6 Build the Best Parks System in Our Region: Offer diverse, accessible, and enjoyable green spaces, tournament-ready ball fields, safe playgrounds, and unique recreational opportunities that enhance the quality of life/quality of place for our community.

4. Transparent and Consistent Communication

4.1 Set a Climate of Respect, Collaboration, and Team Spirit: Cultivate a culture of openness and respect.

4.2 Enhance Communication Efficiency and Effectiveness: Leverage and expand the use of technology to facilitate the exchange of information.

4.3 Elevate Internal Communication and Employee Engagement: Strengthen information flow and collaboration among city staff.

4.4 Advance Two-Way Communication of Key Messages: Engage effectively with external stakeholders; foster community engagement.

4.5 Strengthen Messaging Opportunities Through Various Media Outlets: Communicate the city's achievements and initiatives.

5. Provide Sound Governance and Fiscal Management

5.1 Recruit and Retain a Skilled and Diverse Workforce: Invest in talent and diversity; grow our local pipeline of skilled employees.

5.2 Enhance Citizen Experience: Improve employee working conditions to better serve citizens.

5.3 Hone Public Servant Proficiency: Cultivate a culture of professional growth, skilled mastery, and information exchange.

5.4 Implement Cutting-Edge Practices: Harness automation and Artificial Intelligence technology for efficient resource utilization.

5.5 Promote a Well-Balanced Customer Service Philosophy: Consistently deliver excellent service to residents.

5.6 Deliver Services Timely and Efficiently: Prioritize continuous improvement.

5.7 Ensure Continued Financial Stability and Accountability: Maintain financial transparency.

5.8 Deliver Effective and Efficient Processes: Maximize value in procurement.

5.9 Ensure Reliability and Safety: Maintain existing assets and develop new city asset opportunities, including parks

and other facilities, with a standard of excellence.

5.10 Create a Work Environment that Supports Bleeding-Edge Practices: Encourage bleeding-edge practice that then cultivates an environment where employees can learn from their experiences and improve processes; thus, becoming a learning organization.

6. Strengthen and Sustain Our Infrastructure

6.1 Provide Reliable and Sustainable Utilities: Guarantee water supply and distribution systems security and longevity.

6.2 Enhance Infrastructure for Economic Growth: Improve competitiveness through infrastructure investments that includes collaboration with neighboring jurisdictions and exemplary peer agencies.

6.3 Streamline and Consolidate City Facilities: Create synergy for improved services.

6.4Standardize Infrastructure Processes Across the City: Ensure consistency, timeliness, and accountability in infrastructure development.

6.5 Implement a Funding Stream for Infrastructure: Establish reliable funding for continual improvements.

6.6 Strategize for and Monitor City Growth: Develop proactive responses to growth rather than reactive.

6.7 Develop and Implement Comprehensive Road Planning and Maintenance Initiatives: Ensure safe and maintained roads for existing and new developing areas and main thoroughfares.

Request for Proposals

RFP 25000017

for

Hogan Park Golf Course Concession Management

Proposals for this requirement will be accepted until 10:00 A.M. on October 7, 2024

Proposals May be Submitted Electronically on Bonfire, Mailed or Delivered to:

City Secretary
City of Midland
Suite 330
P.O. BOX 1152
Midland, Texas 79702-1153
(300 N. Loraine, Suite 330 Midland, TX 79701)

No Late Proposals Will Be Accepted

NOTICE TO PROPOSERS:

1. **IMPORTANT NOTICE** – IF THE AGREEMENT DOCUMENTS REQUIRE WORKER'S COMPENSATION INSURANCE, PROPOSER/AGREEMENTOR MUST CARRY WORKER'S COMPENSATION INSURANCE TO BE ELIGIBLE FOR THIS AGREEMENT. IF YOU CANNOT PROVIDE WORKER'S COMPENSATION INSURANCE AS REQUIRED BY STATE OF TEXAS STATUTE WE RESPECTFULLY REQUEST THAT YOU "NO BID" THIS WORK

2. 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.

3. **PUBLIC INFORMATION.** TO THE EXTENT THAT PROPOSER IS SUBMITTING A PROPOSAL FOR A AGREEMENT DESCRIBED BY SECTION 552.371 OF THE TEXAS GOVERNMENT CODE, PROPOSER 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 PROPOSAL, AND THE AGREEMENTOR OR VENDOR AGREES THAT THE AGREEMENT CAN BE TERMINATED IF THE AGREEMENTOR OR VENDOR KNOWINGLY OR INTENTIONALLY FAILS TO COMPLY WITH A REQUIREMENT OF THAT SUBCHAPTER.

SCHEDULE OF EVENTS

RFP 25000017

For

Hogan Park Golf Course Concession Management RFP

Event	Date*
RFP Released	9/21/2024
Cutoff Date for inquiries and clarification	10/2/2024
Proposal Due Date	10/7/2024
Notification of Vendor Interviews / Product Demonstrations	To Be Determined
Intended Date for Agreement Award	10/22/2024

*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 offeror's. 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 agreement. 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 agreement for the requirement contained in this RFP. However, the City is not obligated to award a agreement 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 a 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 agreement 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 agreement 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 agreement shall be exclusively in Midland County, Texas. The parties agree that all performance under this agreement shall take place in Midland, County, Texas. The Contractor and City agree that all payments made under this agreement shall take place in Midland County, Texas.

10. This obligation and undertakings of each of the parties to this agreement shall be deemed to have been performed in Midland County, Texas.

1. GENERAL INFORMATION

1.1. INTRODUCTION

The City of Midland (hereinafter referred to as "the City") is pleased to invite you to submit a proposal for Concession Management Services at Hogan Park Golf Course 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 an agreement 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 AGREEMENT 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. TRADE SECRETS

1.6.1. All information received in response to this RFP will be available to the public except for:

1.6.1.1. trade secrets meeting the requirements of Texas Government Code Title 5, Chapter 552, Subchapter C, § 552.110; and

1.6.1.2. matters involving individual safety as determined by the department.

1.6.2. In order for an offeror to claim trade secret material, the following conditions must be met. Information to be withheld must be clearly marked and separated from the rest of the proposal.

1.6.2.1. The proposal may not contain trade secret matter in the cost or price.

1.6.2.2. An affidavit from the offeror's legal counsel attesting to and explaining the validity of the trade secret claim must be attached to each proposal containing trade secrets. In

addition, offerors submitting a proposal containing trade secrets must be prepared to pay all legal costs and fees associated with defending the claim for trade secret protection in the event of an open records request from another party.

1.6.3. Documents not meeting all of the requirements of (1) and (2) will be available for public inspection, including copyrighted materials.

1.7. 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.

1.8. 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.

1.8.1 Offerors shall promptly notify the City of any ambiguity, inconsistency or error, which they may discover upon examination of this RFP.

1.9. 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 or on Bonfire 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
P.O. Box 1152
Midland, TX 79702

FAX: (432) 685-0523

OR

e-mail: purchasing@midlandtexas.gov

1.10. 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.

1.11. 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.

1.12. 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.

1.13. OFFER PRICING

Offerors must respond to this RFP by utilizing the RFP requirements. The RFP requirements section 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.

1.14. ALTERNATE PROPOSALS

Offerors may submit, at their option, multiple proposals, in which case each proposal shall be evaluated as a separate document.

1.15. SUBMITTING A SEALED PROPOSAL

1.15.1. Number of copies and Location:

1.15.1.1. Offerors must submit one electronic sealed proposal on Bonfire. 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.

1.15.1.2. 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.

1.15.2. Each Offeror who submits a proposal represents that:

1.15.2.1. The proposal is based upon an understanding of the specifications and requirements described in this RFP.

1.15.2.2. 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.

1.15.2.3. 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.

1.15.3. The proposals must be signed in ink by an individual authorized to legally bind the business submitting the proposal.

1.15.4. 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.

1.16. RIGHTS RESERVED

While the City has every intention to award an agreement as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the City of Midland to award an agreement. 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 agreement if the City determines adequate City funds are not available.

1.17. 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.

1.18. SUBCONTRACTING

1.18.1. 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.

1.18.2. 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 agreement documents created as a result of any agreement awards derived from this RFP shall create any contractual relationships between any subcontractor and the City.

1.19. INSURANCE REQUIREMENTS

See Agreement provisions and terms.

1.20. 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.

1.21. 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.

1.22. AGREEMENT PROVISIONS AND TERMS

1.22.1. Agreement Execution

1.22.1.1. The City will execute an agreement 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 agreement documents.

1.22.2. Terms and Conditions

Agreement that will be executed by the successful offeror and the City.

1.22.3. Exceptions to Agreement Terms & Conditions

Offerors should notify the City of any terms within the sample agreement that either precludes them from responding to the RFP or add unnecessary cost.

1.22.4. The initial agreement term will be awarded for a term of five (5) years, with five (5) one-year extensions.

1.22.5. Agreement Extension

The offeror agrees that, through the term of the initial agreement 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.

1.22.6. Escalation

Annual pricing adjustments to agreement extensions following the initial agreement 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 agreement 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 agreement 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 CITY REGARDING THE AWARD OR ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THIS PROPOSAL, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS PROPOSAL. OFFEREOR SPECIFICALLY AGREES THAT IF OFFEROR BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS PROPOSAL, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS PROPOSAL, 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, 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. OFFEROR ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THIS PROPOSAL. OFFEROR FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN CITY AND OFFEROR. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OR GOVERNMENTAL IMMUNITY AND SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.

2.3. OFFEROR IS RELYING ON ITS OWN JUDGMENT. OFFEROR HAD THE OPPORTUNITY TO DISCUSS THESE PROPOSAL DOCUMENTS WITH COMPETENT LEGAL COUNSEL PRIOR TO SUBMISSION OF THE PROPOSAL OR EXECUTION OF THE AGREEMENT.

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 AGREEMENT DOCUMENTS;

2.5.3. ACCEPTANCE OR REJECTION OF ANY PROPOSALS; OR

2.5.4. AWARD OF THE AGREEMENT.

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

To provide concession management services to the patrons of the City of Midland's Municipal Golf Course to include Hogan Park Golf Course, 3600 North Fairgrounds Road, Midland, Texas. The Contractor would be required to provide concessions at a minimum while open to the general public.

3.1. GENERAL INFORMATION

3.1.1. Minimum Qualification Criteria

3.1.1.1. Terms of Agreement

3.1.1.2. The City will grant the selected Proposer a five (5) year contract term. In addition, the contract will contain five (5) one-year options which may be exercised by the City at its sole discretion.

3.1.2. Concession Agreement

3.1.3. Rent

3.1.4. Additional Information

3.1.4.1. The City of Midland will not be responsible for any oral instructions given with regard to the completion and submission of any proposal.

3.1.4.2. A Proposer may withdraw its proposal prior to the time set for receipt of proposals, provided its request is in writing and is received by Erika Martinez, Purchasing Manager, before the date and time set for the receipt of proposals. After this date and time, no Proposer may withdraw its proposal except with the consent of the City. Corrections to errors made by the Proposer in the proposal will not be accepted after submission of the proposal.

3.1.4.3. The City reserves the right to reject any or all proposals.

3.1.4.4. The City reserves the right to waive any irregularities.

3.1.5. Confidentiality

3.1.5.1. All documents submitted in connection with the proposal become the property of the City of Midland upon opening. All documents received in connection with this proposal will remain confidential and will not be released or distributed in any form until such time that an Award of an Agreement is made by the City of Midland. At that time, all documents, with the exception of proprietary or confidential financial records of unsuccessful proposers, will be subject to examination and release in accordance with Texas Public Record laws.

4. REQUIREMENTS

NOTE: Complete the attached Hogan Golf Course Concession Management Worksheet.

5. VENDOR QUALIFICATIONS

5.1. 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.

5.2. 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 agreement.

5.3. 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):

5.3.1. References

5.3.1.1. Offeror shall provide a minimum of three (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 agreement. Negative references may be grounds for proposal disqualification.

5.3.2. Vendor Stability

5.3.2.1. Offerors shall demonstrate their financial stability to supply, install and support the services specified.

5.3.2.2. Provide financial statements, preferably audited, for the two (2) consecutive years immediately preceding the issuance of this RFP.

5.3.2.3. Provide copies of any quarterly financial statements that have been prepared since the end of the period reported by your most recent annual report.

5.3.2.4. Offerors shall specify how long the company submitting the proposal has been in business doing Concessions with a minimum of five (5) years' experience is required.

6. EVALUATION PROCESS

6.1. EVALUATION PROCEDURE

6.1.1. Committee Actions

6.1.1.1. The evaluation committee will separate proposals into "responsive" and "non-responsive" proposals. Non-responsive proposals will be eliminated from further consideration.

6.1.1.2. The evaluation committee will evaluate the remaining proposals and determine whether to award the agreement to the best proposal or to seek a best and final offer before awarding a agreement. Selection and award will be based on the offeror's proposal and other items outlined in this RFP.

6.1.1.3. 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.

6.2. EVALUATION CRITERIA

This Contract will be awarded to the bidder who provides goods or services at the best value for the City of Midland. The evaluation committee will review and evaluate the offers according to

the following criteria:

6.2.1. Company Service Qualifications- Capability to perform the required services for the Concession Management **(25%)**

6.2.2. **Quality of concession goods to be provided-** Vendor must provide approach to performance and quality assurance of services **(20%)**

6.2.3. Years in concession business- Reputation, personal and professional experience in Concession Management **(15%)**

6.2.4. **Cost of concession goods to consumer analysis -**Price will be evaluated for fairness and reasonable costs **(15%)**

6.2.5. Funding percentage allocation to the City of Midland- Percentage that will be allocated to the City of Midland to perform Concession Management **(15%)**

6.2.6. **References -** Vendors shall submit (3) business references, preferably from current customers **(10%).**

7. PROPOSAL CONTENTS

The following items constitute the RFP submittal in response to the request herein:

7.1. THE RFP

7.2. CONCESSION MANAGEMENT WORKSHEET

7.3. REQUESTED ATTACHMENTS

7.3.1. References

7.3.2. Financial Information

7.4. ADDITIONAL INFORMATION (SUCH AS MENU)

8. TEXAS PUBLIC INFORMATION ACT

Notwithstanding any other provisions, this request for proposals, along with any associated agreement, is subject to the Texas Public Information Act.

Hogan Golf Course Concession Management Worksheet
25000017

Please list the food and beverage items below as requested.

Featured Item	Consumer Cost Per Item	City %	Additional Detail
Prepared Food			
Burger	$7.50	5	Cooked to Order
BBL Burger	$9.50	5	Cooked to Order
Deluxe Club	$9.25	5	
Chicken Strip Basket	$9.00	5	
Grilled Cheese	$6.00	5	
Philly Cheese Steak	$8.75	5	Cooked to Order
Deluxe Frito Pie	$8.25	5	
Prepackaged Foods			
Chips	$1.75	5	
Pastries	$2.00	5	
Peanuts	$2.00	5	
Trail mix	$2.00	5	
Candy	$1.75	5	
Crackers	$1.50	5	

Featured Item	Consumer Cost Per Item	City %	Additional Detail
Drinks (Bottled, Canned, Fountain, Draft Beer, and/or Canned Beer)			
Fountain Drinks (sm, med, lg, x large	$1.75 - $3.50	5	
Bottle water	$2.00	5	
Gatorade	$2.00	5	
Energy Drink	$4.25	5	
Domestic Can Beer	$3.50	5	
Import Can Beer	$4.25	5	
Six Pack can Beer	$19.00	5	
White Claw, Truely	$5.00	5	
Beers on Tap 16oz - 24oz	$4.75 - $5.50	5	
Snacks			
Ham/turkey & cheese Sandwich	$4.00	5	
Hot Dogs	$4.00	5	
Jalapeno Sausage Dog	$4.50	5	
Basket of Fries	$5.00	5	
Frito Pie	$5.50	5	
Taquitos	$5.50	5	
Hot Wings	$12.50	5	
Onion Rings	$5.00	5	
Chili Dog	$5.50	5	

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 Agent
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 with 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).

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

O'Mulligan's 19th Hole
Company Name

Kristi Grebeck
Authorized Signature

Kristi Grebeck
Print Above Name

Oct. 4, 2024
Date

432 889-6916
Phone

Fax

NOTICE TO BIDDERS

IF THIS PURCHASE REQUIRES A CONTRACT, THE ATTACHED **CONTRACT AND INSURANCE REQUIREMENTS ARE NON-NEGOTIABLE**. MODIFICATIONS BY BIDDER/CONTRACTOR OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE BID. NON-RESPONSIVE BIDS WILL BE REJECTED. BIDDER/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.

IF THE SELECTED BIDDER/CONTRACTOR 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/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.

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.

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 Kristie Grebeck

Signature of vendor doing business with the governmental entity

10/5/24

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.

CITY OF MIDLAND

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: O'mulligan's 19th Hole

Local Address (must be within the City limits): 3600 N. Fairgrounds rd. Midland, TX 79702

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? 19
3. Year your business was established in the City of Midland: 2004
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: Kristi Greback Date: Oct. 4, 2024

Printed Name and Title: Kristi Careback

----- Forwarded Message -----
From: Delgado, Edgar E <edgar.e.delgado@conocophillips.com>
To: Kristi Grebeck <grbck@aol.com>
Cc: Day, Amanda <amanda.day@conocophillips.com>; Delgado, Edgar E <edgar.e.delgado@conocophillips.com>
Sent: Thursday, October 3, 2024 at 09:47:06 AM CDT
Subject: ConocoPhillips Yearly Tournament

To: Whom it May concern

We started our **Permian Mini Masters COP Golf Tournament** this past year and realized that partnering up with Omulligans was a huge part of our success.
COP was able to raise over $100K for the United Way of Midland.

Mrs. Grebeck was very fair in costs of the services and they were extremely professional with our staff as well as our invited guests to the tournament.
They were also instrumental in advising us on how a tournament needs to be run and helped us with various logistic items.

In addition to this, her staff is second to none, they are amazing and extremely helpful & professional.

They provided COP with top service and took care of any problems that came up immediately.

Should you have any questions feel free to contact me either via cell or email.

Because of the success we plan on having this tournament again in 2025 (scheduled for 4/11/25).

Ed Delgado | **Production Technology Manager** | ConocoPhillips

O: 432-221-0300 | **C**: 432-230-8174 | 600 W. Illinois Avenue, Midland, TX 79701

Knights of Columbus Midland Council 3071

10/2/2024

To: Whom it may concern

The Knights of Columbus Golf League would highly recommend that O'Mulligans and Kristi Grebeck stay on as the concession vendor for Hogan Park Golf Course. Kristi is always there for our Monday Night League and the pre-season Sullivan Memorial Tournament we have every year. There are plenty of people working to make things run smoothly. The food is very good and the prices are more than fair and competitive. The golf cart girls are always fully stocked and the bathrooms are always clean.

When we started our league it was at Nueva Vista and we moved the league to Hogan Park because of the service was so bad at Nueva Vista. After the first meeting with Kristi we knew we made the right choice and even though we had been asked to move back we have stayed at Hogan Park for all the good people including the golf staff.

I hope Kristi is awarded the contract because she has surely made our Monday Night Golf League an enjoyable place to be.

If you have any question please don't hesitate to give me a call.

Sincerely,

Bob Weidner

10-3-2024

To Whom it May Concern

I am writing to express our strong support for O'Mulligans in their application to renew their license as concessionaire at Hogan Golf Course. Over the past 20 years, they have demonstrated exceptional management of the concessions, consistently providing high-quality services to patrons.

Under the leadership of Kristi, O'Mulligans has exemplified honesty and integrity in all aspects of their operations. Their commitment to the Midland community is evident through their dedication to maintaining excellent standards and fostering a welcoming environment for all visitors.

As a valued customer, O'Mulligans has set high benchmarks in service and professionalism. We have been consistently impressed with their attention to detail and their proactive approach to meeting the needs of the golf course and its guests.

We fully support O'Mulligans' efforts to continue as the concessionaire at Hogan Golf Course. We are confident that their continued partnership will greatly benefit the facility and the community it serves.

Please feel free to contact me if you require any additional information.

Sincerely,

Jess Walker

Sales Manager

Standard Sales Odessa

(432) 550-7380

Dear City of Midland,

Thank you for your consideration and appraisal on our bid for continuing contract to provide concessions at Hogan Park Golf Course. We have found a love for the golf course and providing our services to the patrons who frequent the property. It is in our opinion that we have continued to offer an above standard level consistency and professionalism while managing a record number of rounds, patrons, tournaments and events. We hope to continue and grow along with the City of Midland and Hogan Park Golf Course.

Thank You

Kristi Grebeck
Owner
O'Mulligans 19th Hole

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.

15. Public Information. To the extent that Bidder is submitting a bid for a contract described by Section 552.371 of the Texas Government Code, Bidder 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 bid, and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

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. <u>RELEASE</u> - 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: 6

Meeting Date: October 22, 2024

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AUTHORIZING THE PURCHASE OF A TR400 VOYAGER CAMERA SYSTEM FOR THE ENGINEERING SERVICES DEPARTMENT FROM ARIES INDUSTRIES, INC. THROUGH SOURCEWELL FOR A TOTAL COST OF $136,171.00 (DISTRICT: NONE) (GENERAL SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)

Purpose:

Resolution for the purchase of a TR400 Voyager Camera System from Aries Industries, Inc. through Sourcewell contract #12721-ARS for a total cost of $136,171.00.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available in the FY25 Drainage operating budget.

Strategic Priority:

(Provide Sound Governance & Fiscal Management)

Discussion:

Staff is recommending the purchase of a TR400 Voyager Camera System for the Engineering Department. These items are available on the Sourcewell contract #113021-RVG-4. 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. The system to replace the

current, outdated CCTV system used for storm sewer inspections. Please see the attached memo from Abe Langston, Transportation Manager, for additional information.

Therefore, please consider a resolution approving the purchase of a TR400 Voyager Camera System from Aries Industries, Inc. of Waukesha, Wisconsin through Sourcewell contract #12721-ARS for a total cost of $136,171.00.

Morris Williams Jr.

City Manager's Office

INTEROFFICE MEMORANDUM

TO: Erika Martinez, Purchasing Manager

FROM: Abe Langston

SUBJECT: CCTV Inspection Crawler Camera System Justification

DATE: October 7, 2024

CC: Gabe McClelland, Bobby Wojciechowski

The Transportation Division is requesting the acquisition of the Aries TR400 Voyager Camera System to replace the current, outdated CCTV system used for storm sewer inspections. The current system has become inefficient due to frequent breakdowns, leading to increased repair costs and operational downtime. This unreliability hampers our ability to conduct timely maintenance, increasing long-term costs and safety risks. The acquisition of the Aries TR400 Voyager will address these issues by providing:

1. **Operational Efficiency** – The Aries TR400 Voyager Camera System offers state-of-the-art technology. It is equipped with advanced imaging capabilities, enhanced mobility, and durability that will allow for faster and more accurate inspections, thus reducing downtime and minimizing labor costs. Its robust design is engineered for minimal maintenance, which will maximize time in the field, ensuring timely inspections and more reliable service.
2. **Cost Reduction** – The Aries TR400 Voyager will decrease maintenance and operational delays, providing significant long-term savings by avoiding ongoing repair costs and minimizing emergency interventions.
3. **Technological Advancement** – With superior image quality and functionality, the system will enable quicker issue detection, leading to proactive maintenance and fewer system failures.
4. **Improved Safety and Compliance** – The reliable system will ensure that inspections meet industry standards, helping to prevent flooding and other safety risks while maintaining regulatory compliance.

Recommendation:

I recommend the purchase of the Aries TR400 Voyager Camera System to enhance operational capabilities, reduce costs, and improve public safety. The long-term benefits of this investment justify the initial expense.

RESOLUTION NO._____

RESOLUTION AUTHORIZING THE PURCHASE OF A TR400 VOYAGER CAMERA SYSTEM FOR THE ENGINEERING SERVICES DEPARTMENT FROM ARIES INDUSTRIES, INC. THROUGH SOURCEWELL FOR A TOTAL COST OF $136,171.00

WHEREAS, Sourcewell is a cooperative purchasing agency with which the City participates in purchases through a cooperative purchasing program in accordance with Section 271.102 of the Texas Local Government Code; and

WHEREAS, Aries Industries, Inc. ("Seller") submitted a total cost to the City of $136,171.00 for the City's proposed purchase of a TR400 Voyager camera system (the "Goods") for the Engineering Services Department through Sourcewell as shown on the quote attached hereto as Exhibit "A", which is incorporated herein for all purposes; and

WHEREAS, the City Council finds the price proposed for the Goods to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to authorize the purchase of the Goods from Seller through Sourcewell;

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 the Goods from Seller through Sourcewell for a total cost of $136,171.00.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Seller for the Goods from funds available in the FY25 Drainage 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., 2024, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

_____
Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

_____
Gabe McClelland, Engineering Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

ARIES INDUSTRIES, INC.
550 Elizabeth Street
Waukesha, WI 53186

Phone 262-896-7205 Fax: 262-896-7099

Sourcewell Awarded Contract
Contract # 120721-ARS

QUOTATION

Quote Number: S241002

Quote To:

Jesse Zamora
City of Midland
1500 Orchard Lane
Midland TX 79701
USA

Sourcewell Account #: 106268

Phone: (432) 685-7298 Fax:
jzamora@midlandtexas.gov

Date: 10/3/2024
Valid Thru: 11/2/2024
Sales Person: Boris Holmes
Terms of Sale: FOB Dest PPD
Payment Terms: Pre Paid
Ship Via: UPS Freight

Fax:

US Dollars

Line	Part Number	Quantity	Description	Unit Price	Extended Price
			**** Sourcewell Contract Pricing *** Per specifications dated 10/03/2024 Estimated delivery TBD Estimated delivery 16-18 weeks*		
1	CFG-QQ-636	1.00 EA	City of Midland Voyager System for Field Installation	136,171.00	$136,171.00
2	970000	0.00 EA	In-Field Training by Aries Staff on Aries Equipment		$0.00
			Line (2) is for order fulfillment purposes only		

I accept the Terms and Conditions of this Quotation.

PO #: _____

Name: _____
Title: _____
Signature: _____

Sub Total:	**$136,171.00**
Misc. Charges:	**$0.00**
Total:	**$136,171.00**

**** TOTAL SUBJECT TO CHANGE FOR TAXES AND FREIGHT ****

A restocking charge of 15% will apply to all unused returned parts

EXHIBIT "A"

Sourcewell Awarded Contract Contract # 120721-ARS

ARIES INDUSTRIES, INC.

City of Midland Voyager System for Field Installation

REF Quote Line 1 – System Details

2 22" LCD flat panel monitors, TV/PC viewing, mounted to control room desktop
1 22" LCD flat panel monitor, TV/PC viewing, mounted rear viewing in equipment room

1 Aries DC400 Voyager All-in-One Desktop Controller, including:
- 7" color flat touch-screen status & diagnostics monitor
- Sealed connector for interconnect cable to reel
- Camera controls
- Tractor controls
- Reel controls
- Internal overlay module with footage & inclination
- Alphanumeric full "QWERTY" keyboard for video titling and report data input

1 Storage and transportation case *(460281)*

1 Truck mount inter-connect cables

1 Aries HD405 Voyager zoom, rotate & horizontal pan camera w/ high-intensity LED lighting and integrated self-cleaning lens wiper system, including:
- Voyager zoom pan and tilt camera w/ multi-axis infinite rotation
- Integrated on-demand self-cleaning lens wiper system
- 120X zoom (10X optical & 12X digital)
- High-resolution 1080(V) x 1920(H) output
- Auto-focus with manual override
- Auto-iris with manual override
- Maintenance-free directional white LED lighting that follows the camera's field of view
- High-sensitivity camera sensor for low-light applications
- "Starlite" low-light level amplification feature with (4) user selectable amplification steps
- Automatic home feature with forks at top and bottom of camera head
- "One Touch Scanning" feature with (2) user selectable continuous joint scan presets
- "Quick Look" preset view positions (6) (Up, Down, Right, Left, Lat R, Lat L)
- Robust, environmentally sealed camera for use in live pipe, including:
  - Scratch-resistant sapphire lens window
  - Camera recessed behind forks for frontal impact protection
  - Rubber bumpers on forks
  - Camera housing with hardened metal finishes and non-corrosive metals
  - Recessed fasteners & no camera protrusions
- Proportionately slowed camera movements when zooming
- Fast-check internal pressure monitoring system
- On-screen camera diagnostics functions including:

Camera internal pressure, temperature, operating hours, internal power regulated voltage value, camera model, serial number, firmware revision, control error recognition, LED current value.

1 Camera storage and transport case *(460283)*
1 Camera nitrogen recharge kit *(950011)*

1 Aries TR400 Voyager steerable self-propelled transporter for 6" relined to 24" lines, including:

Transporter assembly with continuous duty 120-Watt brushless drive motors
Remotely-operated electric camera lifting mechanism
Fast-check pressure monitoring system
Rear viewing camera with LED lighting
512 Hz internal locating beacon
Integrated inclinometer system

6 Rubber wheels, 3-3/8" diameter for 6" lines *(580660)*
4 Rubber wheels, 4-3/8" diameter for 8-12" lines *(580661)*
4 Rubber wheels, 5" diameter for 12-18" lines *(580662)*
4 Extended hub dually rubber wheels, 5" diameter for 18-24" lines *(580663)*
1 Auxiliary detachable light head *(LH40)*
1 Set maintenance parts *(950351)*
1 Storage and transport case *(460282)*

2 Carbide high traction wheels, 3⅛" dia. for 6" lines, coarse grit *(580721-2)*
2 Carbide high traction wheels, 3⅞" dia. for 8-12" lines, coarse grit *(580722-2)*
2 Carbide high traction wheels, 5" dia. for 12-18" lines, coarse grit *(580723-2)*
2 Ext. hub carbide high traction wheels, 5" dia. for 18-24" lines, coarse grit *(580724-2)*

1 Large diameter pipe kit with geared side rails and 8" diameter rubber tires for operation up to 36" lines *(580808)*

1 PR400 Voyager cable and reel assembly, including:

Lightweight aluminum frame
Drum and motor assembly with electric clutch
Cable level wind assembly with one-button adjustment
Sealed continuous contact 6-conductor slip ring assembly
Distance meter encoder
Emergency stop push button switch
1200' of 6-conductor Kevlar-strengthened cable with water-block to prevent wicking
AC power switch
120 VAC power input plug with cord
Cable guide rollers on extendable downrigger assembly with single-button deployment and spring-loaded top roller for easy cable removal.
Drum tensioner control with knob for fine adjustment
CANbus controlled cable management system
6-pin cable termination

1 HC400 handheld pendant with 15' coiled cable for at-manhole operation of reel & transporter

1 Cable manhole guide system including:

1 Manhole top roller assembly *(610309)*

1 Tiger tail bottom cable guide *(611200)*
1 Insertion and extractor pole assembly and tractor adapter *(610025)*
8 Additional fiberglass extension poles *(610714)*

2 Operation / maintenance and spare parts manuals
1 One year warranty, TV system
1 Delivery of system

REF Quote Line 2 – On-Site

1 Day(s) of in-field training by Aries staff on Aries equipment

ARIES INDUSTRIES, INC.
550 Elizabeth Street
Waukesha, WI 53186

Phone 262-896-7205 Fax: 262-896-7099

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Contract # 120721-ARS

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2 Operation / maintenance and spare parts manuals
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1 Delivery of system

REF Quote Line 2 – On-Site

1 Day(s) of in-field training by Aries staff on Aries equipment

City Council Meeting

Item Number: 7

Meeting Date: October 22, 2024

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION APPROVING THE PURCHASE OF SIXTY (60) BUNKER COATS AND SIXTY (60) BUNKER PANTS FROM DOOLEY TACKABERRY, INC., TROUGH BUYBOARD AT A TOTAL COST OF $206,052.84 (DISTRICT: NONE) (GENERAL SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)

Purpose:

Resolution approving the purchase of sixty (60) Bunker Coats and sixty (60) Bunker Pants from Dooley Tackaberry, Inc. through Buyboard contract 698-23 for a cost of $206,052.84.

Recommended City Council Action:

Approve

Fiscal Impact:

Funds are available in the General Fund FY25 Operating Budget.

Strategic Priority:

(Provide Sound Governance & Fiscal Management)

Discussion:

Staff recommends purchasing sixty (60) Bunker Coats and sixty (60) Bunker Pants from Dooley Tackaberry, Inc. through Buyboard contract 698-23. 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. This purchase is a budgeted yearly purchase of

personal protective equipment in accordance with NFPA 1851. Please see the attached memo from Brian McGary, Assistant Chief/Operations, for additional information.

Therefore, please consider a resolution approving the purchase of sixty (60) Bunker Coats and sixty (60) Bunker Pants from Dooley Tackaberry, Inc. of Deer Park, Texas through Buyboard for a cost of $206,052.84.

Morris Williams Jr.

City Manager's Office

2024 - Interoffice Memorandum

DATE: 10-3-2024

TO: Regina Stephenson, Purchasing

FROM: Brian McGary, Assistant Chief/Operations

SUBJECT: FY ’25 Bunker Gear Purchase

As part of our ongoing efforts to maintain the safety and readiness of our firefighters, the Midland Fire Department replaces aging or damaged bunker gear annually. This ensures compliance with NFPA standards, protects personnel from hazardous conditions, and upholds operational effectiveness.

The Texas Commission on Fire Protection (TCFP) mandates replacing firefighter PPE, including bunker gear, every ten years or sooner based on wear and tear. Replacing 60 sets annually ensures that our department stays compliant with these standards, minimizing the risk of equipment failure.

To maintain the safety and operational efficiency of our personnel, I recommend the approval of the annual purchase of 60 sets of Innotex bunker gear. This investment will allow the Midland Fire Department to continue providing optimal protection for our firefighters, meet safety compliance requirements, and uphold the department’s commitment to excellence.

RESOLUTION NO. _____

RESOLUTION APPROVING THE PURCHASE OF SIXTY (60) BUNKER COATS AND SIXTY (60) BUNKER PANTS FROM DOOLEY TACKABERRY, INC., TROUGH BUYBOARD AT A TOTAL COST OF $206,052.84

WHEREAS, 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, Dooley Tackaberry, Inc., submitted a total proposed cost to the City of $206,052.84 for the purchase of sixty (60) bunker coats and sixty (60) bunker pants through Buyboard, as shown on the quote attached hereto as Exhibit "A", which is incorporated herein for all purposes; and

WHEREAS, the Council finds the price proposed by Dooley Tackaberry, Inc., through Buyboard for sixty (60) bunker coats and sixty (60) bunker pants to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase sixty (60) bunker coats and sixty (60) bunker pants through Buyboard;

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 sixty (60) bunker coats and sixty (60) bunker pants from Dooley Tackaberry, Inc., through Buyboard for a total cost of $206,052.84.

SECTION TWO. That the City Comptroller is hereby authorized and directed to pay Dooley Tackaberry, Inc., for sixty (60) bunker coats and sixty (60) bunker pants from funds available in the General Fund FY25 Operating Budget 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., 2024, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

_____
Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

DOOLEY TACKABERRY
PROTECTING LIFE. GUARDING INVESTMENTS.™

Houston Corporate Headquarters
1515 W. 13th Street
Deer Park TX 77536 USA
Phone: 281.479.9700
Toll Free: 800.833.0247

QUOTATION

Page: 1 of 1
Date: 9/6/2024
Our Reference: 1102516
Your Reference:
Reference Desc.
Sales Person: Jason Billings
Estimator: Natasha Perez
Email: nperez@safetyfire.com
Revision: 0

Quote To: 064204

MIDLAND FIRE DEPARTMENT
P.O. BOX 1152
MIDLAND TX 79702
USA

Ship To:

MIDLAND FIRE DEPARTMENT
1500 W. WALL
MIDLAND TX 79701

ITEM	QTY	PART NUMBER AND DESCRIPTION	ORIGIN	ECCN	SCHEDULE B	UNIT PRICE	UOM	Extension
1	60	INNOENERGY-C-064204-R00 Bunker Coat, Energy Series, Per Midland Fire Department Specifications (see attached): **Lead Time** 9 to 11 Weeks ARO				2,001.14	EA	120,068.64
2	60	INNOENERGY-P-064204-R00 Bunker Pant, Energy Series, Per Midland Fire Department Specifications (see attached): **Lead Time** 9 to 11 Weeks ARO				1,433.07	PR	85,984.20
3	1	BUYBOARD-FEE Buyboard Contracts Valid 2023 - 2026 Contract # 698-23698-23 (Public Safety and Firehouse Supplies and Equipment) - Innotex 32% Off List **Lead Time** 1 Day ARO				0.00	EA	0.00

Terms: Net 30
Shipping Terms: Ex-works - Factory
Prices Firm: 11/8/2024
Ship Via: Best Way
Freight Terms: Prepaid

QUOTE TOTAL USD
206,052.84

Stock items can only be canceled prior to shipment. Non-stock items are subject to manufacturer's cancellation policy. Fees will apply. Custom "made to order" items cannot be canceled or returned. Acceptable methods of payment: Check, ACH, Wire Transfer, Credit Card. All Credit Card payments are subject to a 3% convenience fee.

QuotFormBLH42

ACKED
7.6
October 22 2024

City Council Meeting

Item Number: 8

Meeting Date: October 22, 2024

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AWARDING A CONTRACT FOR THE LANDFILL ACCESS ROAD PROJECT TO REECE ALBERT, INC., FOR A COST OF $3,664,036.08; APPROVING $732,807.00 FOR CONTINGENCIES; AND APPROPRIATING FUNDS (DISTRICT: NONE) (GENERAL SERVICES) (STRENGTHEN AND SUSTAIN OUR INFRASTRUCTURE)

Purpose:

Resolution awarding the execution of a contract for the Landfill Access Road Project to Reece Albert, Inc. for cost of $3,664,036.08 plus $732,807.00 in continencies for a total cost of $4,396,843.08 for the Solid Waste Department.

Recommended City Council Action:

Approve

Fiscal Impact:

Funds will be appropriated in the Sanitation Bond fund to a project for this purpose.

Strategic Priority:

(Strengthen and Sustain our Infrastructure)

Discussion:

Motion 090-2024 approved the specifications and authorized advertisement for bids for the Landfill Access Road Project for the Solid Waste Department. The bid was sent to two hundred two (202) vendors. We received a two (2) bids. Staff recommends the acceptance of the Reece Albert, Inc. Please see the attached memo from Jeffery Ahrlett, Solid Waste Director, for more information.

Therefore, please consider a resolution awarding a contract the execution of a contract for the Landfill Access Road Project to Reece Albert, Inc. of San Angelo, Texas for cost of $3,664,036.08 plus $732,807.00 in continencies for a total cost of $4,396,843.08.

Morris Williams Jr.

City Manager's Office

INTEROFFICE MEMORANDUM

TO: **Erika Munoz, Purchasing Manager**

FROM: **Jeffery Ahrlett, Director of Solid Waste**

SUBJECT: **Award a contract for the Landfill Access Road Project**

DATE: **October 22, 2024**

Requesting a resolution awarding a contract for the Landfill Access Road Reconstruction project. Award a contract to low bidder Reece Albert Inc. Of Midland, Texas for a cost of $3,664,036.08 with a contingency of $732,807.00 for a total cost of $4,396,843.08.

Due to the extreme deteriorating condition of the entrance road to the City of Midland Landfill, Solid Waste believes it is necessary to construct a new entrance road to better serve our customers. A new entrance road is necessary for a safe entry and exit to the Landfill.

The recommendation is to move forward with the Cement treated surface due to its durability, low maintenance, and longevity.

Solid Waste is seeking council approval to accept the bid from Reece Albert Inc., plus the contingency for a total of $4,396,843.08 for the Landfill Access Road Reconstruction project.

RESOLUTION NO. _____

RESOLUTION AWARDING A CONTRACT FOR THE LANDFILL ACCESS ROAD PROJECT TO REECE ALBERT, INC., FOR A COST OF $3,664,036.08; APPROVING $732,807.00 FOR CONTINGENCIES; AND APPROPRIATING FUNDS

WHEREAS, Motion 090-2024 approved plans and specifications and authorized the advertisement for competitive sealed bids for the Landfill Access Road Project; and

WHEREAS, proposals were opened on September 25, 2024, with the lowest responsible bid being submitted by Reece Albert, Inc., as shown on the tabulation attached hereto as Exhibit "A" and incorporated herein for all purposes; and

WHEREAS, the City Council finds the amount proposed by Reece Albert, Inc., to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a contract to Reece Albert, Inc., for the Landfill Access Road Project; and

WHEREAS, the City Council finds it to be in the public interest to approve $732,807.00 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 Reece Albert, Inc., for the Landfill Access Road Project for a cost of $3,664,036.08. 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 732,807.00 for contingencies is hereby approved.

SECTION THREE. That funds shall be appropriated in the Sanitation Bond fund to a project for this purpose.

SECTION FOUR. That the City Comptroller is hereby authorized and directed to pay Reece Albert, Inc., pursuant to the terms of said contract 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., 2024, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

_____
Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

S:\Resolutions\Purchase\2024\Contracts\Award Contract - Landfill Access Road Project.wpd

Parkhill

October 1, 2024

Jeffery Ahrlett
Director of Solid Waste
City of Midland
401 N. Carver
Midland, TX 79701

Re: Midland Landfill Access Road Reconstruction
Recommendation for Award of Construction Contract

Dear Mr. Ahrlett:

On September 25, 2025, City of Midland received 2 Bids from Reece Albert, Inc. and Jones Bros. Dirt & Paving Contractors, Inc. for the Midland Landfill Access Road Reconstruction project and Parkhill has now completed the evaluations of those submitted Bids for the subject Project.

Bids were determined to be tabulated properly and are generally consistent with figures recorded during the bid opening. Enclosed is a detailed bid tabulation form for reference.

The Engineer's Base Bid Estimate for this Project is $2,882,151.95 and Bid amounts ranged from a low of $2,537,519.33 (Reece Albert, Inc.) (-11.95%) to a high of $5,597,883.46 (Jones Bros. Dirt & Paving Contractors, Inc.) (+120.56%).

Parkhill assessed the qualifications of the low Bid to determine if they satisfy Minimum General Requirements and Minimum Project Specific Criteria established for this Project, and Reece Albert, Inc. met all criteria.

Based upon our complete evaluation of all information provided, we recommend the Construction Contract for the Midland Landfill Access Road Reconstruction project be awarded to Reece Albert, Inc., Base Bid and both Additive Alternates for a **total of $4,092,381.83**. In addition, Reece Albert, Inc. has successfully completed Projects of similar nature and complexity, and we feel they will complete the work satisfactorily.

For anything further, please contact me directly at 432.681.6119 or mmolter@parkhill.com.

Sincerely,

PARKHILL

By Michael W. Molter

Mike Molter, PE
Senior Practice Leader

MWM/jgy
Enclosures: Summary Bid Tabulation and Detailed Bid Tabulation

1700 West Wall Street | Suite 100 | Midland, Texas 79701 | 432.697.1447 Parkhill.com

Parkhill

CITY OF MIDLAND

MIDLAND LANDFILL ACCESS ROAD RECONSTRUCTION
300 North Loraine
Midland, TX
September 25, 2024 – 2:00 PM

Parkhill Project No. 6225.22

Contractor	**Bid Bond**	**Addendum #1**	**Base Bid**	**Alternate 1** Concrete Curb Ribbon	**Base Bid + Alternate 1**	**Alternate 2** Pavement Alternate	**Base Bid + Alternate 2**	**Base Bid + Alternate 1 and 2**
Reece Albert, Inc. PO Box 3238 Midland, TX 79702	X	X	$2,537,519.33	$428,345.75	$2,965,865.08	$1,126,516.75	$3,664,036.08	**$4,092,381.83**
Jones Bros. Dirt & Paving Contractors, Inc. 1401 S. Grandview Odessa, TX 79761		X	$5,597,883.46	$765,948.60	$6,363,832.06	$4,128,301.00	$9,726,184.46	**$10,492,133.06**

Parkhill

MIDLAND LANDFILL ACCESS ROAD RECONSTRUCTION

MIDLAND, TX

9/25/24

2:00 PM

					REECE ALBERT, INC. PO BOX 3238 MIDLAND, TX 79702		JONES BROS. DIRT & PAVING CONTRACTORS, INC 1401 S. GRANDVIEW ODESSA, TX 79761	
		BASE BID						
Item No.		Description	Quantity	Unit	Unit Price	Amount	Unit Price	Amount
		Base Bid: 3" TY C HMAC, 6" TY B HMAC, 13" Flexible Base, 9" Compacted Subgrade						
1	500	MOBILIZATION	1	LS	$167,009.81	$167,009.81	$799,450.00	$799,450.00
2	100	PREPARING RIGHT-OF-WAY	41	STA	$625.26	$25,635.66	$5,000.00	$205,000.00
3	105	REMOVING STAB BASE AND ASPH PAV (6"-8")	10,587	SY	$1.75	$18,527.25	$9.50	$100,576.50
4	110	EXCAVATION (ROADWAY)	6,844	CY	$10.09	$69,055.96	$18.50	$126,614.00
5	132	EMBANKMENT (FINAL)(DENS CONT)(TY A)	109	CY	$34.27	$3,735.43	$127.00	$13,843.00
6	132	SUBGRADE PREPARATION (9")	14,466	SY	$3.80	$54,970.80	$9.25	$133,810.50
7	247	FL BS (CMP IN PLC)(TY D)(GR 1-2)(13")	13,747	SY	$26.61	$365,807.67	$38.60	$530,634.20
8	247	FL BS (CMP IN PLC)(TY A)(GR 2)(8")	500	SY	$24.49	$12,245.00	$38.70	$19,350.00
9	247	FL BS (CMP IN PLC)(TY A)(GR 2)(6")	718	SY	$36.93	$26,515.74	$36.50	$26,207.00
10	275	CEMENT	8	TON	$917.69	$7,341.52	$690.00	$5,520.00
11	275	CEMENT TREAT (NEW BASE)(6")	718	SY	$13.61	$9,771.98	$150.00	$107,700.00
12	310	PRIME COAT (MC-30)	2,749	GAL	$6.56	$18,033.44	$6.80	$18,693.20
13	316	ASPH (CRS-2)	539	GAL	$6.63	$3,573.57	$12.60	$6,791.40
14	316	AGGR (TY-B GR-3)	9	CY	$160.61	$1,445.49	$758.00	$6,822.00
15	316	AGGR (TY-B GR-4)	6	CY	$198.31	$1,189.86	$1,070.00	$6,420.00
16	360	CONC PAVT (11")	718	SY	$186.17	$133,670.06	$400.00	$287,200.00
17	SS3076	D-GR HMA (TY B)(6")(PG 64-22)	4,250	TON	$154.32	$655,860.00	$150.00	$637,500.00
18	3077	TACK COAT	1,925	GAL	$5.46	$10,510.50	$5.50	$10,587.50
19	SS3077	SUPERPAVE (TY C)(3")(PG 76-22)	2,070	TON	$173.47	$359,082.90	$180.00	$372,600.00
20	508	CONSTRUCTING DETOURS	8,012	SY	$31.79	$254,701.48	$200.00	$1,602,400.00
21	529	CONCRETE CURB (RIBBON)	403	LF	$64.79	$26,110.37	$72.00	$29,016.00
22	530	DRIVEWAYS (SURF TREAT)	500	SY	$37.26	$18,630.00	$40.00	$20,000.00
23	SS3076	D-GR HMA (TY D)(1")(PG 64-22)	40	TON	$334.26	$13,370.40	$730.00	$29,200.00
24	502	BARRICADES AND TRAFFIC CONTROL	4	MO	$8,272.69	$33,090.76	$13,550.00	$54,200.00
25	506	BIODEG EROSN CONT LOGS (INSTALL)	285	LF	$4.70	$1,339.50	$15.60	$4,446.00
26	506	BIODEG EROSN CONT LOGS (REMOVE)	285	LF	$0.98	$279.30	$7.80	$2,223.00
27	506	TEMP SEDMT CONT FENCE (INSTALL)	379	LF	$6.25	$2,368.75	$14.00	$5,306.00
28	506	TEMP SEDMT CONT FENCE (REMOVE)	379	LF	$0.96	$363.84	$2.00	$758.00
29	506	CONSTRUCTION EXIT (INSTALL)	111	SY	$44.43	$4,931.73	$45.57	$5,058.27
30	506	CONSTRUCTION EXIT (REMOVE)	111	SY	$7.59	$842.49	$40.03	$4,443.33
31	550	CHAIN LINK FENCE (REMOVE)(8')	3,126	LF	$4.22	$13,191.72	$7.50	$23,445.00
32	550	CHAIN LINK FENCE (INSTALL)(8')	2,688	LF	$36.73	$98,730.24	$87.60	$235,468.80
33	550	CHAIN LINK FENCE GATE (REMOVE)(8')	1	EA	$871.80	$871.80	$900.00	$900.00
34	550	CHAIN LINK FENCE GATE (INSTALL)(8')	1	EA	$4,250.42	$4,250.42	$6,600.00	$6,600.00
35	N/A	REMOVE AND INSTALL NEW MECHANICAL GATE	1	LS	$63,265.65	$63,265.65	$57,300.00	$57,300.00
36	N/A	ELECTRICAL WORK	1	LS	$8,718.56	$8,718.56	$9,000.00	$9,000.00
37	644	REMOVE SMALL ROADSIDE SIGN ASSEMBLY	4	EA	$258.45	$1,033.80	$241.69	$966.76
38	644	SMALL ROADSIDE SIGN ASSEMBLY	5	EA	$1,573.18	$7,865.90	$1,440.00	$7,200.00
39	666	REFL PAV MRK (TY II)(Y)(SLD)(6")	7,992	LF	$1.31	$10,469.52	$1.20	$9,590.40
40	666	REFL PAV MRK (TY II)(W)(SLD)(6")	8,156	LF	$1.31	$10,684.36	$1.20	$9,787.20
41	666	REFL PAV MRK (TY II)(Y)(SLD)(8")	178	LF	$2.62	$466.36	$2.40	$427.20
42	666	REFL PAV MRK (TY II)(W)(SLD)(8")	1,068	LF	$2.62	$2,798.16	$2.40	$2,563.20
43	666	REFL PAV MRK (TY II)(W)(SLD)(24")	24	LF	$65.55	$1,573.20	$60.00	$1,440.00
44	6001	PORTABLE CHANGEABLE MESSAGE SIGN	2	EA	$6,292.71	$12,585.42	$30,000.00	$60,000.00
45	6185	TRUCK MOUNTED ATTENUATOR (TMA)	2	DAY	$501.48	$1,002.96	$412.50	$825.00
		Total Base Bid				$2,537,519.33		$5,597,883.46
		Additive Alternate: Concrete Curb Ribbon (ADDITIONAL QUANTITY ONLY)						
1A	500	MOBILIZATION ADJUSTMENT	1	LS	$32,024.02	$32,024.02	$199,450.00	$199,450.00
4A	110	EXCAVATION (ROADWAY)	(422)	CY	$10.09	-$4,257.98	$18.50	-$7,807.00
5A	132	EMBANKMENT (FINAL)(DENS CONT)(TY A)	188	CY	$34.27	$6,442.76	$127.00	$23,876.00
7A	247	FL BS (CMP IN PLC)(TY D)(GR 1-2)(13")	(890)	SY	$26.61	-$23,682.90	$37.80	-$33,642.00
12A	310	PRIME COAT (MC-30)	(178)	GAL	$6.56	-$1,167.68	$6.80	-$1,210.40
17A	SS3076	D-GR HMA (TY B)(6")(PG 64-22)	(7)	TON	$154.32	-$1,080.24	$150.00	-$1,050.00
19A	SS3077	SUPERPAVE (TY C)(3")(PG 76-22)	51	TON	$173.47	$8,846.97	$180.00	$9,180.00
21A	529	CONCRETE CURB (RIBBON)	8,016	LF	$51.30	$411,220.80	$72.00	$577,152.00
		Total Additive Alternate				$428,345.75		$765,948.60
		Pavement Alternate: 11" JRCP, 1" TY D HMAC, 6" Cement Treated Flexible Base, 9" Compacted Subgrade (ADDITIONAL QUANTITY ONLY)						
1B	500	MOBILIZATION ADJUSTMENT	1	LS	$51,060.11	$51,060.11	$479,450.00	$479,450.00
4B	110	EXCAVATION (ROADWAY)	(2,127)	CY	$10.09	-$21,461.43	$18.50	-$39,349.50
5B	132	EMBANKMENT (FINAL)(DENS CONT)(TY A)	180	CY	$34.27	$6,168.60	$127.00	$22,860.00
6B	132	SUBGRADE PREPARATION (9")	(2,242)	SY	$3.80	-$8,519.60	$9.25	-$20,738.50
7B	247	FL BS (CMP IN PLC)(TY D)(GR 1-2)(13")	(13,747)	SY	$26.61	-$365,807.67	$37.80	-$519,636.60
9B	247	FL BS (CMP IN PLC)(TY D)(GR 1-2)(6")	12,224	SY	$15.41	$188,371.84	$36.50	$446,176.00
10B	275	CEMENT	132	TON	$370.10	$48,853.20	$690.00	$91,080.00
11B	275	CEMENT TREAT (NEW BASE)(6")	12,224	SY	$2.15	$26,281.60	$44.70	$546,412.80
12B	310	PRIME COAT (MC-30)	(2,749)	GAL	$6.56	-$18,033.44	$6.80	-$18,693.20
16B	360	CONC PAVT (11")	12,224	SY	$168.66	$2,061,699.84	$295.00	$3,606,080.00
17B	SS3076	D-GR HMA (TY B)(6")(PG 64-22)	(4,250)	TON	$154.32	-$655,860.00	$150.00	-$637,500.00
19B	SS3077	SUPERPAVE (TY C)(3")(PG 76-22)	(2,070)	TON	$173.47	-$359,082.90	$180.00	-$372,600.00
24B	502	BARRICADES AND TRAFFIC CONTROL	4	MO	$8,272.69	$33,090.76	$13,550.00	$54,200.00
23B	SS3076	D-GR HMA (TY D)(1")(PG 64-22)	672	TON	$207.97	$139,755.84	$730.00	$490,560.00
		Total Pavement Alternate				$1,126,516.75		$4,128,301.00
		Base Bid + Additve Alternate + Pavement Alternate				**$4,092,381.83**		**$10,492,133.06**

Parkhill

PROJECT MANUAL

CITY OF MIDLAND

Midland Landfill Access Road Reconstruction

Midland, Texas

August | 2024

Parkhill Project # 01622522

REECALB-01 SHOLVERSON

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 9/24/2024

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	CONTACT NAME: Blake Knepper	
American Global LLC 25700 I-45 North Suite 140 Spring, TX 77386	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS: blake.knepper@americanglobal.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Charter Oak Fire Insurance Company	25615
INSURED	INSURER B : Phoenix Insurance Company	25623
Reece Albert, Inc; CSA Materials, Inc; Arroyo Angelo, Inc P O Box 62030 San Angelo, TX 76906	INSURER C : StarStone Specialty Insurance Company	44776
	INSURER D : Texas Mutual Insurance Company	22945
	INSURER E : Travelers Lloyds Insurance Co	41262
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

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			VTC2O-CO-4R631144-COF-24	9/1/2024	9/1/2025	EACH OCCURRENCE	$ 2,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 300,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 4,000,000
	POLICY X PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 4,000,000
	OTHER:							$
B	AUTOMOBILE LIABILITY			VTN-CAP-4R631168-PHX-24	9/1/2024	9/1/2025	COMBINED SINGLE LIMIT (Ea accident)	$ 2,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
C	UMBRELLA LIAB X OCCUR			CSX00058789P-01	9/1/2024	9/1/2025	EACH OCCURRENCE	$ 5,000,000
	X EXCESS LIAB CLAIMS-MADE						AGGREGATE	$ 5,000,000
	DED X RETENTION $ 0							$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			0002051358	9/1/2024	9/1/2025	X PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N N	N/A					E.L. EACH ACCIDENT	$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
E	Leased/ Rented			QT-630-1L163762-TLC-24	9/1/2024	9/1/2025	Each Item	1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

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

American Global LLC

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Parkhill

ADDENDUM NO: 001

TO: ALL PLANHOLDERS

FROM: PARKHILL

PROJECT NAME: MIDLAND LANDFILL ACCESS ROAD RECONSTRUCTION

PROJECT NO.: 6225.22

DATE: SEPTEMBER 20, 2024

Attention of all Plan Holders is directed to the following modifications to the referenced Drawings and Project Manual. This Addendum becomes a part of the Contract Documents and modifies the original Contract Documents dated August 28, 2024 as noted below:

This Addendum consists of 3 pages, the attached sections 00 41 00 and the attached drawings G-101, C-103, C-107, C-108, C-109, C-111, C-112, C-113, C-114, C-115, C-116, C-117, C-118, C-524, and C-525.

I. CHANGES TO ADVERTISEMENT

1. PRE-BID CONFERENCE
   a. Pre-Bid Conference has been cancelled.

II. CHANGES TO DIVISION 00 – PROCUREMENT AND CONTRACTING REQUIREMENTS:

1. SECTION 00 41 00 – BID FORM
   a. REMOVE and REPLACE in its entirety as attached to this Addendum.

2. THE CITY OF MIDLAND CONTRACT
   a. REMOVE and REPLACE in its entirety as attached to this Addendum

III. CHANGES TO DIVISION 01 – GENERAL REQUIREMENTS:

1. NONE

IV. CHANGES TO DIVISIONS 02 THROUGH 40 (TECHNICAL SPECIFICATIONS):

1. NONE

V. CHANGES TO DRAWINGS:

1. SHEET G-101 – Vicinity Map, Location Map, and Index of Sheets
   a. REMOVE and REPLACE Sheet G-101 in its entirety as attached to this Addendum.

2. SHEET C-103 – Summary of Quantities
   a. REMOVE and REPLACE Sheet C-103 in its entirety as attached to this Addendum.

3. SHEET C-107 – Removal Plan and Project Layout Sheet 1 of 4
   a. REMOVE and REPLACE Sheet C-107 in its entirety as attached to this Addendum.

4. SHEET C-108 – Removal Plan and Project Layout Sheet 2 of 4
   a. REMOVE and REPLACE Sheet C-108 in its entirety as attached to this Addendum.

5. SHEET C-109 – Removal Plan and Project Layout Sheet 3 of 4
   a. REMOVE and REPLACE Sheet C-109 in its entirety as attached to this Addendum.

6. SHEET C-111 – Traffic Control Plan Sequence of Construction
   a. REMOVE and REPLACE Sheet C-111 in its entirety as attached to this Addendum.

7. SHEET C-112 – Traffic Control Plan Advanced Warning Sign and Phasing Layout
   a. REMOVE and REPLACE Sheet C-112 in its entirety as attached to this Addendum.

8. SHEET C-113 – Traffic Control Typical Sections Phase II
   a. REMOVE and REPLACE Sheet C-113 in its entirety as attached to this Addendum.

9. SHEET C-114 – Traffic Control Typical Sections Phase III
   a. REMOVE and REPLACE Sheet C-114 in its entirety as attached to this Addendum.

10. SHEET C-115 – Traffic Control Typical Sections Phase IV
    a. REMOVE and REPLACE Sheet C-115 in its entirety as attached to this Addendum.

11. SHEET C-116 – S CR 1110 Plan and Profile Sheet 1 of 4
    a. REMOVE and REPLACE Sheet C-116 in its entirety as attached to this Addendum.

12. SHEET C-117 – S CR 1110 Plan and Profile Sheet 2 of 4
    a. REMOVE and REPLACE Sheet C-117 in its entirety as attached to this Addendum.

13. SHEET C-118 – S CR 1110 Plan and Profile Sheet 3 of 4
    a. REMOVE and REPLACE Sheet C-118 in its entirety as attached to this Addendum.

14. SHEET C-524 – Concrete Pavement Contraction Design Sheet 1 of 2
    a. REMOVE and REPLACE Sheet C-524 in its entirety as attached to this Addendum.

15. SHEET C-525 – Concrete Pavement Contraction Design Sheet 2 of 2
    a. REMOVE and REPLACE Sheet C-525 in its entirety as attached to this Addendum.

VI. QUESTION AND ANSWER

Q1: Is a stabilizer going to be utilized below the pavement in this project. I represent a company that manufactures a low cost ionic stabilizer for use in subgrades and base courses.
A1: **No.**

Q2: Is there an engineer's estimate available?
A2: **No.**

Q3: Would you please post the Prebid Sign in Sheet?
A3: **Pre-bid meeting was cancelled.**

Q4: Are all alternates required to be priced for the bid to be considered?
A4: **Yes.**

Q5: What is the completion date?
A5: **Work shall be completed within 120 Calendar Days after the NTP.**

Q6: Is rebar required in the 11" JRCP? If so, could you please provide the size and spacing for the rebar. Is fiber reinforcing required in the Class C concrete for the 11" JRCP? If so, please provide the quantity of fiber required per CY.
A6: **Addendum 01 will include the Standard to be referenced. Not Required.**

Q7: Could you please verify the estimated quantity indicated on the Bid Form for Item 23, D-GR HMA (TY-D)(1")(PG64-22), as this quantity appears significantly low.
A7: **Quantity should be 40 tons.**

Q8: Could you please confirm the number of Calendar Days and Liquidated Damages associated with this project.
A8: **Work shall be completed within 120 Calendar Days after the NTP. Please reference the Project Manual (p. 46) "Late Completion; Liquidated Damages".**

END OF ADDENDUM NO. 001

09/20/2024

Respectfully submitted,

PARKHILL

By: Michael W. Molter

Receipt of this addendum shall be acknowledged by the Bidder, below and on the bid Proposal. This entire addendum, or a copy thereof, shall be attached to the bid Proposal submitted.

ACKNOWLEDGED:

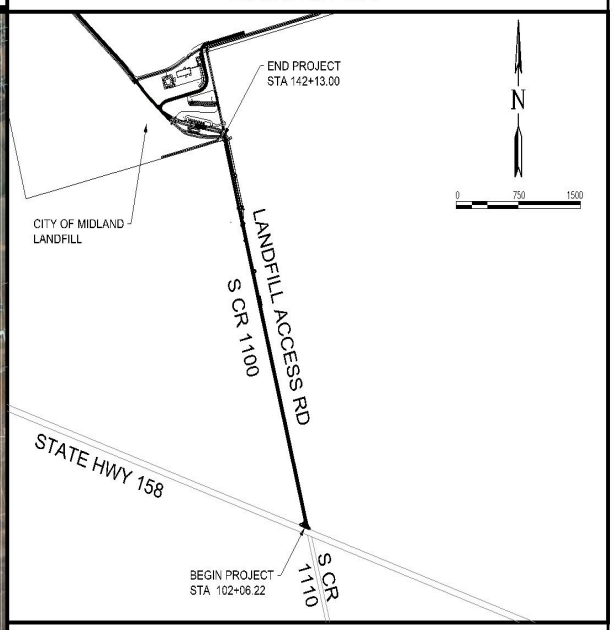
#1

By: Mike Hester

VICINITY MAP

MIDLAND COUNTY, TEXAS

LOCATION MAP



INDEX OF SHEETS

SHEET #	DESCRIPTION
G-100	COVER SHEET
G-101	VICINITY MAP, LOCATION MAP, AND INDEX OF SHEETS
G-102-103	GENERAL NOTES
C-101	HORIZONTAL ALIGNMENT DATA
C-102	HORIZONTAL AND VERTICAL CONTROL DATA
C-103	SUMMARY OF QUANTITIES
C-104	EXISTING TYPICAL SECTIONS
C-105-106	PROPOSED TYPICAL SECTIONS
C-107-110	REMOVAL PLAN AND PROJECT LAYOUT
C-111	TCP SEQUENCE OF CONSTRUCTION
C-112	TCP ADVANCED WARNING SIGN AND PHASING LAYOUT
C-113-115	TCP TYPICAL SECTIONS PHASE I, II, AND III
C-116-119	PLAN & PROFILE
C-120-121	INTERSECTION LAYOUT
C-122	ROADWAY DETAILS
C-123-124	DRIVEWAY DETAILS
C-125-127	MECHANICAL GATE DETAILS
C-128-129	PAVEMENT MARKINGS AND SIGNS
C-130	SUMMARY OF SMALL SIGNS
C-131-132	EROSION CONTROL PLAN
*C-501-512	TRAFFIC CONTROL STANDARDS (TxDOT)
*C-513	ROADWAY STANDARDS (TxDOT)
*C-514-518	SIGNING AND PAVEMENT MARKING STANDARDS (TxDOT)
*C-519-523	EROSION CONTROL STANDARDS (TxDOT)
*C-524-525	CONCRETE PAVEMENT CONTRACTION DESIGN STANDARDS (TXDOT)
E-101	LANDFILL ENTRANCE GATE OPERATOR ELECTRICAL

THE TxDOT STANDARD SHEETS SPECIFICALLY IDENTIFIED WITH AN "*" HAVE BEEN SELECTED BY ME OR UNDER MY RESPONSIBLE SUPERVISION AS BEING APPLICABLE TO THIS PROJECT.

Michael W Molter, P.E. 09/20/24
MICHAEL WILLIAM MOLTER, P.E. DATE

October 22, 2024

Parkhill

PARKHILL, SMITH & COOPER, INC. STATE OF TEXAS REGISTERED MICHAEL WILLIAM MOLTER 79765 LICENSED PROFESSIONAL ENGINEER
Michael W. Molter
09/20/24

Parkhill.com

Midland Landfill Access Road (S CR 1110) Reconstruction

MIDLAND Engineering Services

CLIENT
City of Midland

300 N Loraine
Midland, TX
79701

PROJECT NO.
6225.22

#	DATE	DESCRIPTION
1	09/20/24	Addendum 01
1	08/12/24	Bid Set

Vicinity Map, Location Map, and Index of Sheets

G-101

PACKET 8.14

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SUMMARY OF REMOVAL ITEMS

REMOVAL PLAN SHEET	BEGIN STATION	END STATION	105 REMOVING STAB BASE AND ASPH PAV	644 REMOVE SMALL ROADSIDE SIGN ASSEMBLY
			SY	EA
SHEET 1 OF 4	102+06.22	112+00.00	2,781	2
SHEET 2 OF 4	112+00.00	123+00.00	2,784	0
SHEET 3 OF 4	123+00.00	134+00.00	2,868	1
SHEET 4 OF 4	134+00.00	142+13.00	2,154	1
		TOTALS:	10,587	4

SUMMARY OF TRAFFIC CONTROL ITEMS

PLAN AND PROFILE SHEETS	BEGIN STATION	END STATION	500 MOBILIZATION	502 BARRICADES, SIGNS, AND TRAFFIC HANDLING	508 CONSTRUCTING DETOURS	6001 PORTABLE CHANGEABLE MESSAGE SIGN	6185 TRUCK MOUNTED ATTENUATOR (TMA)
			LS	MO	SY	EA	DAY
SHEET 1 OF 4	102+06.22	112+00.00	1	4	2,184	2	2
SHEET 2 OF 4	112+00.00	123+00.00			2,261		
SHEET 3 OF 4	123+00.00	134+00.00			2,261		
SHEET 4 OF 4	134+00.00	142+13.00			1,306		
		TOTALS:	1	4	8,012	2	2

△1

SUMMARY OF ROADWAY ITEMS

PLAN AND PROFILE SHEETS	BEGIN STATION	END STATION	100 PREPARING RIGHT-OF-WAY	110 EXCAVATION (ROADWAY)	132 EMBANKMENT (DENSITY CONTROL)	132 SUB-GRADE PREPARATION (9") △1	247 FL BS (CMP IN PLC) (TY A) (GR 1-2)(6")	247 FL BS (CMP IN PLC) (TY A) (GR 1-2)(8")	247 FL BS (CMP IN PLC) (TY A) (GR 1-2)(13")	310 PRIME COAT (MC-30)	SS3076 DG TYPE-B HMAC (PG70-22) (6")	3077 TACK COAT	SS3077 SUPERPAVE SP-C HMAC (PG76-22) (3")	530 DRIVEWAYS (SURF TREAT)	530 INTERSECTIONS (CONC)	SS3076 INTERSECTIONS (D-GR HMA) (TY D)(1")
			STA	CY	CY	SY	SY	SY	SY	GAL	TON	GAL	TON	SY	SY	TON
SHEET 1 OF 4	102+06.22	112+00.00	10	1,710	44	3,589	634	0	2,955	591	909	414	442	0	634	35
SHEET 2 OF 4	112+00.00	123+00.00	11	1,533	42	3,606	0	0	3,606	721	1,109	505	539	0	0	0
SHEET 3 OF 4	123+00.00	134+00.00	11	1,714	17	3,606	0	297	3,606	721	1,110	505	539	297	0	0
SHEET 4 OF 4	134+00.00	142+13.00	9	1,887	6	3,665	84	203	3,580	716	1,122	501	550	203	84	5
		TOTALS:	41	6,844	109	14,466	718	500	13,747	2,749	4,250	1,925	2,070	500	718	40

△1

SUMMARY OF FENCE ITEMS

PLAN AND PROFILE SHEETS	BEGIN STATION	END STATION	550 CHAIN LINK FENCE (REMOVE)(8')	550 CHAIN LINK FENCE (INSTALL)(8')	550 CHAIN LINK FENCE GATE (REMOVE)(8')	550 CHAIN LINK FENCE (INSTALL)(8')	N/A REMOVE AND INSTALL NEW MECHANICAL GATE AND OPERATOR
			LF	LF	EA	EA	LS
SHEET 1 OF 4	102+06.22	112+00.00	975	975	0	0	0
SHEET 2 OF 4	112+00.00	123+00.00	1,100	1,100 △1	0	0	0
SHEET 3 OF 4	123+00.00	134+00.00	203	203	0	0	0
SHEET 4 OF 4	134+00.00	142+13.00	848	410	1	1	1
		TOTALS:	3,126	2,688	1	1	1

△1

SUMMARY OF SW3P ITEMS

SW3P SHEET	506 BIODEG EROSN CONT LOGS (INSTALL)	506 BIODEG EROSN CONT LOGS (REMOVE)	506 TEMP SEDMT CONT FENCE (INSTALL)	506 TEMP SEDMT CONT FENCE (REMOVE)
	LF	LF	LF	LF
SHEET 1 0F 2	285	285	198	198
SHEET 2 0F 2	-	-	181	181
TOTALS:	285	285	379	379

SUMMARY OF SIGNING AND PAVEMENT MARKING ITEMS

PAVEMENT MARKINGS AND SIGNS SHEET	BEGIN STATION	END STATION	644 SMALL ROADSIDE SIGN ASSEMBLY	666 REFL PAV MRK (TY II)(Y)(SLD) (6")	666 REFL PAV MRK (TY II)(W)(SLD) (6")	666 REFL PAV MRK (TY II)(Y)(SLD) (8")	666 REFL PAV MRK (TY II)(W)(SLD) (8")	666 REFL PAV MRK (TY II)(W)(SLD) (24")
			EA	LF	LF	LF	LF	LF
SHEET 1 OF 1	102+06.22	123+00.00	2	4,124	4,234	0	0	36
SHEET 1 OF 2	123+00.00	142+13.00	3	3,868	3,923	178	1,068	0
		TOTALS:	5	7,992	8,157	178	1,068	36

Parkhill

PARKHILL SMITH & COOPER, INC. STATE OF TEXAS MICHAEL WILLIAM MOLTER 79765 LICENSED PROFESSIONAL ENGINEER
Michael W. Molter
09/20/24

Parkhill.com

Midland Landfill Access Road (S CR 1110) Reconstruction

MIDLAND Engineering Services

CLIENT
City of Midland

300 N Loraine
Midland, TX
79701

PROJECT NO.
6225.22

#	DATE	DESCRIPTION
1	09/20/24	Addendum 01
1	08/12/24	Bid Set

Summary of Quantities

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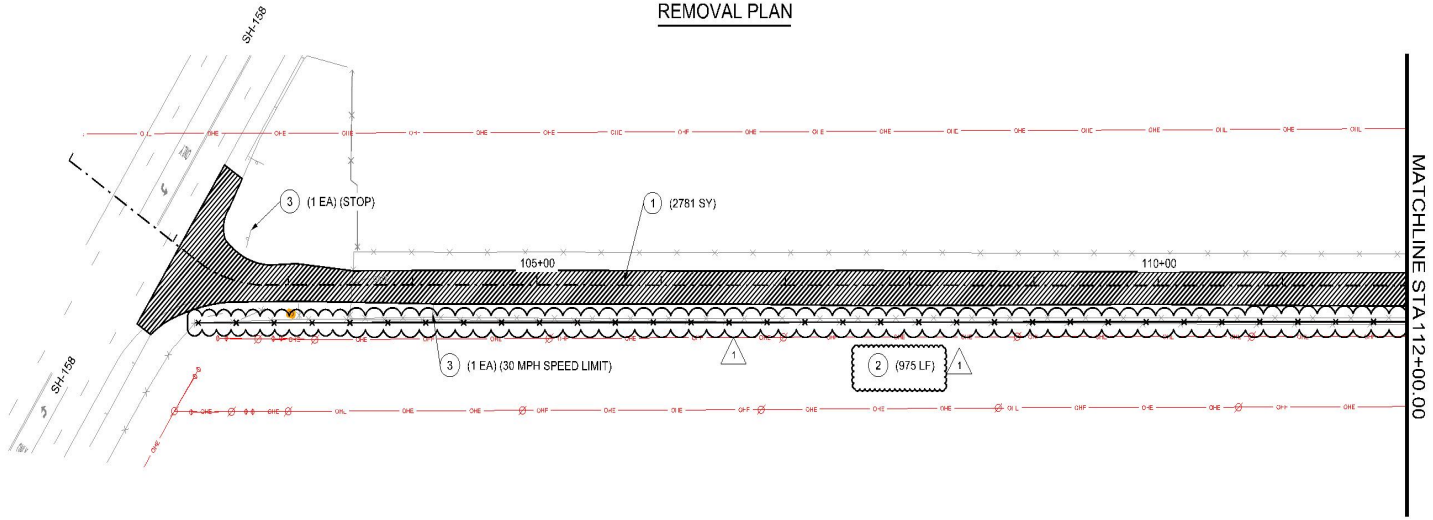
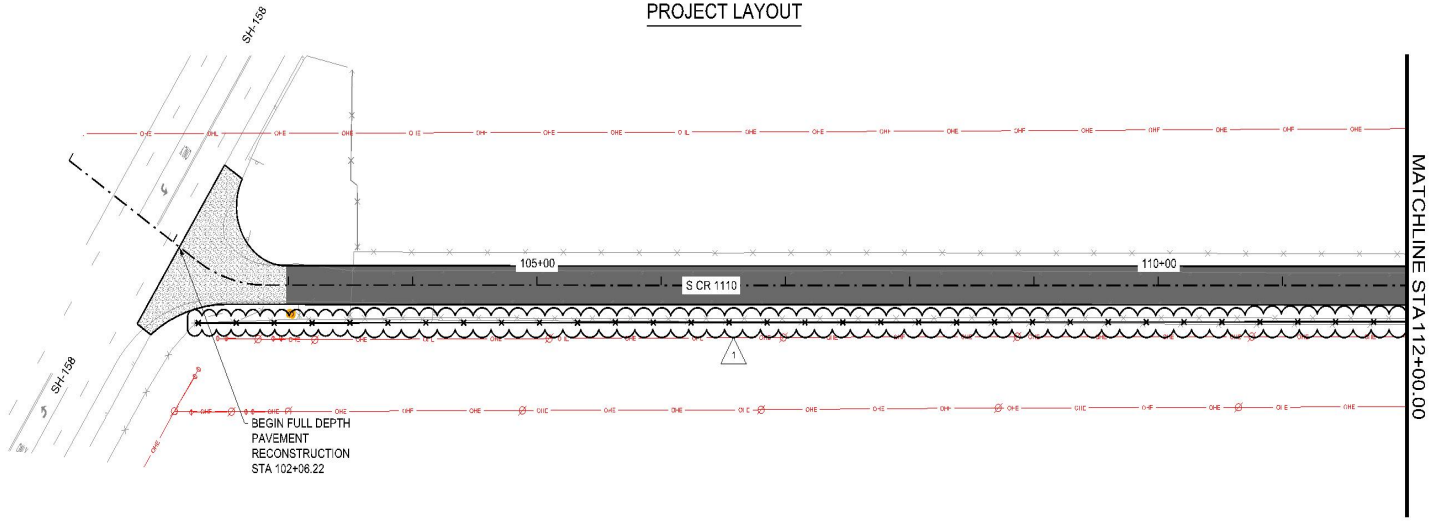
REMOVAL PLAN



PROJECT LAYOUT



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0 50' 100'

LEGEND

- REMOVE ASPHALT
- REMOVE FENCE

REMOVAL ITEMS

1. REMOVE ASPHALT PAVEMENT (SY)
2. REMOVE FENCE (LF)
3. REMOVE SMALL SIGN (EA)
4. REMOVE MECHANICAL GATE (MANUFACTURER IS TYMETAL)

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PARKHILL SMITH & COOPER, INC. F-560 STATE OF TEXAS MICHAEL WILLIAM MOLTER 79765 LICENSED PROFESSIONAL ENGINEER

Michael W. Molter 09/20/24

Parkhill.com

Midland Landfill Access Road (S CR 1110) Reconstruction

MIDLAND Engineering Services

CLIENT
City of Midland
300 N Loraine
Midland, TX
79701

PROJECT NO.
6225.22

#	DATE	DESCRIPTION
1	09/20/24	Addendum 01
1	08/12/24	Bid Set

Removal Plan and Project Layout Sheet 1 of 4

C-107

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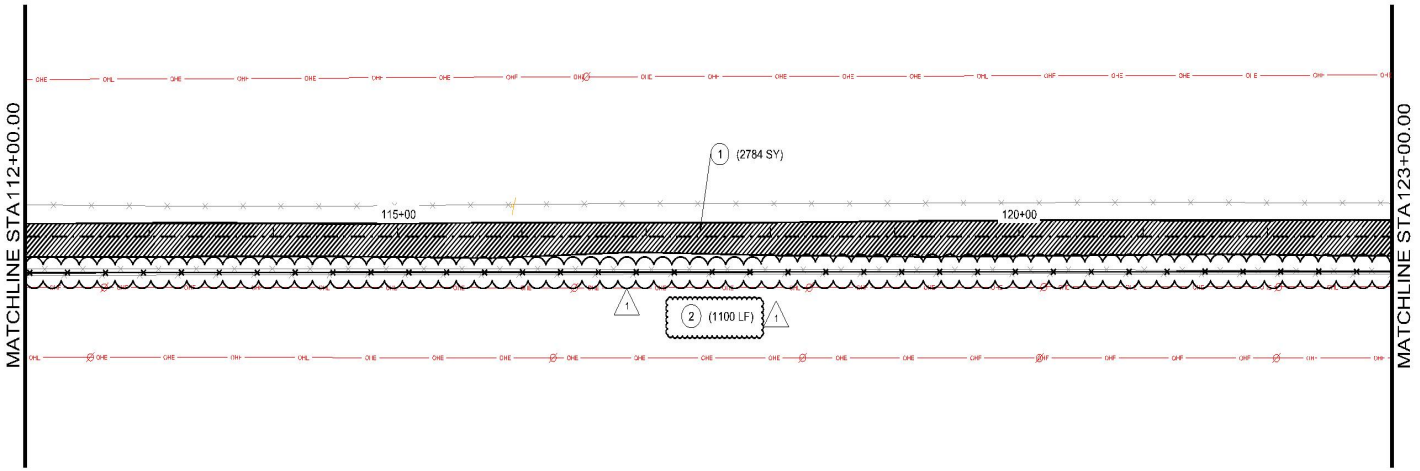
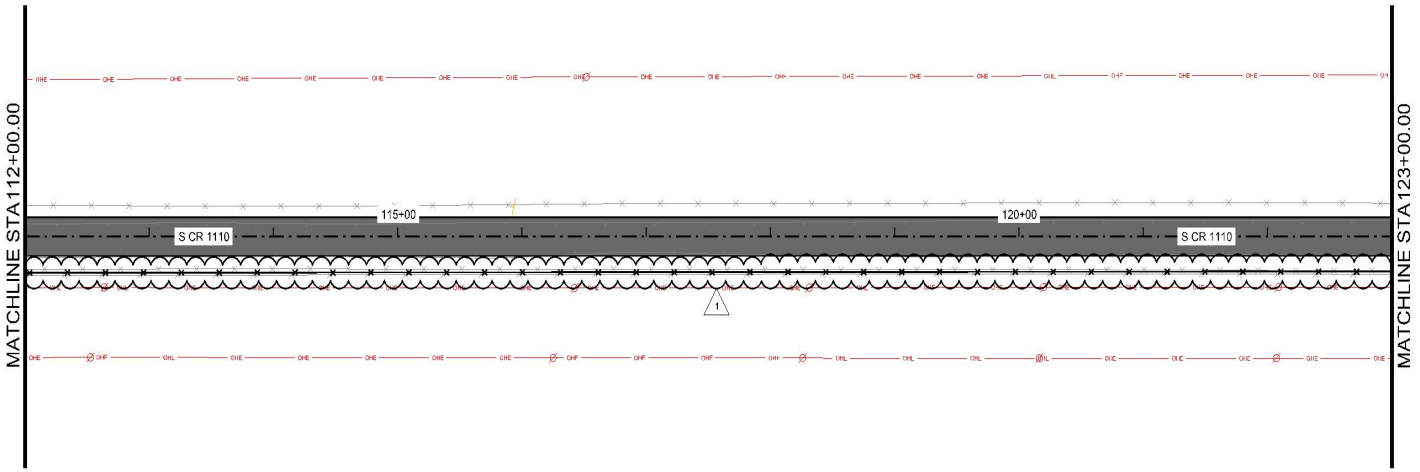


PROJECT LAYOUT



N

0 50' 100'

LEGEND

- REMOVE ASPHALT
- REMOVE FENCE

REMOVAL ITEMS

1. REMOVE ASPHALT PAVEMENT (SY)
2. REMOVE FENCE (LF)
3. REMOVE SMALL SIGN (EA)
4. REMOVE MECHANICAL GATE (MANUFACTURER IS TYMETAL)

Parkhill

PARKHILL SMITH & COOPER, INC. F-560 STATE OF TEXAS MICHAEL WILLIAM MOLTER 79765 LICENSED PROFESSIONAL ENGINEER

Michael W. Molter 09/20/24

Parkhill.com

Midland Landfill Access Road (S CR 1110) Reconstruction

MIDLAND Engineering Services

CLIENT
City of Midland

300 N Loraine
Midland, TX
79701

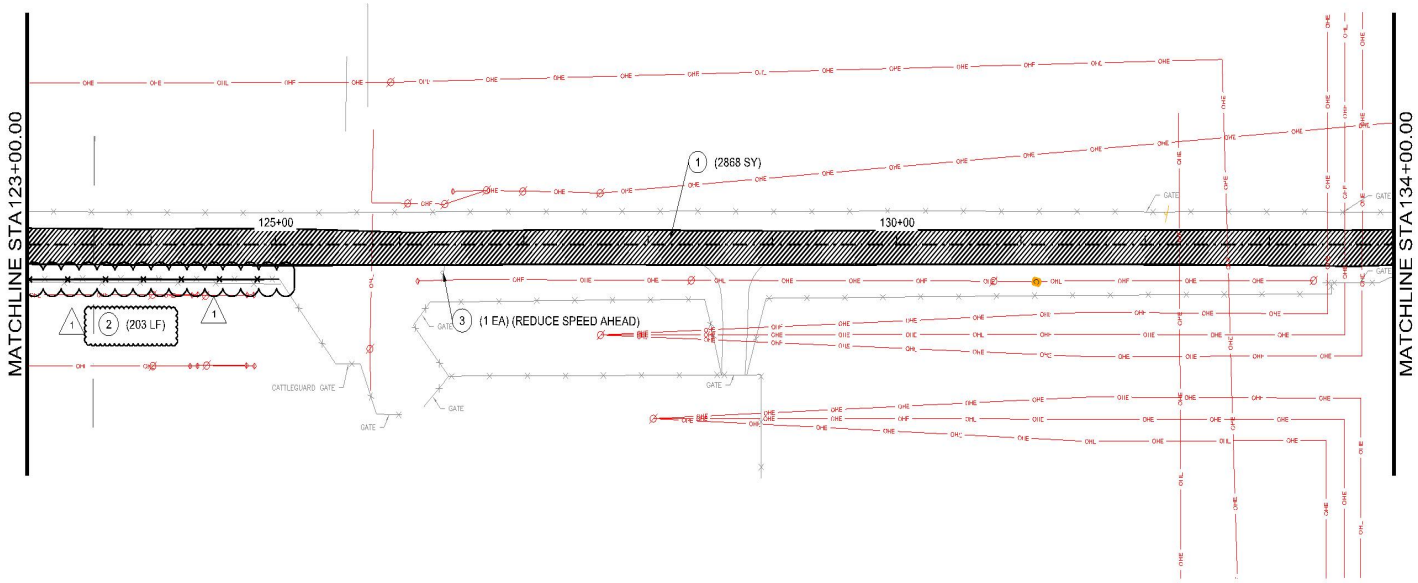
PROJECT NO.
6225.22

#	DATE	DESCRIPTION
1	09/20/24	Addendum 01
1	08/12/24	Bid Set

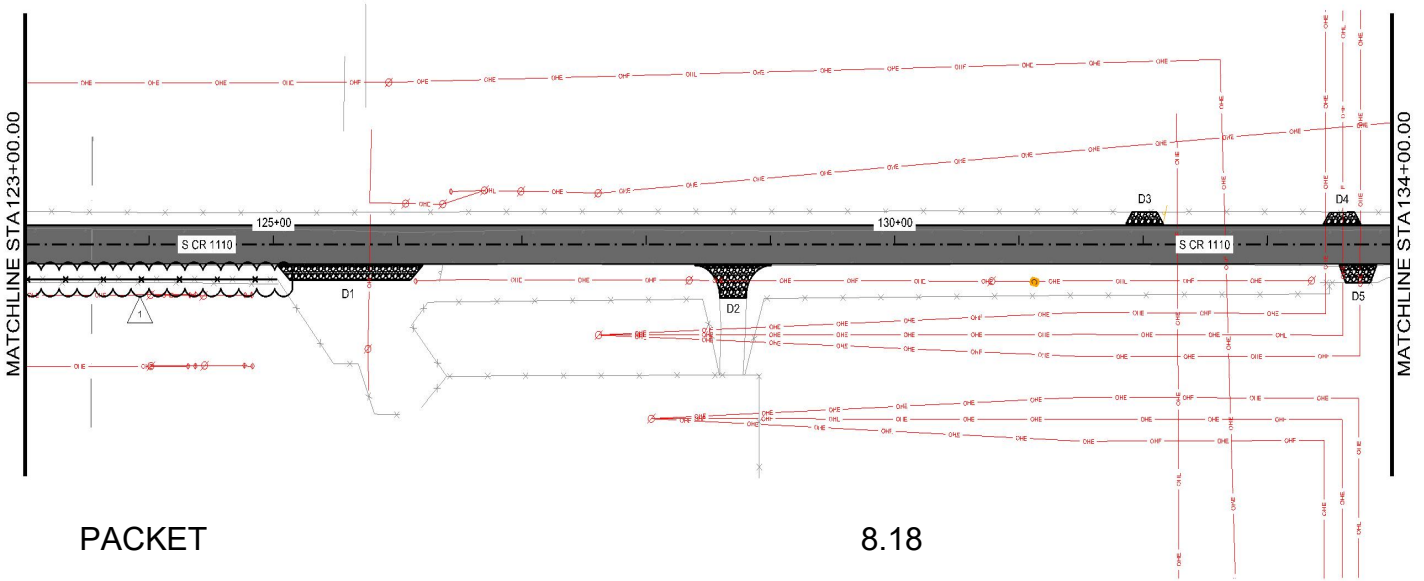
Removal Plan and Project Layout Sheet 2 of 4

C-108

REMOVAL PLAN



PROJECT LAYOUT



0 50' 100'

LEGEND

- REMOVE ASPHALT
- REMOVE FENCE

REMOVAL ITEMS

1. REMOVE ASPHALT PAVEMENT (SY)
2. REMOVE FENCE (LF)
3. REMOVE SMALL SIGN (EA)
4. REMOVE MECHANICAL GATE (MANUFACTURER IS TYMETAL)

PACKET 8.18 October 22, 2024

Parkhill

PARKHILL SMITH & COOPER, INC. F-560 STATE OF TEXAS MICHAEL WILLIAM MOLTER 79765 LICENSED PROFESSIONAL ENGINEER

Michael W. Molter 09/20/24

Parkhill.com

Midland Landfill Access Road (S CR 1110) Reconstruction

MIDLAND Engineering Services

CLIENT
City of Midland
300 N Loraine
Midland, TX
79701

PROJECT NO.
6225.22

#	DATE	DESCRIPTION
1	09/20/24	Addendum 01
1	08/12/24	Bid Set

Removal Plan and Project Layout Sheet 3 of 4

C-109

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GENERAL NOTES FOR TRAFFIC CONTROL

1. NOTIFY TXDOT AT LEAST 48 HOURS BEFORE TRAFFIC CONTROL IS PLACED ALONG SH 158.
2. CONTACT FIRE, POLICE, EMS, POSTAL SERVICES AT LEAST 48 HOURS BEFORE EACH CONSTRUCTION PHASE BEGINS.
3. NOTIFY EACH PROPERTY OWNER OR TENANT AT LEAST 5 BUSINESS-DAYS PRIOR TO ANY CHANGES AFFECTING THEIR PROPERTY ACCESS POINTS.
4. INSTALL ALL BARRICADES, WARNING SIGNS, TRAFFIC CONTROL DEVICES, AND PAVEMENT MARKINGS IN CONFORMANCE WITH TCP, BC, AND WZ TXDOT STANDARDS.
5. PROVIDE AND MAINTAIN ALL BARRICADES, WARNING SIGNS, AND TRAFFIC CONTROL DEVICES IN CONFORMANCE WITH THE CURRENT TXDOT BC AND TCP STANDARDS ALONG SH 158.
6. FOR TCP ALONG CR 1110, MEET THE REQUIREMENTS SET BY THE TXMUTCD.
7. THE TRAFFIC CONTROL SHEETS ARE TO BE USED AS A GUIDE TO AID IN BIDDING THE PROJECT. THE SUCCESSFUL CONTRACTOR SHALL SUBMIT A TRAFFIC CONTROL PLAN AT LEAST 2 WEEKS PRIOR TO START OF CONSTRUCTION. THE CONSTRUCTION SEQUENCE CAN DIFFER FROM WHAT IS SHOWN IN THE CONSTRUCTION PLANS.
8. ADDITIONAL SIGNS AND BARRICADES, PLACED AS DIRECTED, WILL BE CONSIDERED SUBSIDIARY TO ITEM 502.

SEQUENCE OF WORK

REFER TO ADVANCED WARNING SIGN AND PHASING LAYOUT SHEET FOR ADVANCED WARNING SIGN NOTES, PHASING DETAILS, AND PCMS DETAILS.

~~PHASE IV~~ PHASE I

~~REFER TO PLAN PHASE IV DETAILS FOR CONSTRUCTION WORK LIMITS AND DETAILS.~~

1 REFER TO PLAN PHASE I DETAILS FOR CONSTRUCTION WORK LIMITS AND DETAILS.
CONSTRUCT TEMPORARY DRIVEWAY AT 8". TYPE A GRADE 1-2 FLEX BASE (ITEM 247) WITH AN. EMULSION SEAL (ITEM 310) AT 0.2. GAL/SY. CONTRACTOR RESPONSIBLE FOR OBTAINING THE TEMPORARY DRIVEWAY PERMIT FROM TXDOT.

MAINTENANCE OF TRAFFIC:
1. RE-SET ALL BARRICADES, WARNING SIGNS, AND TRAFFIC CONTROL DEVICES IN CONFORMANCE WITH THE CURRENT TXDOT BC AND TCP STANDARDS.

CONSTRUCTION:
1. PERFORM FULL DEPTH RECONSTRUCTION AT SH 302 TIE-IN.
2. PERFORM CLEANUP.

1 ~~PHASE I~~ PHASE II

MAINTENANCE OF TRAFFIC:
1. PLACE PCMS TWO WEEKS PRIOR TO BEGINNING CONSTRUCTION TO NOTIFY PUBLIC OF CONSTRUCTION PROJECT.
2. INSTALL ALL BARRICADES, WARNING SIGNS, AND TRAFFIC CONTROL DEVICES IN CONFORMANCE WITH THE CURRENT TXDOT BC AND TCP STANDARDS.

CONSTRUCTION:
1. INSTALL EROSION CONTROL DEVICES AS NECESSARY. REFER TO SW3P DETAIL SHEET.
2. CONSTRUCT TEMPORARY PAVEMENT. REFER TO TRAFFIC CONTROL TYPICAL SECTION ~~PHASE I~~ PHASE II FOR TEMPORARY PAVEMENT NEED.
3.

1 ~~PHASE II~~ PHASE III

REFER TO TRAFFIC CONTROL TYPICAL SECTION PHASE II.

MAINTENANCE OF TRAFFIC:
1. RE-SET ALL BARRICADES, WARNING SIGNS, AND TRAFFIC CONTROL DEVICES IN CONFORMANCE WITH THE CURRENT TXDOT BC AND TCP STANDARDS.

CONSTRUCTION:
1. PERFORM FULL DEPTH RECONSTRUCTION.
2. CONSTRUCT DRIVEWAYS.
3. PERFORM CLEANUP.

1 ~~PHASE III~~ PHASE IV

REFER TO TRAFFIC CONTROL TYPICAL SECTION PHASE III.

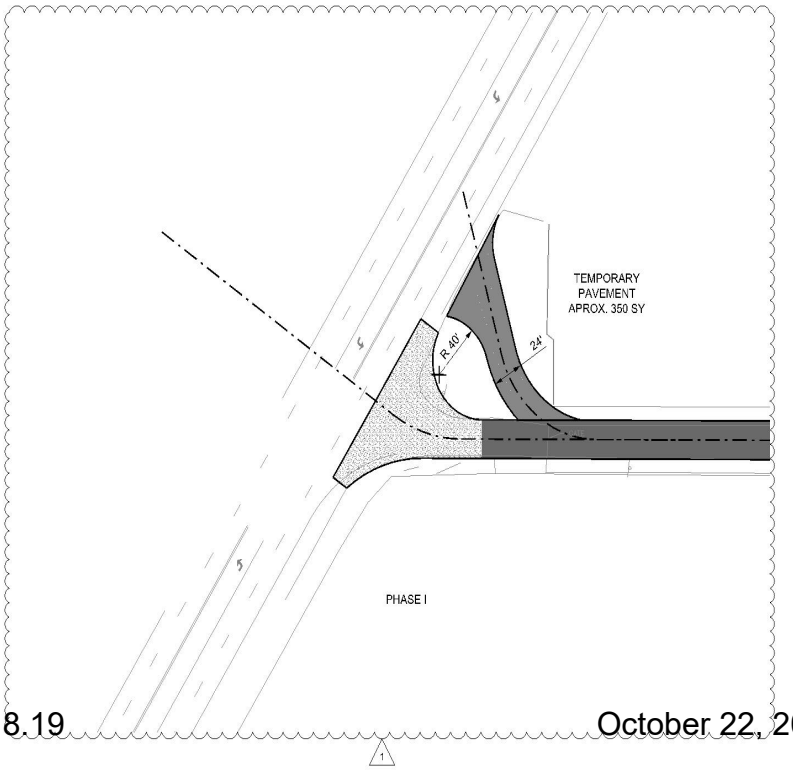
MAINTENANCE OF TRAFFIC:
1. RE-SET ALL BARRICADES, WARNING SIGNS, AND TRAFFIC CONTROL DEVICES IN CONFORMANCE WITH THE CURRENT TXDOT BC AND TCP STANDARDS.

CONSTRUCTION:
1. PERFORM FULL DEPTH RECONSTRUCTION.
2. CONSTRUCT DRIVEWAYS.
3. PERFORM CLEANUP.

PHASE V

MAINTENANCE OF TRAFFIC:
1. RE-SET ALL BARRICADES, WARNING SIGNS, AND TRAFFIC CONTROL DEVICES IN CONFORMANCE WITH THE CURRENT TXDOT BC AND TCP STANDARDS.

CONSTRUCTION:
1. INSTALL PERMANENT SIGNING AND STRIPING USING TCP(3-4)-13.
2. PERFORM FINAL SIDE-SCOPE GRADING.
3. REMOVE EROSION CONTROL DEVICES
4. REMOVE ALL BARRICADES WARNING SIGNS, AND TRAFFIC CONTROL DEVICES.
5. PERFORM FINAL CLEANUP.



PACKET
1 THE SEQUENCE OF WORK ORDER HAS CHANGED
THE SEQUENCE OF WORK HAS BEEN ORDERED NUMERICALLY.

Parkhill

PARKHILL SMITH & COOPER, INC. STATE OF TEXAS MICHAEL WILLIAM MOLTER 79765 LICENSED PROFESSIONAL ENGINEER
Michael W. Molter
09/20/24

Parkhill.com

Midland Landfill Access Road (S CR 1110) Reconstruction

MIDLAND Engineering Services

CLIENT
City of Midland

300 N Loraine
Midland, TX
79701

PROJECT NO.
6225.22

#	DATE	DESCRIPTION
1	09/20/24	Addendum 01
1	08/12/24	Bid Set

Traffic Control Plan Sequence of Construction

C-111

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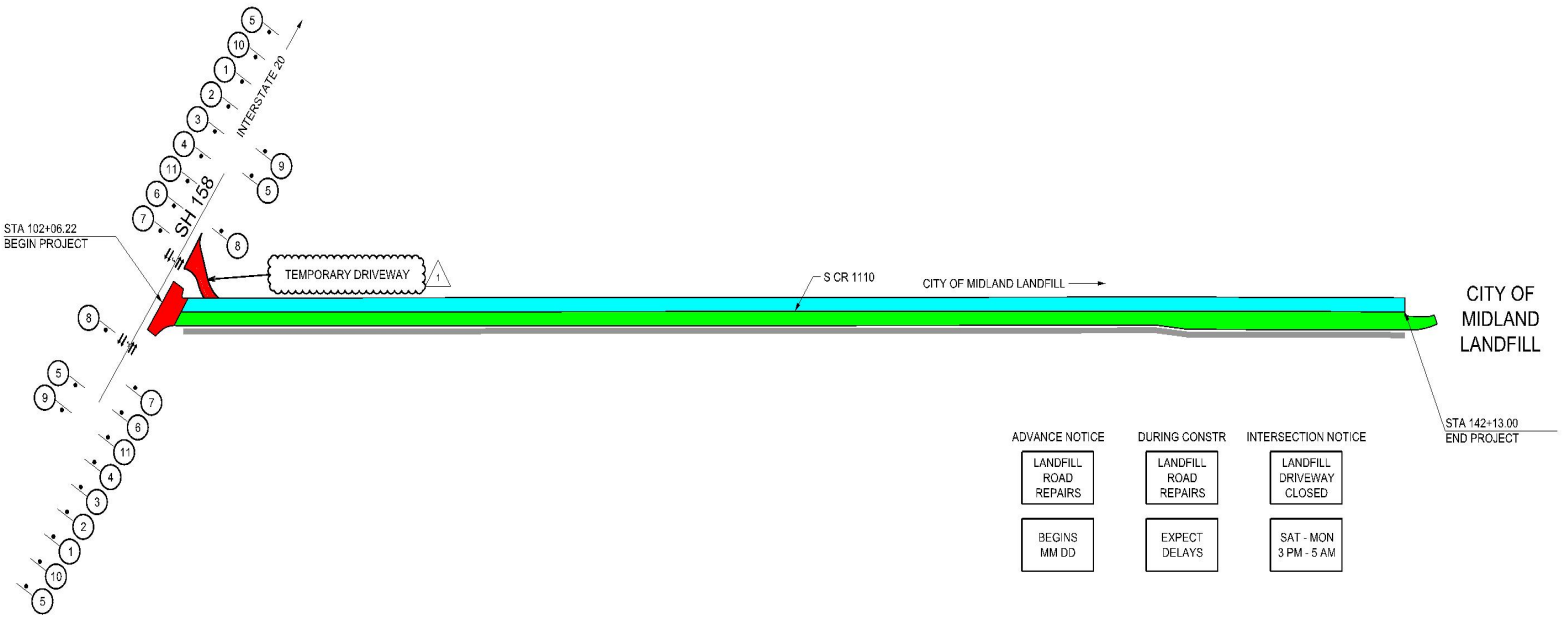
LEGEND

- TRAFFIC FLOW
- PHASE I WORK AREA
- PHASE II WORK AREA
- PHASE III WORK AREA
- PHASE IV WORK AREA
- TRAFFIC SIGN
- PORTABLE CHANGEABLE MESSAGE SIGN (PCMS)

NOTES:

1. THIS SHEET REFLECTS ADVANCED SIGNING FOR WORK AT THE BEGINNING OF THE PROJECT LIMITS AND ARE TO REMAIN DURING CONSTRUCTION.
2. TRAFFIC SIGN LOCATIONS SHOWN ON THIS SHEET ARE REPRESENTATIONAL. SPACE SIGNS ACCORDING TO TXDOT BC STANDARDS AND TO SUIT SITE CONDITIONS.
3. PROVIDE AND MAINTAIN ALL BARRICADES, WARNING SIGNS, AND TRAFFIC CONTROL DEVICES IN CONFORMANCE WITH THE CURRENT TXDOT BC AND TCP STANDARDS.
4. PLACE PCMS TWO WEEKS PRIOR TO BEGINNING CONSTRUCTION TO NOTIFY PUBLIC OF PROJECT. REFER TO TXDOT BC(6)-21 FOR ADDITIONAL PCMS NOTES.
5. PHASE V LIMITS NOT SHOWN ON THIS SHEET.
6. SPEED REDUCTION TO BE APPROVED BY TxDOT. CONTRACTOR TO REQUEST APPROVAL IF DETERMINED THAT THE SPEED REDUCTION IS NECESSARY DURING CONSTRUCTION.

NTS



ADVANCE NOTICE	DURING CONSTR	INTERSECTION NOTICE
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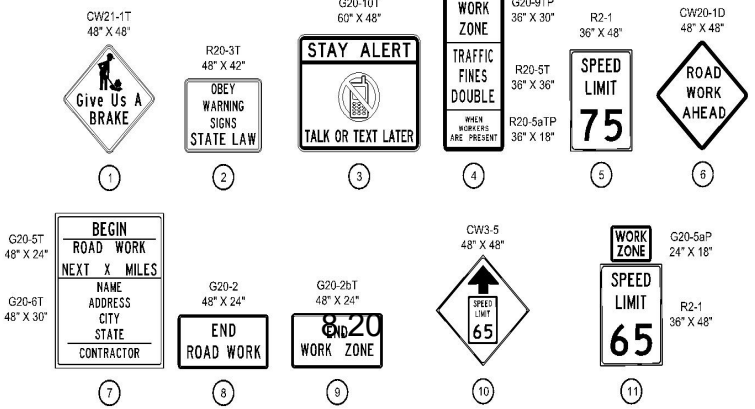
BEGINS MM DD	EXPECT DELAYS	SAT - MON 3 PM - 5 AM



PACKET

October 22, 2024

Parkhill

PARKHILL, SMITH & COOPER, INC. STATE OF TEXAS F-595 MICHAEL WILLIAM MOLTER 79765 LICENSED PROFESSIONAL ENGINEER
Michael W. Molter
09/20/24

Parkhill.com

Midland Landfill Access Road (S CR 1110) Reconstruction

MIDLAND Engineering Services

CLIENT
City of Midland

300 N Loraine
Midland, TX
79701

PROJECT NO.
6225.22

#	DATE	DESCRIPTION
1	09/20/24	Addendum 01
1	08/12/24	Bid Set

Traffic Control Plan Advanced Warning Sign and Phasing Layout

C-112

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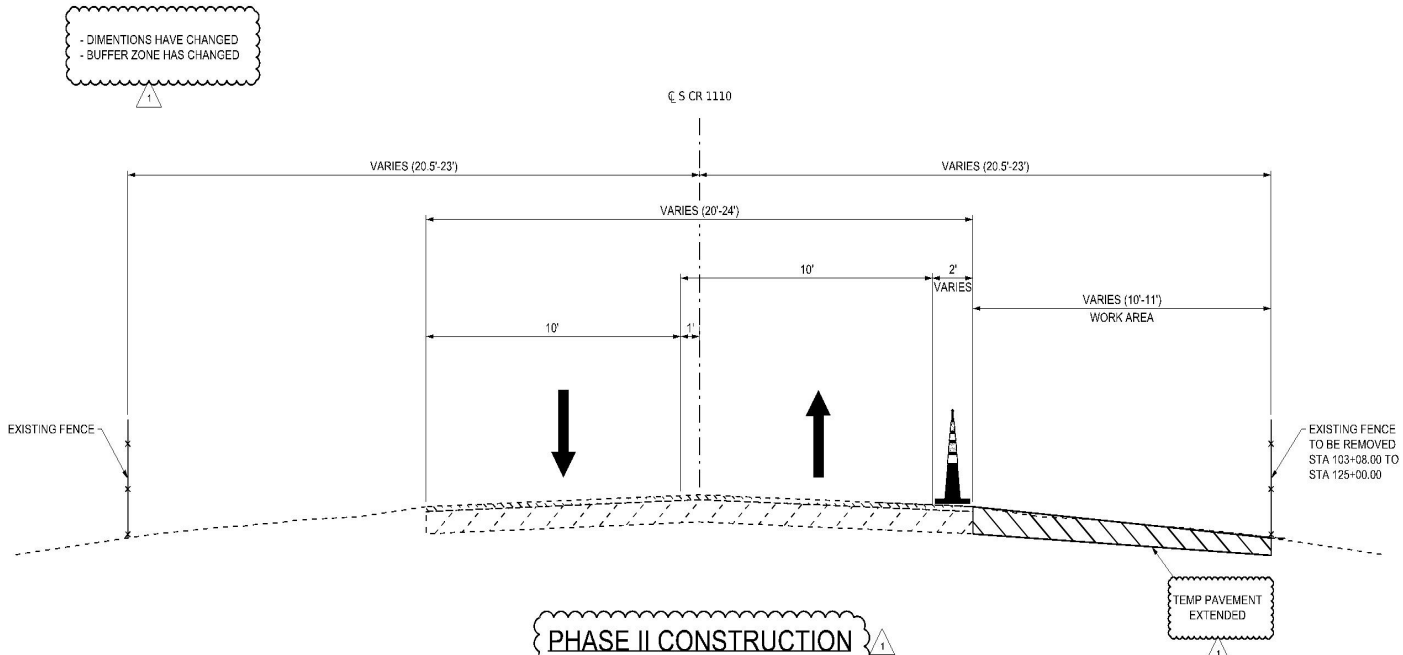

PHASE II CONSTRUCTION
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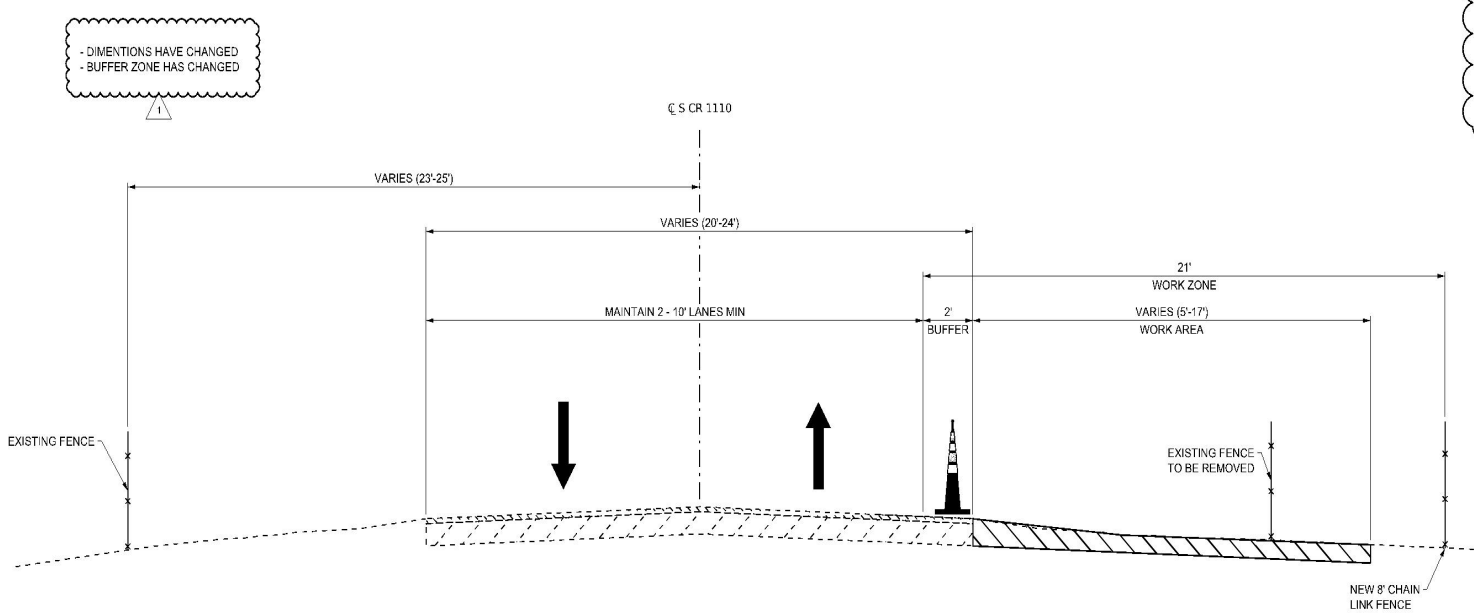
STA 102+06.22 TO STA 139+00.00



PHASE II CONSTRUCTION
NTS
STA 139+00.00 TO STA 142+13.00

LEGEND

CONSTRUCT THIS PHASE-TEMP DETOUR

NOTES:

1. TEMPORARY PAVEMENT WILL BE MEASURED AND PAID FOR BY THE SQUARE YARD AND MAY CONSIST OF 8" TY A GRADE 1-2 FLEX BASE WITH EMULSION SEAL. CONTRACTOR MAY SUBMIT ANOTHER SECTION FOR APPROVAL. THE CONTRACTOR IS RESPONSIBLE FOR MAINTAINING DRIVEABILITY AND PERFORMANCE OF TEMPORARY PAVEMENT THROUGHOUT THE COURSE OF CONSTRUCTION FOR NO ADDITIONAL PAYMENT.

Parkhill

PARKHILL SMITH & COOPER, INC. F-560
STATE OF TEXAS
MICHAEL WILLIAM MOLTER
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09/20/24

Parkhill.com

Midland Landfill Access Road (S CR 1110) Reconstruction

MIDLAND Engineering Services

CLIENT
City of Midland
300 N Loraine
Midland, TX
79701

PROJECT NO.
6225.22

#	DATE	DESCRIPTION
1	09/20/24	Addendum 01
1	08/12/24	Bid Set

Traffic Control
Typical Sections
1 Phase II

PACKET 8.21 October 22, 2024

C-113

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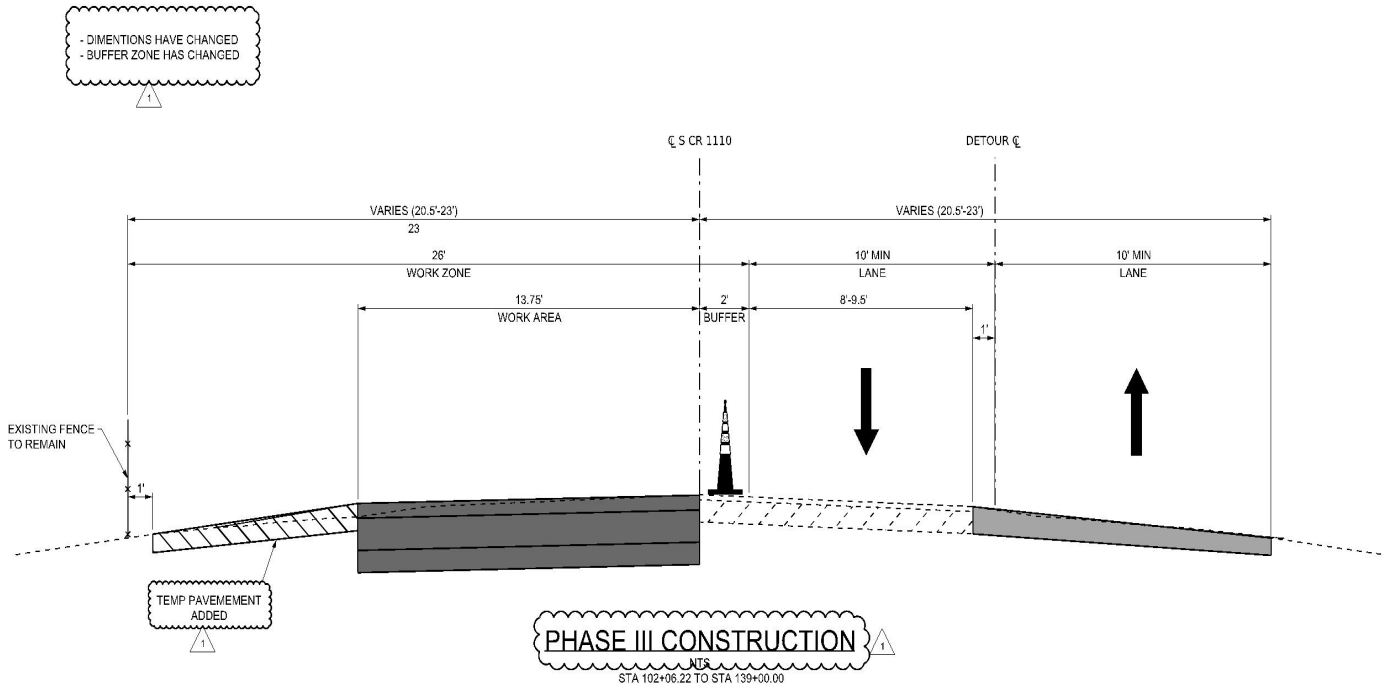

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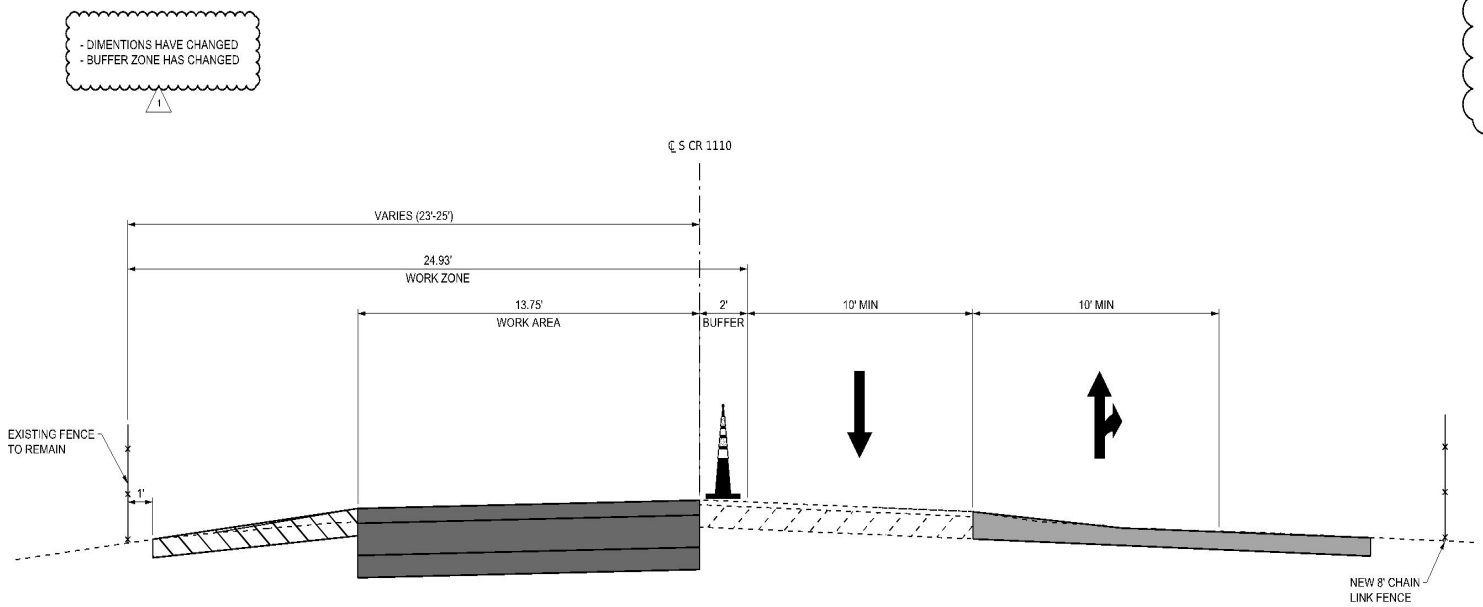

PHASE III CONSTRUCTION
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LEGEND

- CONSTRUCT THIS PHASE-TEMP DETOUR
- CONSTRUCT THIS PHASE
- CONSTRUCTED PREVIOUS PHASE

NOTES:

1. TEMPORARY PAVEMENT WILL BE MEASURED AND PAID FOR BY THE SQUARE YARD AND MAY CONSIST OF 8" BASE WITH EMULSION SEAL. CONTRACTOR MAY SUBMIT ANOTHER SECTION FOR APPROVAL. THE CONTRACTOR IS RESPONSIBLE FOR MAINTAINING DRIVEABILITY AND PERFORMANCE OF TEMPORARY PAVEMENT THROUGHOUT THE COURSE OF CONSTRUCTION FOR NO ADDITIONAL PAYMENT.

PACKET 8.22 October 22, 2024

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STATE OF TEXAS
MICHAEL WILLIAM MOLTER
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09/20/24

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Midland Landfill Access Road (S CR 1110) Reconstruction

MIDLAND Engineering Services

CLIENT
City of Midland
300 N Loraine
Midland, TX
79701

PROJECT NO.
6225.22

#	DATE	DESCRIPTION
1	09/20/24	Addendum 01
1	08/12/24	Bid Set

Traffic Control
Typical Sections
1 Phase III

C-114

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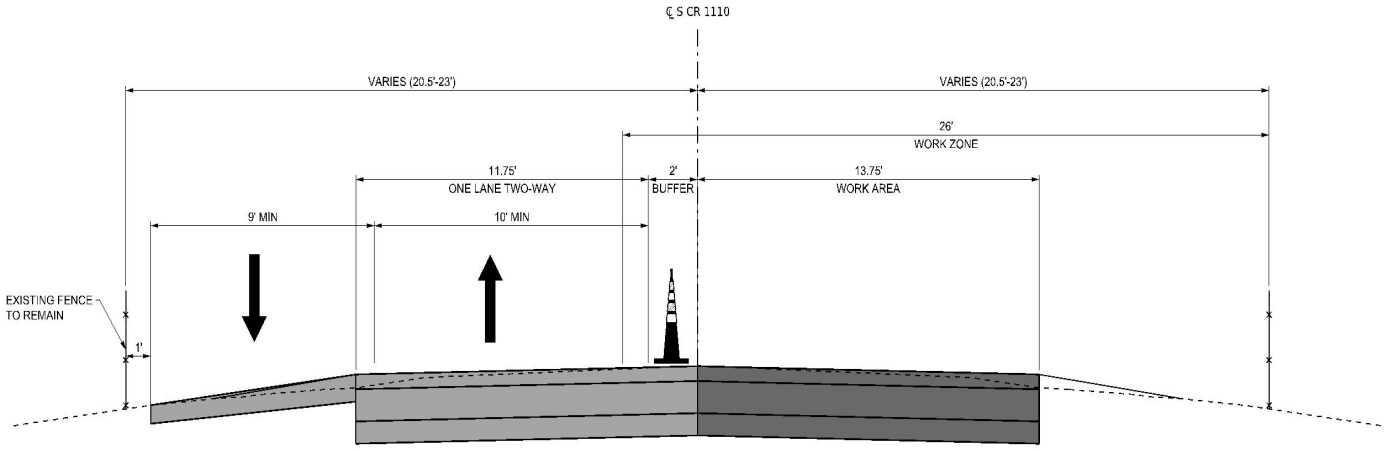
- BUFFER ZONE HAS CHANGED



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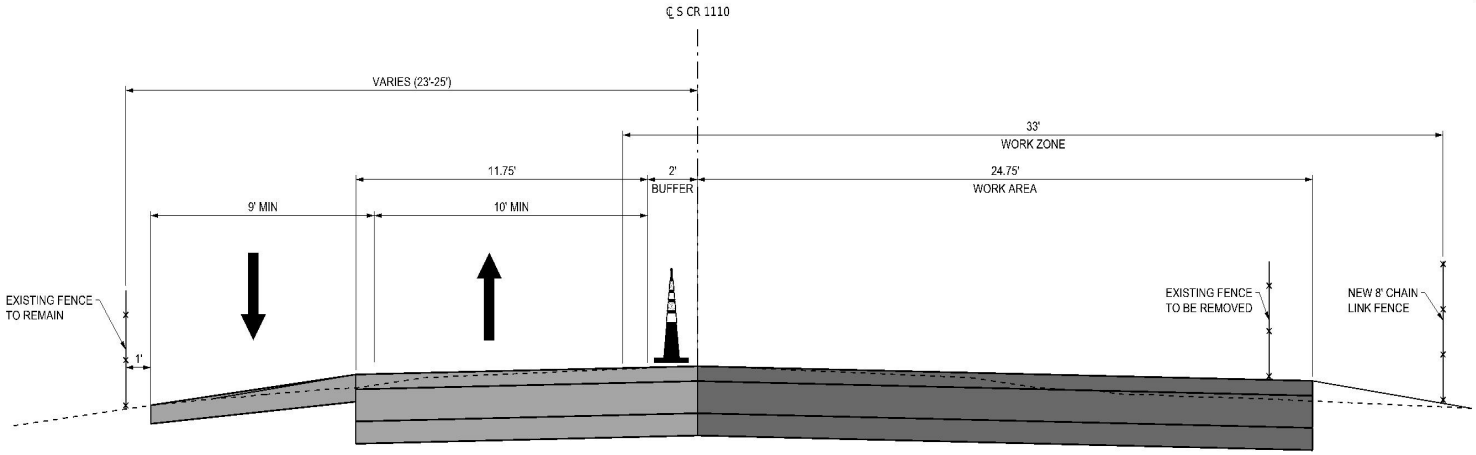
- DIMENTIONS HAVE CHANGED
- BUFFER ZONE HAS CHANGED



PHASE IV CONSTRUCTION
NTS
STA 139+00.00 TO STA 142+13.00

LEGEND

CONSTRUCT THIS PHASE

CONSTRUCTED PREVIOUS PHASE

NOTES:

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Parkhill

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09/20/24

Parkhill.com

Midland Landfill Access Road (S CR 1110) Reconstruction

MIDLAND Engineering Services

CLIENT
City of Midland
300 N Loraine
Midland, TX
79701

PROJECT NO.
6225.22

#	DATE	DESCRIPTION
1	09/20/24	Addendum 01
1	08/12/24	Bid Set

Traffic Control
Typical Sections
Phase IV

C-115

PACKET 8.23 October 22, 2024

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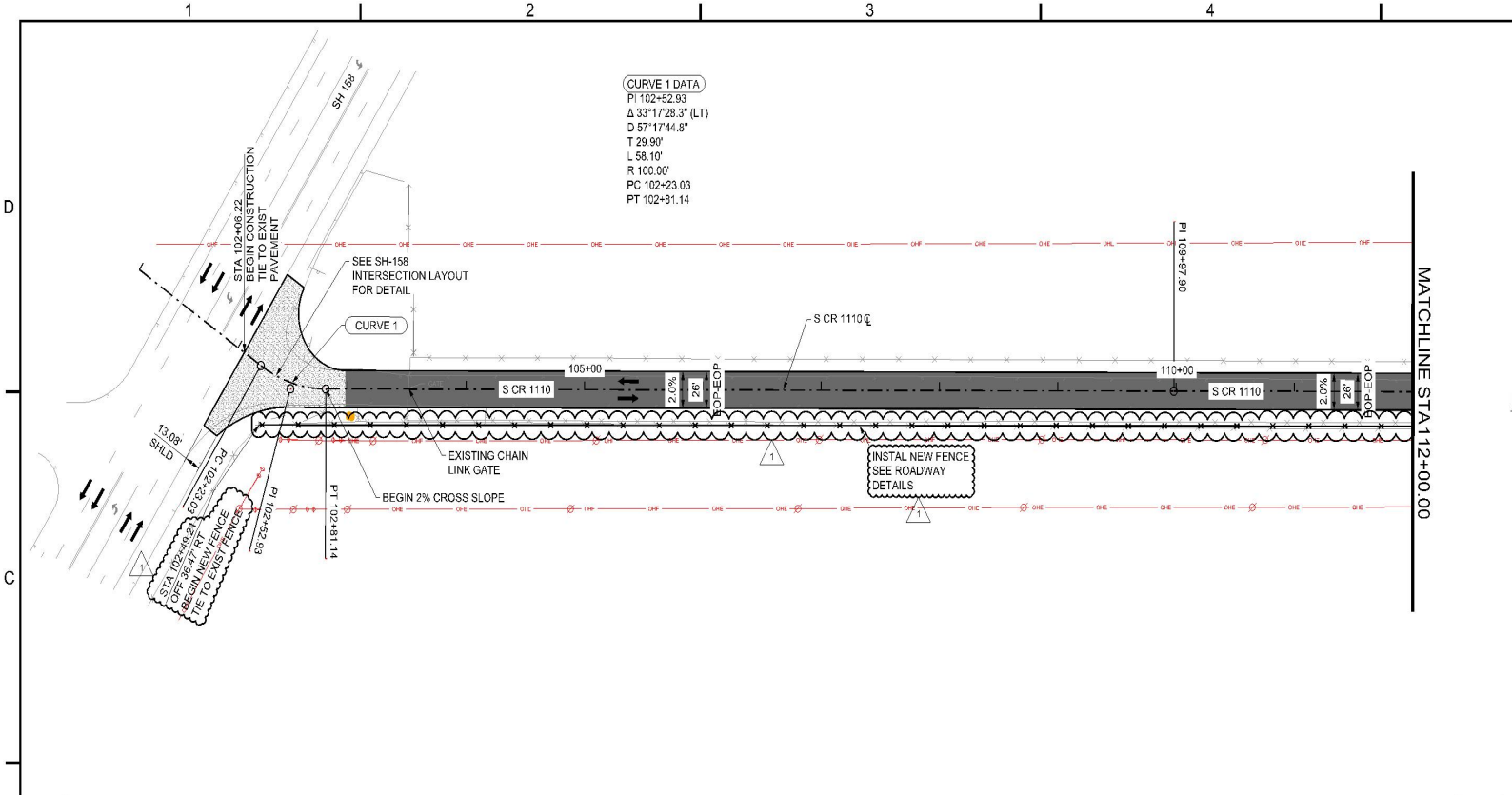

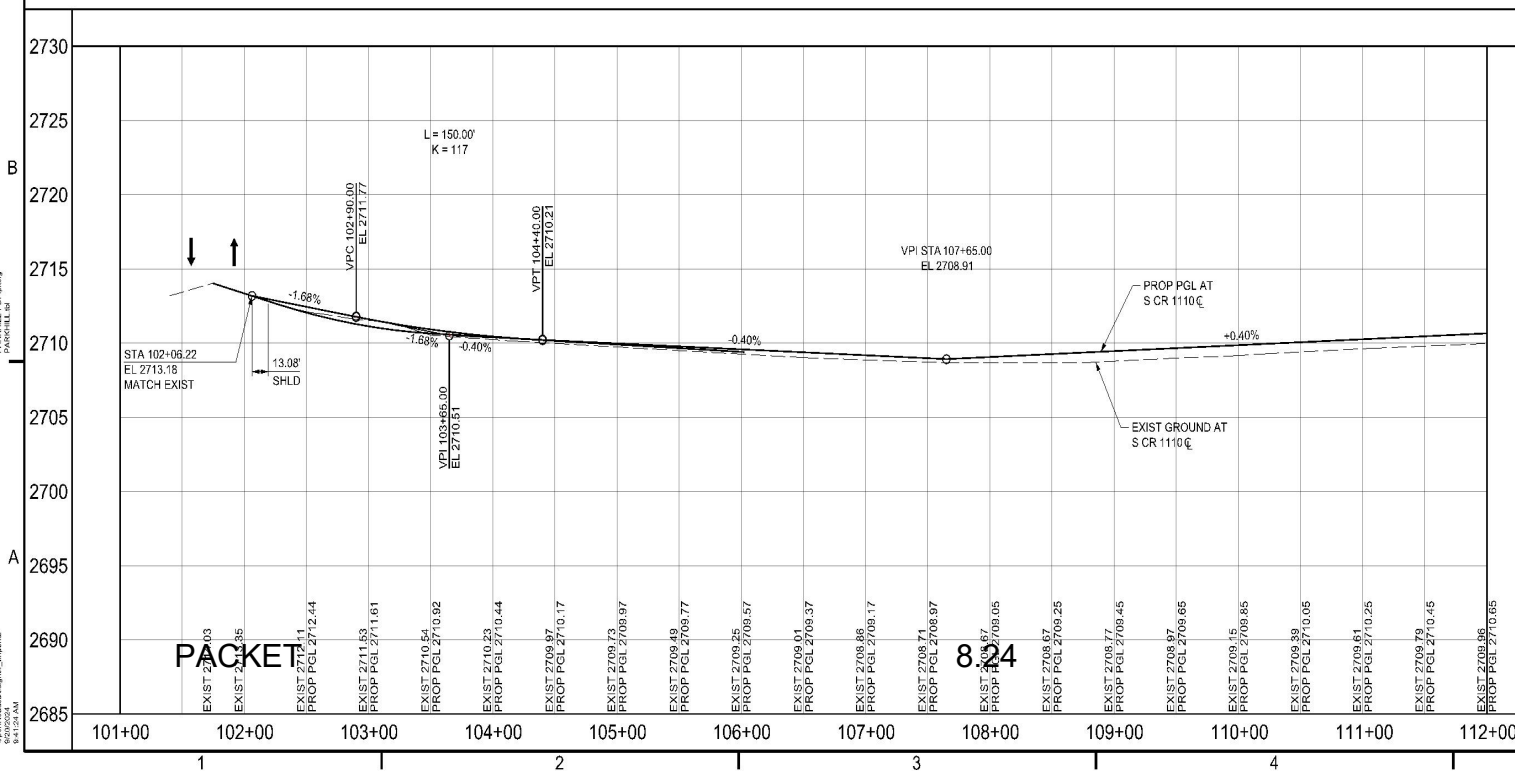

LEGEND - PLAN VIEW

- TRAFFIC FLOW
- D# DRIVEWAY ID NUMBER
- EXISTING FENCE
- EXISTING EDGE OF PAVEMENT
- EXISTING OVERHEAD POWER LINE
- EXISTING UTILITY POLE
- PROPOSED ASPHALT PAVEMENT
- PROPOSED CONCRETE PAVEMENT
- PROPOSED DRIVEWAY
- PROPOSED FENCE

LEGEND - PROFILE VIEW

- EXIST GROUND
- PROPOSED PGL

NOTES:

1. ALL DIMENSIONS ARE TO EDGE OF PAVEMENT UNLESS OTHERWISE SHOWN IN PLANS.
2. ALL STA/OFFSET LABELS ARE BASED ON THE S CR 1110 ALIGNMENT UNLESS OTHERWISE SHOWN IN PLANS.
3. SEE HORIZONTAL ALIGNMENT DATA SHEET FOR ADDITIONAL ALIGNMENT INFORMATION.

Parkhill

PARKHILL SMITH & COOPER, INC. F-560
STATE OF TEXAS
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Michael W. Molter
09/20/24

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Midland Landfill Access Road (S CR 1110) Reconstruction

MIDLAND Engineering Services

CLIENT
City of Midland
300 N Loraine
Midland, TX
79701

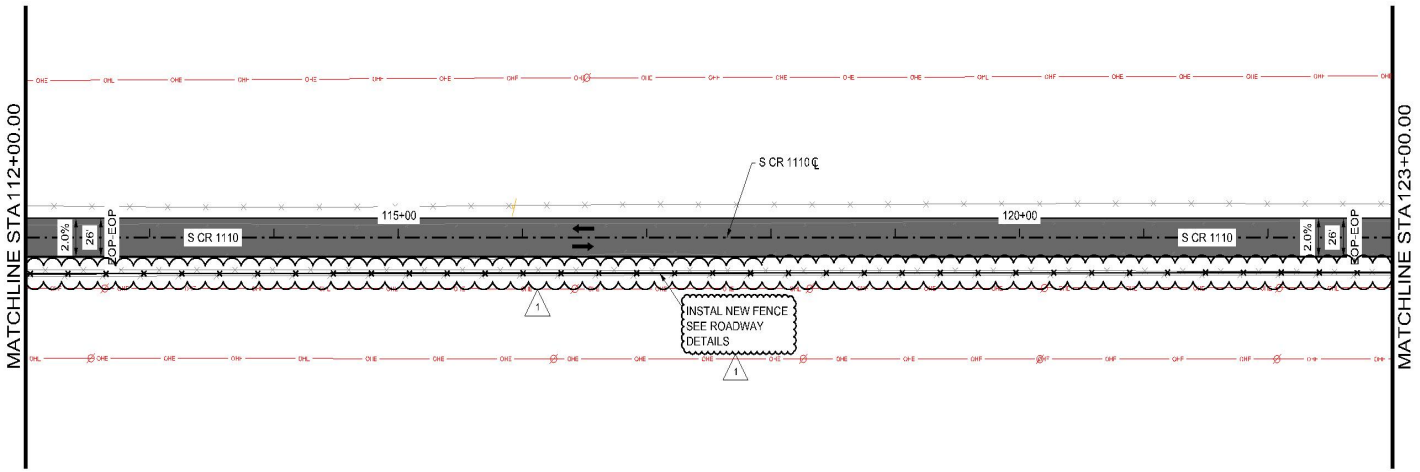
PROJECT NO.
6225.22

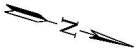
#	DATE	DESCRIPTION
1	09/20/24	Addendum 01
1	08/12/24	Bid Set

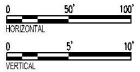
S CR 1110
Plan and Profile
Sheet 1 of 4

PACKET 8.24 October 22, 2024

C-116

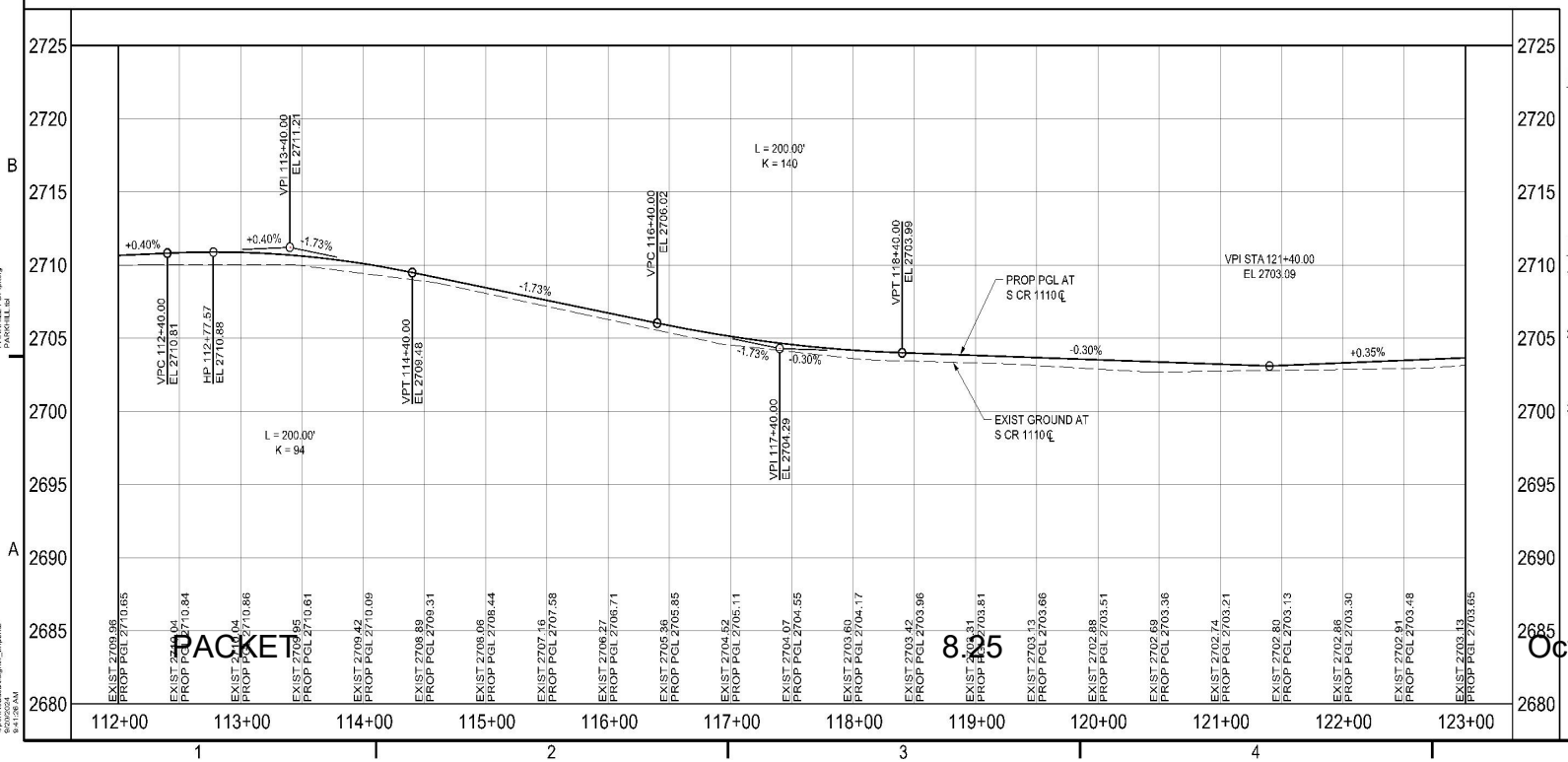






LEGEND - PLAN VIEW

- TRAFFIC FLOW
- D# DRIVEWAY ID NUMBER
- EXISTING FENCE
- EXISTING EDGE OF PAVEMENT
- EXISTING OVERHEAD POWER LINE
- EXISTING UTILITY POLE
- PROPOSED ASPHALT PAVEMENT
- PROPOSED CONCRETE PAVEMENT
- PROPOSED DRIVEWAY
- PROPOSED FENCE



LEGEND - PROFILE VIEW

- EXIST GROUND
- PROPOSED PGL

NOTES:

1. ALL DIMENSIONS ARE TO EDGE OF PAVEMENT UNLESS OTHERWISE SHOWN IN PLANS.
2. ALL STA/OFFSET LABELS ARE BASED ON THE S CR 1110 ALIGNMENT UNLESS OTHERWISE SHOWN IN PLANS.
3. SEE HORIZONTAL ALIGNMENT DATA SHEET FOR ADDITIONAL ALIGNMENT INFORMATION.

Parkhill

Parkhill.com

Midland Landfill Access Road (S CR 1110) Reconstruction

MIDLAND Engineering Services

CLIENT
City of Midland

300 N Loraine
Midland, TX
79701

PROJECT NO.
E225.22

#	DATE	DESCRIPTION
1	09/20/24	Addendum 01
1	08/12/24	Bid Set

S CR 1110
Plan and Profile
Sheet 2 of 4

C-117

PACKET 8.2.25 October 22, 2024

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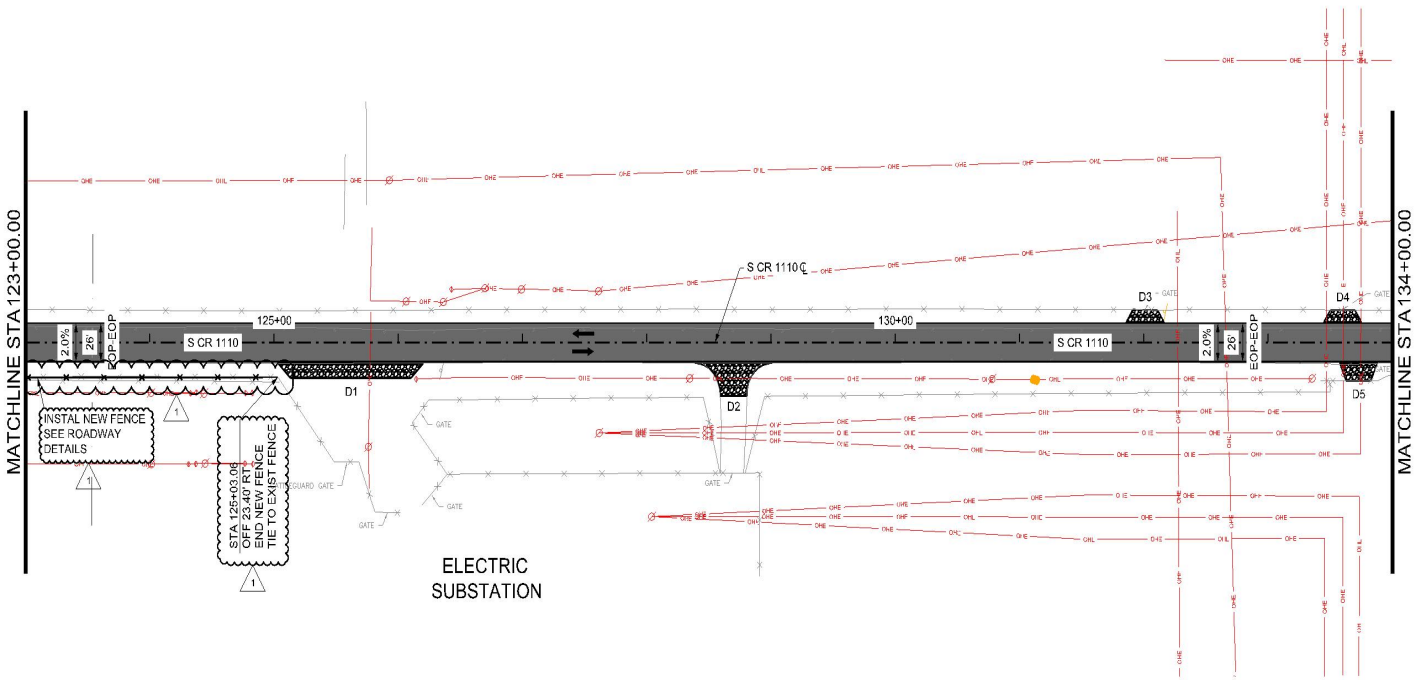
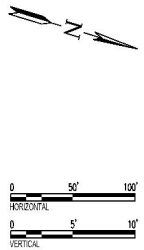
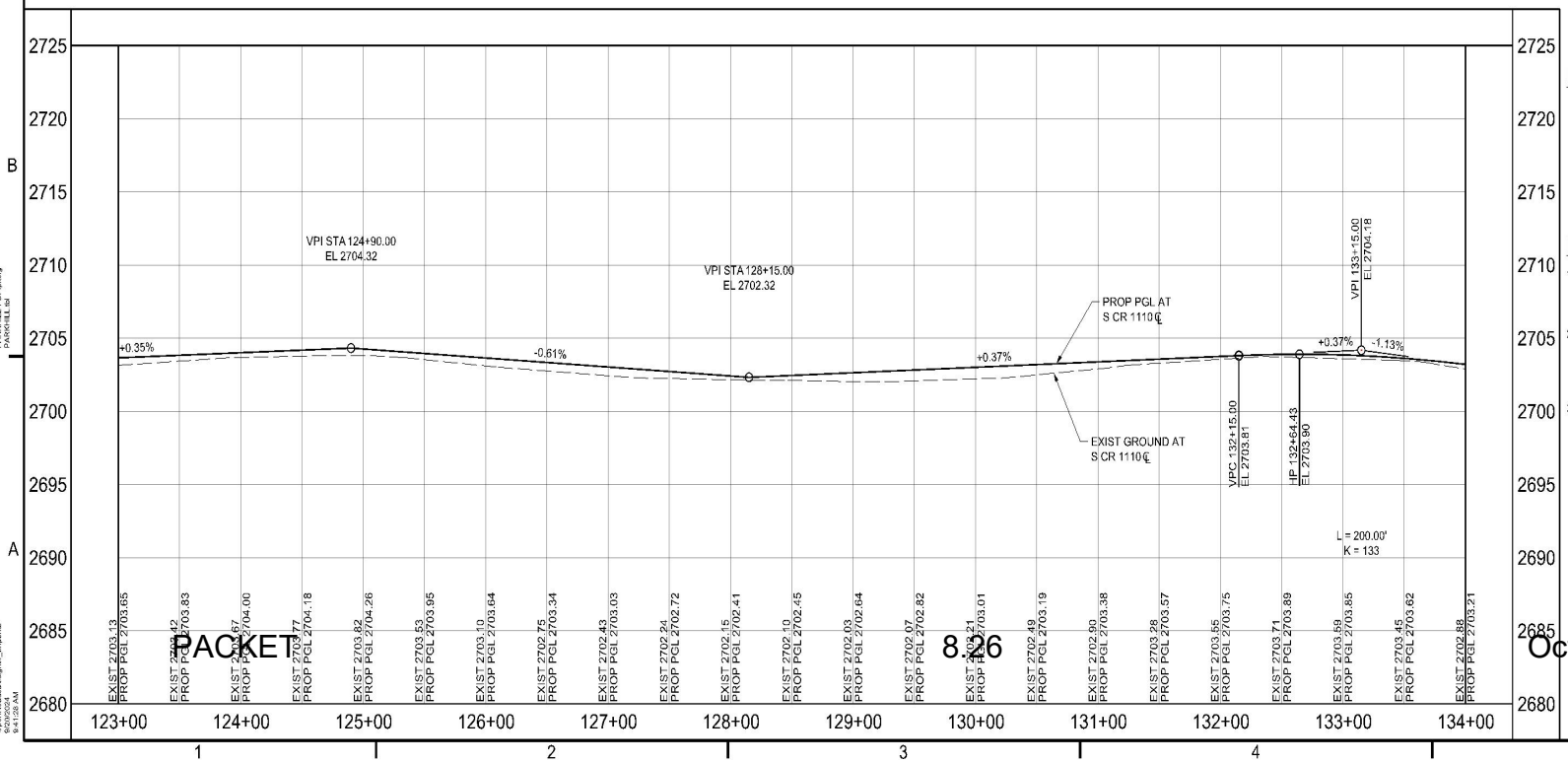




LEGEND - PLAN VIEW

- TRAFFIC FLOW
- D# DRIVEWAY ID NUMBER
- EXISTING FENCE
- EXISTING EDGE OF PAVEMENT
- EXISTING OVERHEAD POWER LINE
- EXISTING UTILITY POLE
- PROPOSED ASPHALT PAVEMENT
- PROPOSED CONCRETE PAVEMENT
- PROPOSED DRIVEWAY
- PROPOSED FENCE



LEGEND - PROFILE VIEW

- EXIST GROUND
- PROPOSED PGL

NOTES:

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2. ALL STA/OFFSET LABELS ARE BASED ON THE S CR 1110 ALIGNMENT UNLESS OTHERWISE SHOWN IN PLANS.
3. SEE HORIZONTAL ALIGNMENT DATA SHEET FOR ADDITIONAL ALIGNMENT INFORMATION.

Parkhill

MICHAEL WILLIAM MOLTER
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LICENSED
PROFESSIONAL ENGINEER
09/20/24

Parkhill.com

Midland Landfill Access Road (S CR 1110) Reconstruction

MIDLAND Engineering Services

CLIENT
City of Midland

300 N Loraine
Midland, TX
79701

PROJECT NO.
E225.22

#	DATE	DESCRIPTION
1	09/20/24	Addendum 01
1	08/12/24	Bid Set

S CR 1110
Plan and Profile
Sheet 3 of 4

C-118

PACKET 8.2.a October 22, 2024

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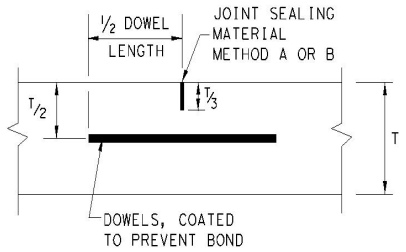
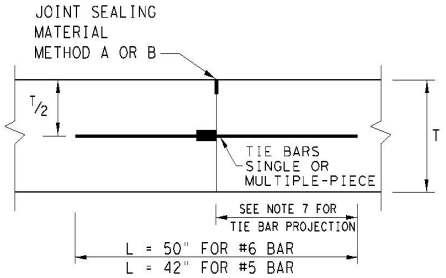
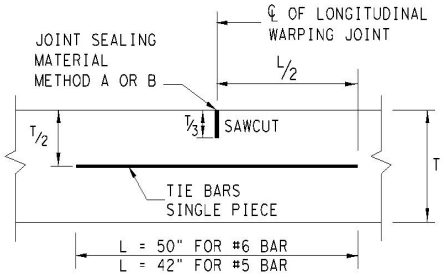


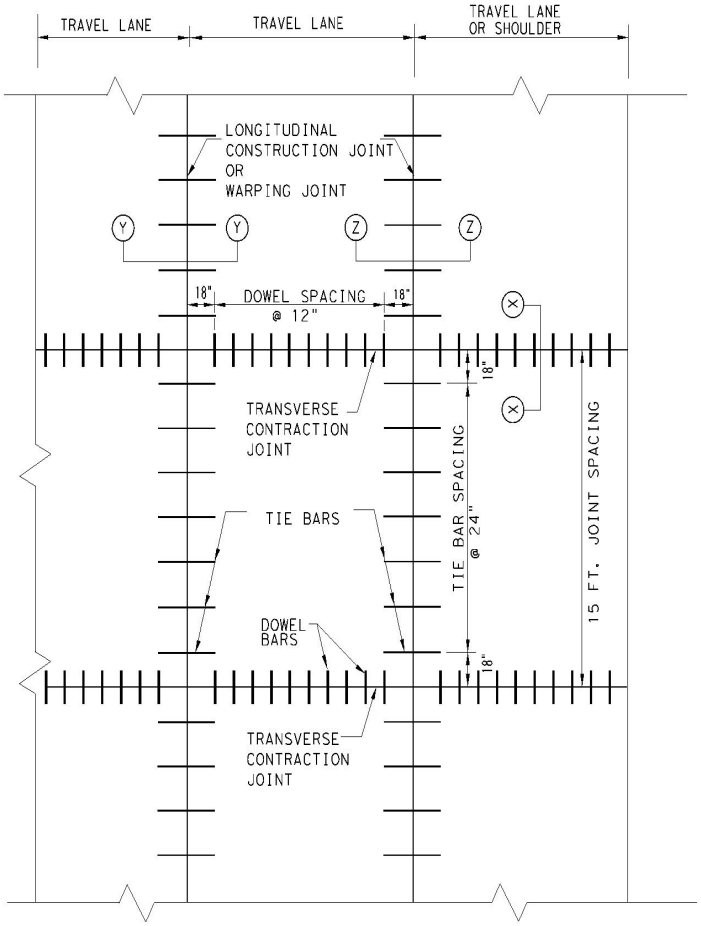
TRANSVERSE CONTRACTION JOINT
SECTION X-X



LONGITUDINAL CONSTRUCTION JOINT
SECTION Y-Y



LONGITUDINAL WARPING JOINT
SECTION Z-Z



TYPICAL PAVEMENT LAYOUT
PLAN VIEW (NOT TO SCALE)

GENERAL NOTES

1. DETAILS FOR PAVEMENT WIDTH, PAVEMENT THICKNESS AND THE CROWN CROSS-SLOPE SHALL BE SHOWN ELSEWHERE IN THE PLANS. FOR PAVEMENTS WIDER THAN 100 FT. WITHOUT A FREE LONGITUDINAL JOINT, ADDITIONAL DETAILS MAY BE SHOWN ELSEWHERE IN THE PLANS.
2. FOR FURTHER INFORMATION REGARDING THE PLACEMENT OF CONCRETE AND LOAD TRANSFER DEVICES REFER TO THE GOVERNING SPECIFICATION FOR "CONCRETE PAVEMENT".
3. THE SPACING BETWEEN TRANSVERSE CONTRACTION JOINTS SHALL BE 15 FT. UNLESS OTHERWISE SHOWN IN THE PLANS.
4. TRANSVERSE CONSTRUCTION JOINTS MAY BE FORMED BY USE OF METAL OR WOOD FORMS EQUAL IN DEPTH TO THE DEPTH OF PAVEMENT, OR BY METHODS APPROVED BY THE ENGINEER.
5. USE HAND-OPERATED IMMERSION VIBRATORS TO CONSOLIDATE THE CONCRETE ADJACENT TO ALL THE FORMED JOINTS.
6. PAVEMENT WIDTHS OF MORE THAN 15 FT. SHALL HAVE A LONGITUDINAL JOINT (SECTION Z-Z OR SECTION Y-Y). THESE JOINTS SHALL BE LOCATED WITHIN 6 IN. OF THE LANE LINE UNLESS THE JOINT LOCATION IS SHOWN ELSEWHERE ON THE PLANS.
7. THE MINIMUM PROJECTION OF TIE BARS INTO THE ADJACENT PLACEMENT IS 22.5 IN. FOR #6 BARS AND 18.5 IN. FOR #5 BARS.
8. WHEN TYING CONCRETE GUTTER AT A LONGITUDINAL JOINT, THE TIE BAR LENGTH OR POSITION MAY BE ADJUSTED. PROVIDE 3 IN. OF CONCRETE COVER FROM THE BACK OF GUTTER TO THE END OF TIE BAR.
9. REPLACE MISSING OR DAMAGED TIE BARS WITHOUT ADDITIONAL COMPENSATION BY DRILLING MIN. 10 IN. DEEP AND GROUTING TIE BARS WITH TYPE III, CLASS C EPOXY. MEET THE PULL-OUT TEST REQUIREMENTS IN ITEM 361.
10. WHEN A MONOLITHIIC CURB IS SPECIFIED, THE JOINT IN THE CURB SHALL COINCIDE WITH PAVEMENT JOINTS AND MAY BE FORMED BY ANY MEANS APPROVED BY THE ENGINEER.
11. DOWEL BAR PLACEMENT TOLERANCE SHALL BE +/- 1/4 IN. HORIZONTALLY AND VERTICALLY UNLESS OTHERWISE SPECIFIED. WHERE DOWEL BAR BASKETS ARE USED, REMOVE OR CUT THE SHIPPING WIRES.
12. THE DETAIL FOR JOINT SEALANT AND RESERVOIR IS SHOWN ON STANDARD SHEET "CONCRETE PAVING DETAILS, JOINT SEALS."

TABLE NO. 1 DOWELS (SMOOTH BARS)

SLAB THICKNESS T (IN.)	BAR DIA. AND LENGTH	AVERAGE SPACING (IN.)
6 to 7.5	1" X 18"	12
8 to 10	1 1/4" X 18"	12
>= 10.5	1 1/2" X 18"	12

TABLE NO. 2 TIE BARS (DEFORMED BARS)

SLAB THICKNESS T, (IN.)	BAR SIZE	AVERAGE SPACING (IN.)
6 to 7.5	#5	24
>= 8	#6	24

1 NEW TxDOT STANDARD

1 Addendum 01

SHEET 1 OF 2

Texas Department of Transportation | Design Division Standard

CONCRETE PAVEMENT CONTRACTION DESIGN

T-6 to 12 INCHES

CPCD-24

FILE: cpcd24.dgn	DN: CES	CK: KM	DW:	CK: AN
© TxDOT: Sept 2024	CONT	SECT	JOB	HIGHWAY
REVISIONS	-	-	-	-
	DIST	COUNTY		SHEET NO.
	-	-		C-524

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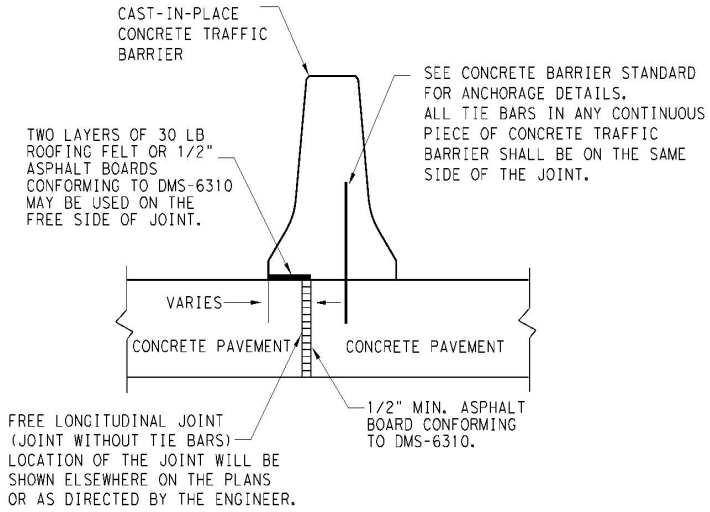
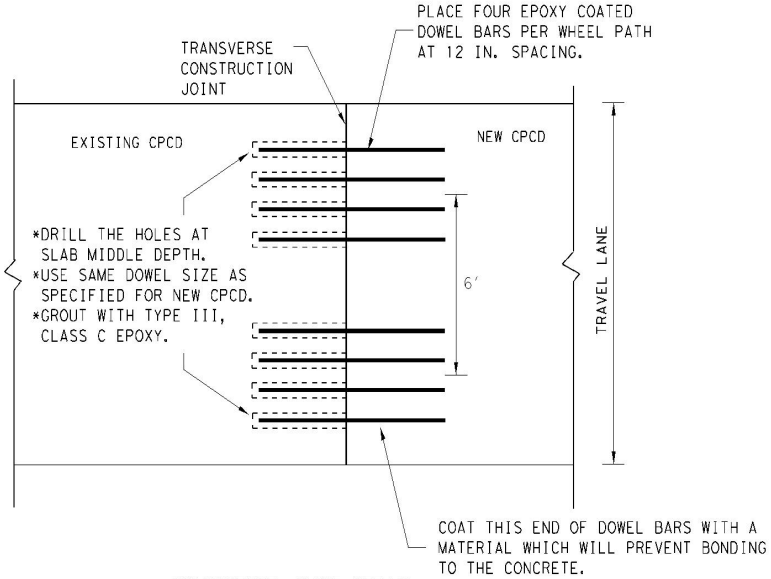
DATE: 9/20/2024 9:41:39 AM
FILE: A:\2022\6225.22\03_DSGN\01_DWG\050_CIVIL\09_SHEETS\TxDOT-CPCD-STD.dgn



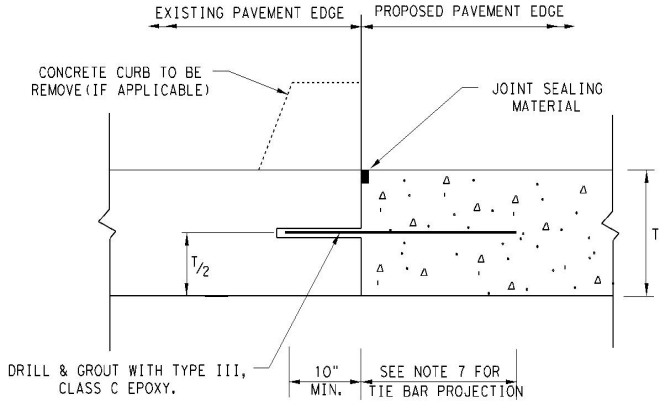
FREE LONGITUDINAL JOINT DETAIL



TRANSVERSE JOINT DETAIL

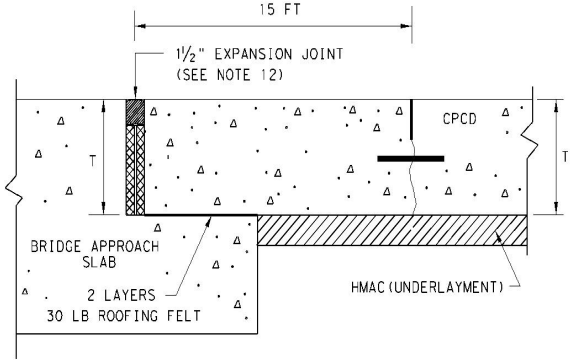
EXISTING CPCD TO NEW CPCD

PLAN VIEW (NOT TO SCALE)



1. USE A DRILL BIT WITH A DIAMETER THAT IS 1/8 IN. GREATER THAN THAT OF THE TIE BAR DIAMETER.
2. BEFORE CONCRETE PLACEMENT, PERFORM PULL-OUT TESTS ON EPOXY-GROUTED TIE BARS IN ACCORDANCE WITH ITEM 360.
3. SPACE TIE BARS AT 24" SPACING. USE #6 TIE BARS FOR 8" AND THICKER PAVEMENTS, USE #5 TIE BARS FOR LESS THAN 8" THICK PAVEMENTS.
4. THE TRANSVERSE JOINTS OF PROPOSED PAVEMENT SHALL COINCIDE WITH EXISTING PAVEMENT JOINTS UNLESS OTHERWISE SHOWN ON THE PLANS.

LONGITUDINAL WIDENING JOINT DETAIL



1 Addendum 01

TRANSVERSE EXPANSION JOINT DETAIL

AT BRIDGE APPROACH

SHEET 2 OF 2

Texas Department of Transportation | Design Division Standard

CONCRETE PAVEMENT CONTRACTION DESIGN

T-6 to 12 INCHES

CPCD-24

FILE: cpcd24.dgn	DN: CES	CK: KM	DW:	CK: AN
©TxDOT: Sept 2024	CONT	SECT	JOB	HIGHWAY
REVISIONS	-	-	-	-
	DIST	COUNTY		SHEET NO.
	-	-		C-525

1 NEW TxDOT STANDARD

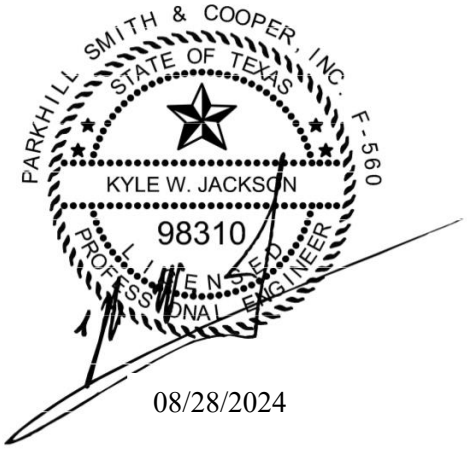
Parkhill

PROJECT MANUAL

CITY OF MIDLAND

Midland Landfill Access Road Reconstruction

Midland, Texas



August | 2024

Parkhill Project # 01622522

PACKET 8.29 October 22, 2024

TABLE OF CONTENTS

DIVISION 00 – PROCUREMENT AND CONTRACTING REQUIREMENTS

00 11 13	Advertisement for Bids	2
	Exhibit C – Bonding Requirements	1
	Bid Bond	1
	Payment Bond	2
	Performance Bond	2
	Exhibit D – Building Wage Rates	6
	Exhibit D – Heavy and Highway Wage Rates	5
	Conflict of Interest Reporting Requirements	1
	Conflict of Interest Questionnaire	2
	Affidavit of Eligibility	1
	Notice to Bidders	2
	General Conditions of Bidding	2
	A Message for Our Vendors	3
	Standard Purchase Terms	6
	Contract	14
00 41 00	Bid Form	7

DIVISION 01 – GENERAL REQUIREMENTS

01 10 00	Summary	1
01 20 00	Price and Payment Procedures	2
01 22 00	Measurement and Payment	2
01 25 00	Substitution Procedures	2
01 30 00	Administrative Requirements	6
	RFI Form	1
	Document C106-2022 AIA Digital Data Licensing Agreement	4
01 32 16	Construction Progress Schedule	2
01 33 00	Submittal Procedures	3
01 40 00	Quality Requirements	2
01 50 00	Temporary Facilities and Controls	4
01 57 23	Temporary Stormwater Pollution Control	2
01 60 00	Product Requirements	2
01 70 00	Execution and Closeout Requirements	6

DIVISION 32 - EXTERIOR IMPROVEMENTS

32 31 00	Structural Cantilever Slide Gate System	6

TECHNICAL SPECIFICATIONS

Technical Specifications adopted by the Texas Department of Transportation (TxDOT) November 1, 2014 and titled "Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges" shall govern this Project, except where superseded in the Plans and Contract Documents. This Specification book may be purchased from TxDOT or downloaded at: http://www.txdot.gov/business/resources/txdot-specifications.html. For this Project, any reference within the Specification book to "Department," "Engineer," or "Owner" should be interpreted as City of Midland, Texas authorized staff, or their representatives.

SECTION 00 11 13 - ADVERTISEMENT FOR BIDS

CITY OF MIDLAND
MIDLAND, TEXAS
MIDLAND LANDFILL ACCESS ROAD RECONSTRUCTION

GENERAL NOTICE

The City of Midland (Owner) is requesting Bids for the construction of the following Project:

Midland Landfill Access Road Reconstruction
01622522

Bids for construction of the Project will be received at City Hall located at 300 North Loraine, Midland, Texas 79701 until Wednesday, September 25, 2024, at 2:00 p.m., local time. At that time the Bids received will be publicly opened and read.

The Project includes the following Work:

Reconstructing the existing asphalt pavement, approximately 11,000 square yards, along South CR 1110 (Landfill Access Road) off of SH 158. Project limits are approximately 0.8 miles. This Project includes widening the existing 2-lane road to a 3-lane road for approximately 800 feet. Work includes replacing chain-link fence and a mechanical operated gate, driveway reconstruction, earthwork, pavement markings and signage, seeding, and erosion control. Refer to the Bid Form for the proposed pavement section.

OBTAINING THE BIDDING DOCUMENTS

General Project information can be found at the following webiste:

https://parkhill.com/projects-for-bid/

1. Prospective Bidders are urged to register as a plan holder, even if Bidding Documents are obtained from a plan room or source other than the designated website in either electronic or paper format. Only Prospective Bidders who obtain Bid Documents through Parkhill will be registered as a document holder (plan holder) and will therefore automatically receive addenda if/when issued.
2. No partial sets will be issued.
3. Neither Owner nor Engineer will be responsible for Bidding Documents, including addenda, if any, obtained from sources other than the designated website.

Information and Bidding Documents for the Project can be found at the following designated website:

https://www.civcastusa.com/

Select BROWSE BIDS in upper right corner; search for the Project using the filters.
To register as a Plan Holder, please access the CivCast website.

The designated website will be updated periodically with Addenda, lists of registered plan holders, reports, and other information relevant to submitting a Bid for the Project. All official notifications, Addenda, and other Bidding Documents will be offered only through the designated website. Neither Owner nor Engineer will be responsible for Bidding Documents, including Addenda, if any, obtained from sources other than the designated website.

The Issuing Parkhill Office for the Bidding Documents is:

1700 West Wall, Suite 100, Midland, Texas 79701, 432.697.1447.

Prospective Bidders may obtain or examine the Bidding Documents at the Issuing Office during normal business hours (call Issuing Office to verify normal business hours) and may obtain copies of the Bidding Documents as described above.

PRE-BID CONFERENCE
A pre-bid conference for the Project will be held virtually on Wednesday, September 11, 2024, at 10:00 a.m., local time**.** Attendance at the pre-bid conference is encouraged but not required.

INSTRUCTIONS TO BIDDERS
For all further requirements regarding bid submittal, qualifications, procedures, and contract award, refer to the Instructions to Bidders that are included in the Bidding Documents.

Written questions are encouraged and will be accepted until Friday, September 13, 2024, at 5:00 p.m., local time. All questions must be asked via CivCast. Any answers that are provided will be uploaded to CivCast and available to all registered Plan Holders on the designated website.

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.

BID BOND

THE STATE OF TEXAS §

SURETY NO. _____

COUNTY OF MIDLAND §

KNOW ALL MEN BY THESE PRESENTS, THAT _____

_____

_____

(hereinafter called the Principal), as Principal, 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 submitted a Bid or Proposal to enter into a certain written Contract with the obligee to_____

_____.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully enter into such written Contract, then this obligation shall be void; otherwise to remain in full force and effect.

IT IS EXPRESSLY UNDERSTOOD AND AGREED that if said Principal should withdraw its Bid anytime after such Bid is opened and before official rejection to such Bid or, if successful in securing the award thereof, said Principal should fail to enter into the Contract and furnish satisfactory Performance Bond and Payment Bond, the Obligee, in either such events, shall be entitled and is hereby given the right to collect the full amount of this Bid Bond as liquidated damages.

PROVIDED, further that if any legal action be filed upon this Bond venue shall lie in Midland County, Texas

IN WITNESS THEREOF, 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

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

Form Revised August 2012

"General Decision Number: TX20220261 08/05/2022

Superseded General Decision Number: TX20210261

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: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least $15.00 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 2022.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least $11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at https://www.dol.gov/agencies/whd/government-contracts.

Modification Number	Publication Date
0	01/07/2022
1	02/25/2022

2 08/05/2022

BOIL0074-003 01/01/2021

	Rates	Fringes
BOILERMAKER	$ 29.47	24.10

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

* IRON0084-011 06/01/2022

	Rates	Fringes
IRONWORKER, ORNAMENTAL	$ 26.76	7.88

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.

==========

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 ($15.00) or 13658 ($11.25). Please see the Note at the top of the wage determination for more information.

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 https://www.dol.gov/agencies/whd/government-contracts.

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 body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the

wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

==========

END OF GENERAL DECISIO"

"General Decision Number: TX20220002 02/25/2022

Superseded General Decision Number: TX20210002

State: Texas

Construction Types: Heavy and Highway

Counties: Armstrong, Carson, Crosby, Ector, Irion, Lubbock, Midland, Potter, Randall, Taylor and Tom Green Counties in Texas.

HEAVY & HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

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Modification Number	Publication Date
0	01/07/2022

1 02/25/2022

* SUTX2011-002 08/02/2011

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER (Paving & Structures)	$ 13.55 **	
ELECTRICIAN	$ 20.96	
FORM BUILDER/FORM SETTER		
Paving & Curb	$ 12.36 **	
Structures	$ 13.52 **	
LABORER		
Asphalt Raker	$ 12.28 **	
Flagger	$ 9.30 **	
Laborer, Common	$ 10.30 **	
Laborer, Utility	$ 11.80 **	
Work Zone Barricade Servicer	$ 10.30 **	
POWER EQUIPMENT OPERATOR:		
Asphalt Distributer	$ 14.87 **	
Asphalt Paving Machine	$ 13.40 **	
Broom and Sweeper	$ 11.21 **	
Crane, Lattice Boom 80 Tons or Less	$ 16.82	
Crawler Tractor Operator	$ 13.96 **	
Excavator, 50,000 lbs or less	$ 13.46 **	
Front End Loader Operator, Over 3 CY	$ 12.77 **	
Front End Loader, 3CY or less	$ 12.28 **	
Loader/Backhoe	$ 14.18 **	
Mechanic	$ 20.14	
Milling Machine	$ 15.54	
Motor Grader, Rough	$ 16.15	
Motor Grader, Fine	$ 17.49	
Pavement Marking Machine	$ 16.42	
Reclaimer/Pulverizer	$ 12.85 **	
Roller, Asphalt	$ 10.95 **	
Roller, Other	$ 10.36 **	
Scraper	$ 10.61 **	
Spreader Box	$ 12.60 **	
Servicer	$ 13.98 **	
Steel Worker (Reinforcing)	$ 13.50 **	
TRUCK DRIVER		
Lowboy-Float	$ 14.46 **	
Single Axle	$ 12.74 **	
Single or Tandem Axle Dump	$ 11.33 **	
Tandem Axle Tractor with Semi	$ 12.49 **	

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 ($15.00) or 13658 ($11.25). Please see the Note at the top of the wage determination for more information.

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 https://www.dol.gov/agencies/whd/government-contracts.

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 body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that

no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISIO"

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.**

Reece Albert, Inc.

2 [X] **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.**

NONE

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

9/25/2024

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: REECE ALBERT, INC.

Local Address (must be within the City limits): NOT APPLICABLE - OFFICE IS OUT OF 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: Mike Schmidt Date: 9/25/2024

Printed Name and Title: MIKE SCHMIDT, VICE PRESIDENT

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.

15. Public Information. To the extent that Bidder is submitting a bid for a contract described by Section 552.371 of the Texas Government Code, Bidder 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 bid, and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

A Message for Our Vendors

The City of Midland, Texas has developed a strategic plan with long-term objectives, new mission and vision statements, and a course of action to carry out goals established by and for our community. This includes strategic priorities that will address our economy, infrastructure, quality of life, standards for a safe and secure city, plus much more that's detailed below. We hope you join us on this exciting journey and to be part of the energy toward a successful and prosperous Midland!

Vision Statement

The City of Midland will be the premier and safest city in West Texas by providing world-class municipal services through operational excellence and a culture of innovation.

Mission Statement

Deliver exceptional services and promote a high quality of life and place for ALL our citizens.

Guiding Principles: I-FORCE

Integrity
Financial Stewardship
Outstanding Service
Respect
Collaboration
Excellence

City Council Key Focus Areas

Communication • Customer Service
Economic Development
Fiscal Responsibility & Accountability
High-Performing City Team • Legislation
Quality of Place • Technology Improvements

Core Values

Commitment: Duty to the public good.
Engagement: Foster partnerships and collaboration.
Excellence: Practice continuous improvement.
Innovation: Embrace creativity and cutting-edge solutions.
Integrity: Operate with transparency and accountability.
Inclusivity: Ensure all voices are heard and valued.

Vendor & Contractor Communication

In order to ensure smooth coordination and effective communication between contractors and the City of Midland**, it is imperative that contractors provide adequate advance notice before commencing work on specific projects**. The city requires ten (10) days' notice on commencement of project. This advance notice requirement serves to notify all relevant city departments, ensuring proper preparation and coordination of resources. Additionally, it facilitates timely dissemination of information to the public, if necessary, thereby minimizing potential disruptions and maximizing transparency throughout the project lifecycle. **By adhering to this protocol, contractors demonstrate their commitment to fostering productive partnerships with the City of Midland and upholding standards of efficient project management and community engagement. This commitment is a part of our strategic plan, with direct ties to Goal 4: Transparent and Consistent Communication and Strategies 4.4 and 4.5.**

Strategic Plan

1. Strong Economy with More Quality Jobs

1.1 Increase the Midland Sales Tax Base: Develop strategies to expand the tax base by attracting businesses and supporting local commerce.
1.2 Enhance Visitor Revenue Opportunities: Boost tourism through marketing and infrastructure improvements.
1.3 Continue Downtown and West Midland Redevelopment: Promote revitalization efforts for a vibrant downtown.
1.4 Nurture Development Districts: Establish key action plans honed to enhance Development Districts.
1.5 Grow the Core Business of Air Transportation: Develop and transform the Midland airport system.
1.6 Diversify Midland's Economy: Support initiatives that diversify the local economy and enhance resilience.
1.7 Expand Opportunities and Programming for General and Small Business: Foster the growth, retention, and expansion of local small businesses as well as business in general.
1.8 Improve Speed to Market for Citizens, Builders, Developers, and Contractors: Reduce wait times for permit review/approval and inspection process of permitted work.
1.9 Establish Our Community as a Premier Destination for Retail and Entertainment: Offer unique and compelling experiences that draw visitors, ultimately driving economic growth and community vibrancy, while increasing tourism and business development.

2. Set the Standard for a safe and secure City

2.1 Enhance public safety programs.
2.2 Improve Pedestrian and Motorist Safety: Invest in traffic management and infrastructure.
2.3 Implement Effective Code Enforcement Strategies: Address nuisances to improve overall health and safety.
2.4 Revitalize Neighborhoods: Utilize best practices to support the redevelopment of neighborhoods.
2.5 Enhance Animal Services: Ensure the welfare of pets and wildlife in the city.
2.6 Grow and Retain Public Safety Resources: Expand law enforcement presence as well as fire reduction and prevention programs while reducing attrition.

3. Quality of Life and Place

3.1 Enhance Community Engagement: Champion innovative recreational, educational, and cultural programs that enrich residents' lives in partnership with the business community.
3.2 Foster Relationships with Foundations and Outside Businesses: Collaborate to create world-class facilities and amenities.
3.3 Create an Attractive and Inclusive Living Environment: Develop and enhance live, work, and play opportunities for our citizens.
3.4 Establish Beautification Programs: Implement initiatives to make the community clean and bright.
3.5 Nurture and Promote a Healthy Community: Increase healthy community living and education opportunities for citizens of all ages.
3.6 Build the Best Parks System in Our Region: Offer diverse, accessible, and enjoyable green spaces, tournament-ready ball fields, safe playgrounds, and unique recreational opportunities that enhance the quality of life/quality of place for our community.

4. Transparent and Consistent Communication

4.1 Set a Climate of Respect, Collaboration, and Team Spirit: Cultivate a culture of openness and respect.
4.2 Enhance Communication Efficiency and Effectiveness: Leverage and expand the use of technology to facilitate the exchange of information.
4.3 Elevate Internal Communication and Employee Engagement: Strengthen information flow and collaboration among city staff.
4.4 Advance Two-Way Communication of Key Messages: Engage effectively with external stakeholders; foster community engagement.
4.5 Strengthen Messaging Opportunities Through Various Media Outlets: Communicate the city's achievements and initiatives.

5. Provide Sound Governance and Fiscal Management

5.1 Recruit and Retain a Skilled and Diverse Workforce: Invest in talent and diversity; grow our local pipeline of skilled employees.
5.2 Enhance Citizen Experience: Improve employee working conditions to better serve citizens.
5.3 Hone Public Servant Proficiency: Cultivate a culture of professional growth, skilled mastery, and information exchange.
5.4 Implement Cutting-Edge Practices: Harness automation and Artificial Intelligence technology for efficient resource utilization.
5.5 Promote a Well-Balanced Customer Service Philosophy: Consistently deliver excellent service to residents.
5.6 Deliver Services Timely and Efficiently: Prioritize continuous improvement.
5.7 Ensure Continued Financial Stability and Accountability: Maintain financial transparency.
5.8 Deliver Effective and Efficient Processes: Maximize value in procurement.
5.9 Ensure Reliability and Safety: Maintain existing assets and develop new city asset opportunities, including parks

and other facilities, with a standard of excellence.

5.10 Create a Work Environment that Supports Bleeding-Edge Practices: Encourage bleeding-edge practice that then cultivates an environment where employees can learn from their experiences and improve processes; thus, becoming a learning organization.

6. Strengthen and Sustain Our Infrastructure

6.1 Provide Reliable and Sustainable Utilities: Guarantee water supply and distribution systems security and longevity.

6.2 Enhance Infrastructure for Economic Growth: Improve competitiveness through infrastructure investments that includes collaboration with neighboring jurisdictions and exemplary peer agencies.

6.3 Streamline and Consolidate City Facilities: Create synergy for improved services.

6.4Standardize Infrastructure Processes Across the City: Ensure consistency, timeliness, and accountability in infrastructuredevelopment.

6.5 Implement a Funding Stream for Infrastructure: Establish reliable funding for continual improvements.

6.6 Strategize for and Monitor City Growth: Develop proactive responses to growth rather than reactive.

6.7 Develop and Implement Comprehensive Road Planning and Maintenance Initiatives: Ensure safe and maintained roads for existing and new developing areas and main thoroughfares.

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, includingWorker'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.

THE CITY OF MIDLAND

CONTRACT

Contract No. 24006417

THIS CONTRACT, effective the 22nd day of October 2024, by and between the City of Midland, hereinafter referred to as "CITY", and Reece Albert, Inc., hereinafter referred to as "COMPANY", is made for the following considerations:

1. **Cost:** Total Proposal: $ 3,664,036.08 DOLLARS

2. **Scope of Work:** COMPANY shall perform all work described and shall provide labor, materials, equipment and supervision necessary for the Midland Landfill access road reconstruction project. Said work being more particularly described in the following documents, which are attached hereto and incorporated herein for all purposes.

EXHIBIT A..... Specifications, Proposal or Cost Summary
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 Jeffery Ahrlett 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 120 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, and 2276.002 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: _____
Tommy Gonzalez, City Manager

ATTEST

_____
Marcia Bentley-German, City Governance Officer/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 _____, 2024 personally appeared, _____, an officer of Reece Albert, 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 _____, 2024.

_____
Notary Public, State of

SECTION 00 41 00 - BID FORM

The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 1—OWNER AND BIDDER

1.01 This Bid is submitted to:

City of Midland
300 N. Loraine
Midland, Texas 79701

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2—ATTACHMENTS TO THIS BID

2.01 The following documents are submitted with and made a condition of this Bid:

A. Required Bid Security;

B. List of Proposed Subcontractors;

C. List of Proposed Suppliers;

D. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such authority within the time for acceptance of Bids;

E. Contractor's license number as evidence of Bidder's State Contractor's License or a covenant by Bidder to obtain said license within the time for acceptance of Bids;

F. Required Bidder Qualification Statement with supporting data.

ARTICLE 3—BASIS OF BID—LUMP SUM BID AND UNIT PRICES

3.01 *Unit Price Bids*

A. Bidder will perform the following Work at the indicated unit prices:

Item No.	TxDOT No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Amount
Base Bid: 3" TY C HMAC, 6" TY B HMAC, 13" Flexible Base, 9" Compacted Subgrade						
1	500	MOBILIZATION	LS	1	$167,009.81	$167,009.81
2	100	PREPARING RIGHT-OF-WAY	STA	41	$625.26	$25,635.66
3	105	REMOVING STAB BASE AND ASPH PAV (6"-8")	SY	10,587	$1.75	$18,527.25
4	110	EXCAVATION (ROADWAY)	CY	6,844	$10.09	$69,055.96
5	132	EMBANKMENT (FINAL)(DENS CONT)(TY A)	CY	109	$34.27	$3,735.43
6	132	SUBGRADE PREPARATION (9")	SY	14,466	$3.80	$54,970.80

Item No.	TxDOT No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Amount
7	247	FL BS (CMP IN PLC)(TY D)(GR 1-2)(13")	SY	13,747	$26.61	$365,807.67
8	247	FL BS (CMP IN PLC)(TY A)(GR 2)(8")	SY	500	$24.49	$12,245.00
9	247	FL BS (CMP IN PLC)(TY A)(GR 2)(6")	SY	718	$36.93	$26,515.74
10	275	CEMENT	TON	8	$917.69	$7,341.52
11	275	CEMENT TREAT (NEW BASE)(6")	SY	718	$13.61	$9,771.98
12	310	PRIME COAT (MC-30)	GAL	2,749	$6.56	$18,033.44
13	316	ASPH (CRS-2)	GAL	539	$6.63	$3,573.57
14	316	AGGR (TY-B GR-3)	CY	9	$160.61	$1,445.49
15	316	AGGR (TY-B GR-4)	CY	6	$198.31	$1,189.86
16	360	CONC PAVT (11")	SY	718	$186.17	$133,670.06
17	SS3076	D-GR HMA (TY B)(6")(PG 64-22)	TON	4,250	$154.32	$655,860.00
18	3077	TACK COAT	GAL	1,925	$5.46	$10,510.50
19	SS3077	SUPERPAVE (TY C)(3")(PG 76-22)	TON	2,070	$173.47	$359,082.90
20	508	CONSTRUCTING DETOURS	SY	8,012	$31.79	$254,701.48
21	529	CONCRETE CURB (RIBBON)	LF	403	$64.79	$26,110.37
22	530	DRIVEWAYS (SURF TREAT)	SY	500	$37.26	$18,630.00
23	SS3076	D-GR HMA (TY D)(1")(PG 64-22)	TON	40	$334.26	$13,370.40
24	502	BARRICADES AND TRAFFIC CONTROL	MO	4	$8,272.69	$33,090.76
25	506	BIODEG EROSN CONT LOGS (INSTALL)	LF	285	$4.70	$1,339.50
26	506	BIODEG EROSN CONT LOGS (REMOVE)	LF	285	$0.98	$279.30
27	506	TEMP SEDMT CONT FENCE (INSTALL)	LF	379	$6.25	$2,368.75
28	506	TEMP SEDMT CONT FENCE (REMOVE)	LF	379	$0.96	$363.84
29	506	CONSTRUCTION EXIT (INSTALL)	SY	111	$44.43	$4,931.73
30	506	CONSTRUCTION EXIT (REMOVE)	SY	111	$7.59	$842.49
31	550	CHAIN LINK FENCE (REMOVE)(8')	LF	3,126	$4.22	$13,191.72
32	550	CHAIN LINK FENCE (INSTALL)(8')	LF	2,688	$36.73	$98,730.24
33	550	CHAIN LINK FENCE GATE (REMOVE)(8')	EA	1	$871.80	$871.80
34	550	CHAIN LINK FENCE GATE (INSTALL)(8')	EA	1	$4,250.42	$4,250.42
35	N/A	REMOVE AND INSTALL NEW MECHANICAL GATE	LS	1	$63,265.65	$63,265.65
36	N/A	ELECTRICAL WORK	LS	1	$8,718.56	$8,718.56
37	644	REMOVE SMALL ROADSIDE SIGN ASSEMBLY	EA	4	$258.45	$1,033.80
38	644	SMALL ROADSIDE SIGN ASSEMBLY	EA	5	$1,573.18	$7,865.90
39	666	REFL PAV MRK (TY II)(Y)(SLD)(6")	LF	7,992	$1.31	$10,469.52

Item No.	TxDOT No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Amount
40	666	REFL PAV MRK (TY II)(W)(SLD)(6")	LF	8,156	$1.31	$10,684.36
41	666	REFL PAV MRK (TY II)(Y)(SLD)(8")	LF	178	$2.62	$466.36
42	666	REFL PAV MRK (TY II)(W)(SLD)(8")	LF	1,068	$2.62	$2,798.16
43	666	REFL PAV MRK (TY II)(W)(SLD)(24")	LF	24	$65.55	$1,573.20
44	6001	PORTABLE CHANGEABLE MESSAGE SIGN	EA	2	$6,292.71	$12,585.42
45	6185	TRUCK MOUNTED ATTENUATOR (TMA)	DAY	2	$501.48	$1,002.96
					Total Base Bid	$2,537,519.33

Bid Item No.	TxDOT Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Extension
Additive Alternate: Concrete Curb Ribbon (ADDITIONAL QUANTITY ONLY)						
1A	500	MOBILIZATION ADJUSTMENT	LS	1	$32,024.02	$32,024.02
4A	110	EXCAVATION (ROADWAY)	CY	-422	$10.09	$-4,257.98
5A	132	EMBANKMENT (FINAL)(DENS CONT)(TY A)	CY	188	$34.27	$6,442.76
7A	247	FL BS (CMP IN PLC)(TY D)(GR 1-2)(13")	SY	-890	$26.61	$-23,682.90
12A	310	PRIME COAT (MC-30)	GAL	-178	$6.56	$-1,167.68
17A	SS3076	D-GR HMA (TY B)(6")(PG 64-22)	TON	-7	$154.32	$-1,080.24
19A	SS3077	SUPERPAVE (TY C)(3")(PG 76-22)	TON	51	$173.47	$8,846.97
21A	529	CONCRETE CURB (RIBBON)	LF	8,016	$51.30	$411,220.80
					Total Additive Alternate	$428,345.75

Bid Item No.	TxDOT Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Extension
Pavement Alternate: 11" JRCP, 1" TY D HMAC, 6" Cement Treated Flexible Base, 9" Compacted Subgrade (ADDITIONAL QUANTITY ONLY)						
1B	500	MOBILIZATION ADJUSTMENT	LS	1	$51,060.11	$51,060.11
4B	110	EXCAVATION (ROADWAY)	CY	-2,127	$10.09	$-21,461.43
5B	132	EMBANKMENT (FINAL)(DENS CONT)(TY A)	CY	180	$34.27	$6,168.60
6B	132	SUBGRADE PREPARATION (9")	SY	-2,242	$3.80	$-8,519.60
7B	247	FL BS (CMP IN PLC)(TY D)(GR 1-2)(13")	SY	-13,747	$26.61	$-365,807.67
9B	247	FL BS (CMP IN PLC)(TY D)(GR 1-2)(6")	SY	12,224	$15.41	$188,371.84
10B	275	CEMENT	TON	132	$370.10	$48,853.20
11B	275	CEMENT TREAT (NEW BASE)(6")	SY	12,224	$2.15	$26,281.60
12B	310	PRIME COAT (MC-30)	GAL	-2,749	$6.56	$-18,033.44
16B	360	CONC PAVT (11")	SY	12,224	$168.66	$2,061,699.84

Bid Item No.	TxDOT Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Extension
17B	SS3076	D-GR HMA (TY B)(6")(PG 64-22)	TON	-4,250	$154.32	$ 655,860.00
19B	SS3077	SUPERPAVE (TY C)(3")(PG 76-22)	TON	-2,070	$173.47	$ 359,082.90
24B	502	BARRICADES AND TRAFFIC CONTROL	MO	4	$8,272.69	$ 33,090.76
23B	SS3076	D-GR HMA (TY D)(1")(PG 64-22)	TON	672	$207.97	$ 139,755.84
					Total Pavement Alternate	$ 1,126,516.75

B. Bidder acknowledges that:

1. each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and
2. estimated quantities are not guaranteed and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Work will be based on actual quantities, determined as provided in the Contract Documents.

ARTICLE 4—TIME OF COMPLETION

4.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment within the number of calendar days indicated in the Agreement.

4.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 5—BIDDER'S ACKNOWLEDGEMENTS: ACCEPTANCE PERIOD, INSTRUCTIONS, AND RECEIPT OF ADDENDA

5.01 *Bid Acceptance Period*

A. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

5.02 *Instructions to Bidders*

A. Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid Security.

5.03 *Receipt of Addenda*

A. Bidder hereby acknowledges receipt of the following Addenda:

Addendum Number	Addendum Date
#1	9/20/2024

Mike Hester 9/25/24

ARTICLE 6—BIDDER'S REPRESENTATIONS AND CERTIFICATIONS

6.01 *Bidder's Representations*

A. In submitting this Bid, Bidder represents the following:

1. Bidder has examined and carefully studied the Bidding Documents, including Addenda.
2. Bidder has visited the site, conducted a thorough visual examination of the site and adjacent areas, and become familiar with the general, local, and site conditions that may affect cost, progress, and performance of Work.
3. Bidder is familiar with all Laws and Regulations that may affect cost, progress, and performance of Work.
4. Bidder has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the site and the drawings of physical conditions relating to existing surface or subsurface structures at the site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and Drawings.
5. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the site; information and observations obtained from visits to the site; the Bidding Documents; and the Technical Data identified in the Supplementary Conditions, or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, if selected as Contractor; and (c) Bidder's (Contractor's) safety precautions and programs.
6. Bidder is aware of the general nature of work to be performed by Owner and others at the site that relates to the Work as indicated in the Bidding Documents.
7. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and of discrepancies between site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
8. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
9. The submission of this Bid constitutes an incontrovertible representation by Bidder that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

6.02 *Bidder's Certifications*

A. The Bidder certifies the following:

1. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.
2. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid.
3. Bidder has not solicited or induced any individual or entity to refrain from bidding.

4. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 8.02.A:

   a. Corrupt practice means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process.

   b. Fraudulent practice means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition.

   c. Collusive practice means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels.

   d. Coercive practice means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

BIDDER hereby submits this Bid as set forth above:

Bidder:

Reece Albert, Inc.
[typed or printed name of organization]

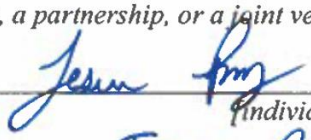
By:
[individual's signature]

Name: Rob McNew
[typed or printed]

Title: Vice President of Midland Operations
[typed or printed]

Date: 9/25/2024
[typed or printed]

If Bidder is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.

Attest: 
[individual's signature]

Name: Jesse Ramirez
[typed or printed]

Title: Contract Admin
[typed or printed]

Date: 9/25/2024
[typed or printed]

Address for giving notices:
PO Box 3238 Midland, Texas 79702

Bidder's Contact:

Name: Mike Hester
[typed or printed]

Title: Estimator
[typed or printed]

Phone: 432-570-0481

Email: bids@reecealbertinc.com

Address:
PO Box 3238 Midland, Texas 79702

Bidder's Contractor License No.: (if applicable)

BID BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

SURETY NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT REECE ALBERT, INC.

(hereinafter called the Principal), as Principal, and CONTINENTAL CASUALTY COMPANY

(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 FIVE PERCENT OF THE GREATEST AMOUNT BID---------- DOLLARS ($----------5%----------), 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 submitted a Bid or Proposal to enter into a certain written Contract with the obligee to MIDLAND LANDFILL ACCESS ROAD CONSTRUCTION PROJECT NUMBER - 24006417.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully enter into such written Contract, then this obligation shall be void; otherwise to remain in full force and effect.

IT IS EXPRESSLY UNDERSTOOD AND AGREED that if said Principal should withdraw its Bid anytime after such Bid is opened and before official rejection to such Bid or, if successful in securing the award thereof, said Principal should fail to enter into the Contract and furnish satisfactory Performance Bond and Payment Bond, the Obligee, in either such events, shall be entitled and is hereby given the right to collect the full amount of this Bid Bond as liquidated damages.

PROVIDED, further that if any legal action be filed upon this Bond venue shall lie in Midland County, Texas

IN WITNESS THEREOF, THE SAID PRINCIPAL AND SURETY do sign and seal this instrument, this 25th day of SEPTEMBER, 2024.

REECE ALBERT, INC.
Principal
By _____

Address P. O. BOX 3238
MIDLAND, TEXAS 79701-3238

CONTINENTAL CASUALTY COMPANY
Surety
By _____
MARLA HILL, ATTORNEY-IN-FACT

Address 5223 79th Street
LUBBOCK, TEXAS 79424

APPROVED AS TO FORM:

_____
City Attorney

NOTE: ATTACH POWER OF ATTORNEY

FORM BID BOND

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company (herein called "the CNA Companies"), are duly organized and existing insurance companies having their principal offices in the City of Chicago, and State of Illinois, and that they do by virtue of the signatures and seals herein affixed hereby make, constitute and appoint

Howard Cowan, Marla Hill, Individually

of Lubbock, TX, their true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on their behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of their insurance companies and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law and Resolutions, printed on the reverse hereof, duly adopted, as indicated, by the Boards of Directors of the insurance companies.

In Witness Whereof, the CNA Companies have caused these presents to be signed by their Vice President and their corporate seals to be hereto affixed on this 15th day of July, 2021.

Continental Casualty Company
National Fire Insurance Company of Hartford
American Casualty Company of Reading, Pennsylvania

Paul T. Bruflat — Vice President

State of South Dakota, County of Minnehaha, ss:

On this 15th day of July, 2021, before me personally came Paul T. Bruflat to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company described in and which executed the above instrument; that he knows the seals of said insurance companies; that the seals affixed to the said instrument are such corporate seals; that they were so affixed pursuant to authority given by the Boards of Directors of said insurance companies and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said insurance companies.

M. BENT NOTARY PUBLIC SOUTH DAKOTA

My Commission Expires March 2, 2026

M. Bent — Notary Public

CERTIFICATE

I, D. Johnson, Assistant Secretary of Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Law and Resolution of the Board of Directors of the insurance companies printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said insurance companies this 25th day of SEPTEMBER, 2024.

Continental Casualty Company
National Fire Insurance Company of Hartford
American Casualty Company of Reading, Pennsylvania

D. Johnson — Assistant Secretary

Form F6853-4/2012

Go to www.cnasurety.com > Owner / Obligee Services > Validate Bond Coverage, if you want to verify bond authenticity.

REECE ALBERT, INC.
HEAVY CONSTRUCTION, UTILITIES AND PAVING

MINUTES OF DIRECTORS' MEETING

A special meeting of the Board of Directors of REECE ALBERT, INC was dully called and held on November 20, 2023, at 3001 FOSTER, SAN ANGELO, TEXAS commencing at 10:00 o'clock a.m.

There were present and participating in the meeting, ROGER ALBERT, LON ALBERT, GREG JACKSON, AND AARON RUTHERFORD.

With approval of the directors present, ROGER ALBERT acted as Chair of the meeting and AARON S. RUTHERFORD recorded the minutes.

On motions duly made and seconded, it was voted that:

ROGER ALBERT, LON ALBERT, MIKE SCHMIDT, MIKE HESTER, SKIP KLEMENT, CRAIG ODOM, ROB MCNEW, CALEB KATTNER, GEORGE WILLIAMS AND KYLE GOULD ARE AUTHORIZED, ON BEHALF OF THE CORPORATION, TO SIGN PROJECT BIDS AND ESTIMATES.

There being no further business, the meeting was adjourned.

Date: November 20, 2023

Aaron S. Rutherford, Secretary

ACKNOWLEDGED:

ROGER ALBERT

LON ALBERT

GREG JACKSON

REECE ALBERT, INC.
HEAVY CONSTRUCTION, UTILITIES AND PAVING

CONTRACTOR'S STATEMENT OF QUALIFICATIONS

Reece Albert, Inc.
3001 Foster Street
P.O. Box 62030
San Angelo, Texas 76903

Phone: (325) 653-1241

Offices:
San Angelo, TX
Midland, TX

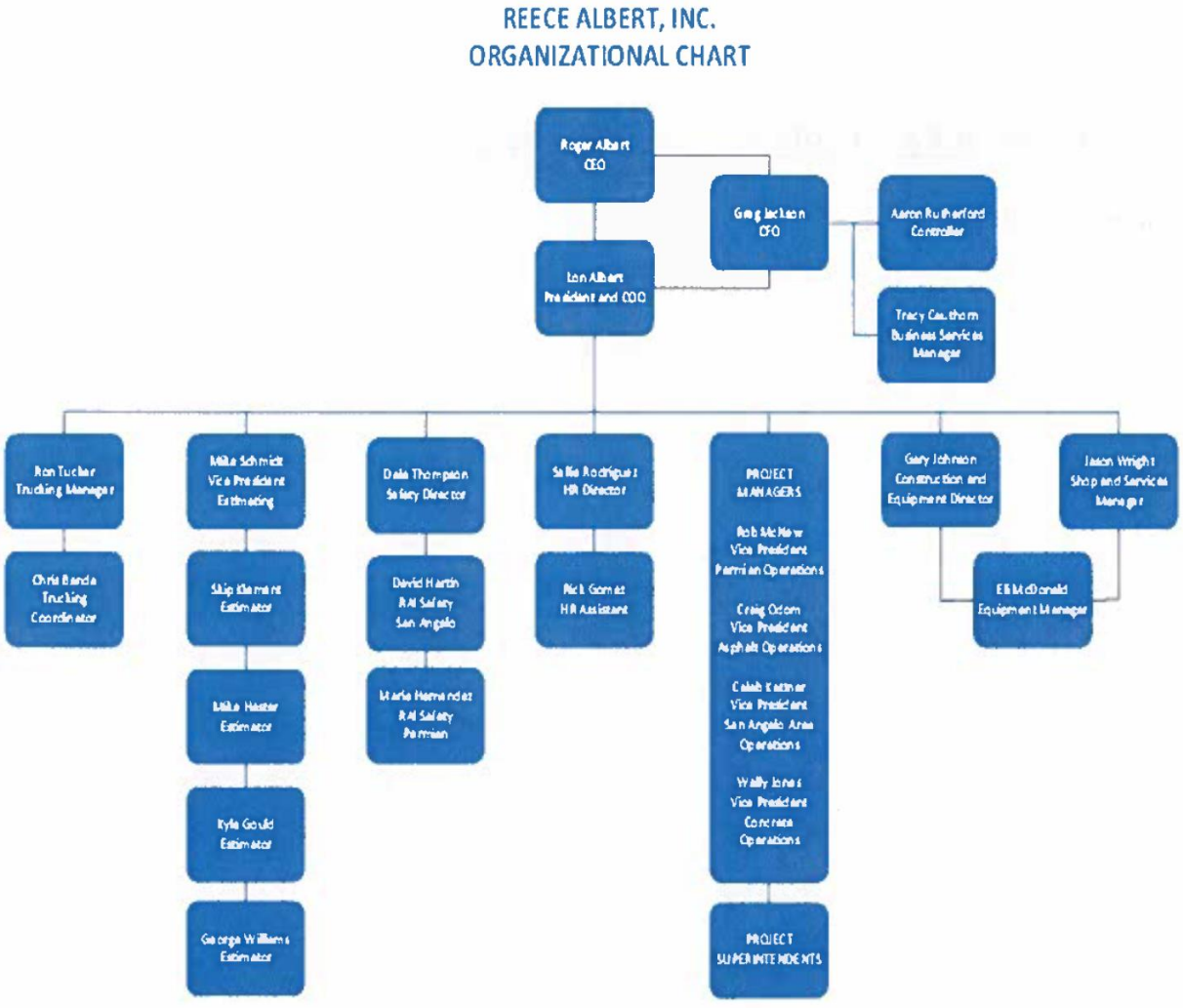
September 25, 2024

Reece Albert, Inc. has in excess of twenty fully equipped crews. Approx. 350 Permanent employees.

Reece Albert, Inc. has not had a contract or subcontract terminated and has had very few claims arise from contracts, none in the last five years.

Our Materials subsidiary, CSA Materials, Inc. provides our trade area and RAI with hot mix and crushed stone products. CSA operates four hot mix plants and six crushing plants.

Organization Chart



Subcontractors and Suppliers

Reece Albert, Inc. is constantly bidding new work in the TXDOT, County and Municipal markets in West Texas and we maintain a large subcontractor and material supplier data base of firms that subcontract specific portions of the work and supply us materials that we do not produce ourselves. We have been in the construction industry long enough that we have vetted all the subcontractors that are on our list, therefore we use only subcontractors that are of the highest standards and dependable. We do not select subcontractors based on price alone, but on the basis of their experience, reliability and ability to meet the performance period of each project.

Licenses

Currently Texas does not require a Contractor's license for Heavy & Highway/Civil Construction, but our underground water & sewer superintendent does maintain current Licenses required for that type of work.

Safety and Environmental

Reece Albert, Inc. has a comprehensive Health & Safety Program, which can be provided upon request. On street and highway projects we typically use Traffic Control, Sign and Barricade subcontractors to setup and maintain the barricades, per the specified traffic control plan in the design documents. If no traffic control plan is specified, then we will setup traffic control devices that comply to the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD). We employ safety personnel who oversee all of our projects to assure compliance with the plans, specifications and state requirements. Reece Albert, Inc. employs an Environmental Manager who oversees implementation of erosion control plans and devices in accordance with the design plans, specifications and TCEQ state guidelines.

Experience of Key Personnel

Since we try to maintain a healthy backlog of projects, we regularly have crews rotating off completed projects and on to new projects, therefore, we cannot anticipate which Superintendent and associated crew(s) will be assigned to projects in the distant future, so we have included a complete list of all superintendents and their years of experience in the industry.
Additional project support personnel include:

- Contract Administration personnel who are responsible for contract execution, submittals, materials acquisition, and invoicing.
- Project Estimators who are responsible for bidding projects and providing information to the Project Manager and Project Superintendent regarding project bid costs and quantities.

Gary Alexander – Concrete Superintendent (38 years)

Ernesto Amaya – Asphalt Paving Superintendent (32 years)

Jason Ballew – Surveyor Superintendent (20 years)

Raul Bustamante – Concrete Superintendent (19 years)

Eddie Fay– Concrete Superintendent (27 years)

John Fernandez – Field Superintendent (24 years)

Leroy Flores – Field Superintendent (22 years)

Victor Jimenez – Field Superintendent (16 years)

Mike Latham - Utility Superintendent (45 years)

Tanner Latham – Asphalt Paving Superintendent (11 years)

Clay Morgan – Field Superintendent (17 years)

Roland Pinkerton - Field Superintendent (35 years)

Rene Rivera – Bridge/Structure Superintendent (37 years)

Mario Sanchez – Asphalt Paving Superintendent (10 years)

J.D. Tilson – Field Superintendent (13 years)

Abraham Valenzuela – Field Superintendent (18 years)

Taylor Watson – Field Superintendent (9 years)

Sergio Zermeno – Field Superintendent (26 years)

APPROACH TO PERFORMING THE REQUIRED SERVICES

It is the Project Superintendent's responsibility to oversee on-going project work on a full-time basis. The Project Superintendent is responsible for constructing the project in accordance with the plans and specifications. The Project Superintendent directs RAI construction personnel, including equipment operators, surveyors, and laborers. He also directs work performed by RAI subcontractors and orders required materials. The Project Superintendent is responsible for scheduling, at a minimum, weekly inspections by government inspectors.

The Project Manager is the primary point of contact for the contract. He works out of our headquarters in San Angelo or our Midland office, and provides technical, logistical, and administrative support to the Project Superintendent. The Project Manager generally produces the project schedules, performs weekly on-site reviews, and documents various aspects of the project, including project progress, project meetings, and deficiencies. If deficiencies in the project plans, specifications, or quality control are identified, it is the Project Manager's responsibility to notify the Owner or Project Engineer, in writing, and to resolve questions or discrepancies as quickly as possible.

Communication relevant to project work between the Owner or Project Engineer and RAI typically is accomplished through the Project Manager. RAI Officers and Project Managers meet weekly to discuss project scheduling, progress, and resource allocation. Thus, all project needs can be discussed on a regular basis. Communication also can occur between the Owner or Project Engineer and the Project Superintendent in the field, who in turn is in direct contact with the Project Manager at all times.

The San Angelo and Midland offices provide all administrative, estimating, health and safety review support for our projects. Minor and major mechanical support is provided by our San Angelo and Midland mechanics.

The estimators are responsible for reviewing project plans and specifications, developing and verifying quantity take-offs, estimating production on each phase of proposed work, consideration of equipment and personnel needs, developing the estimates with HeavyBid software, proposal development and communication with clients regarding proposals, interaction with contract administration once projects are awarded, and communication with the Project Manager and Project Superintendent on key components of the estimate. Estimators also work with the Project Managers to develop pricing for change orders that may be required, during construction.

Resolutions of Deficiencies and Corrective Actions:

Construction is a dynamic process that involves interaction of numerous parties and outside influences that can affect the work. Problems do arise on construction projects, and our philosophy is that it's *how* you resolve problems that matter. Our approach to resolving deficiencies or problems is to communicate expeditiously and openly with owners and inspectors once a problem arises.

We try to resolve problems in the field, and most often do. Thus, the Project Superintendent and inspector generally are able to reach agreement on problem resolution without escalating to higher levels of management. The Project Manager will get involved if needed. Once a resolution is achieved, corrective action is taken as soon as feasibly possible.

Owner Interface and Inspections:

We encourage a minimum of weekly Owner inspections of the project work and prefer daily inspections. We typically find that more frequent Contractor/Owner interfacing and inspection results in a smoother project due to the increased communication.

Attachments

- **Attachment – A: References by Type of Work**
- **Attachment – B: List of Current Projects & Type of Work**
- **Attachment – C: List of Completed Project – Past 5 Years**
- **TXDOT Past Performance References**
- **Industry References**
- **OSHA 30 Logs (past 5 years)**
- **EMR (past 5 years)**
- **TXDOT Letter of Qualification for FY 2022 – FY 2023**

ATTACHMENT - A

REECE ALBERT, INC.

9/15/2022

CURRENT REFERENCES:

REFERENCES BY CATEGORY	PROJECT
Asphalt Paving:	
1) Midland County - Andrew Avis 432-688-4505	Industrial Ave Reconstruction
2) City of Midland - Bobby Wojciechowski - 432-685-7519	Park Ave Heights Paving
3) TXDOT - Fred Herrera, P.E. 432-694-2195	Midland Co - BI 20-E - NH 2020(570)
Concrete Paving:	
1) Midland County - Andrew Avis 432-688-4505	Midland SCR 1270 Reconstruction
2) City of San Angelo - Kevin Pate, PE 325-657-4263	Bell Street Improvements
3) City of Odessa - Yervand Hmayakyan - 432-335-3242	University Blvd Reconstruction
Pre-cast Concrete Box Culvert:	
1) Midland County - Andrew Avis 432-688-4505	Midland SH 158 & SCR 1232 Improvements
2) City of San Angelo - Kevin Pate, PE 325-657-4263	COSA - Southwest Blvd Recostruction
3) TXDOT - Jordan Sefcik, P.E. 325-653-5811	Glasscock Co. - SH 158 - STP 2020(950) - Construct Overpass
Cast-in-Place Concrete Box Culvert:	
1) Midland County - Andrew Avis 432-688-4505	Midland CR 1232 at Monahan's Draw
2) TXDOT - Fred Herrera, P.E. 432-694-2195	Andrews Co - US 385 - CSJ: 0228-04-043
3) TXDOT - Jordan Sefcik, P.E. 325-653-5811	Tom Green Co - US 67 - NH 1802(735)

PACKET 8.97 October 22, 2024

REECE ALBERT, INC.

CURRENT PROJECTS:
Major projects only

9/15/2022

PROJECT NAME	LOCATION	OWNER / OWNER'S REP	Asphalt Paving	Concrete Paving	Pre-Cast Box Culv	Cast-In-Place Box Culv	DESCRIPTION	GC	CONTRACT AMOUNT	BONDED
Bell Street Improvements	San Angelo, Tx	City of San Angelo - Kevin Pate, PE 325-657-4263		X			Reconstruct Street & Utilities	RAI	$20,892,802.00	Yes
Tom Green Co - US 67 - NH 1802(735)	San Angelo, Tx	TXDOT - Jordan Sefcik, P.E. 325-653-5811	X	X	X	X	Construct Hwy Overpasses	RAI	$38,833,750.00	Yes
Reagan Co. - US 67 - STP 2020(652)	Big Lake, Tx	TXDOT - Jordan Sefcik, P.E. 325-653-5811	X			X	Add Passing Lanes w/ extend structures	RAI	$24,201,349.00	Yes
Southwest Blvd Reconstruction	San Angelo, Tx	City of San Angelo - Kevin Pate, PE 325-657-4263	X	X	X		Reconstruct Street w/ Storm Drain Struct	RAI	$6,692,258.00	Yes
Glasscock Co. - SH 158 - STP 2020(950)	Near Garden City, Tx	TXDOT - Jordan Sefcik, P.E. 325-653-5811	X	X	X		Construct Overpass	RAI	$26,882,521.00	Yes
Pulice Const. - Midland Co - IH 20	Midland, Tx	TXDOT - Fred Herrera, P.E. 432-694-2195	X				Hot Mix Asph & Flex Base	SUB	$12,089,751.00	Yes
Pecos Co - IH-10 - CSJ:6376-42-001	Various	TXDOT - Caitlin Swick, P.E. 432-336-7998	X				Hot Mix Asphalt	RAI	$3,360,946.00	Yes
Midland CR 1232 at Monahan's Draw	Midland, Tx	Midland County - Andrew Avis 432-688-4505	X	X		X	Construct New Structure	RAI	$4,973,110.00	Yes
Rio Concho Drive Rehabilitation	San Angelo, Tx	City of San Angelo - Kevin Pate, PE 325-657-4263	X				Full Depth Rehab	RAI	$1,396,643.00	Yes
Park Ave Heights Paving	Midland, Tx	City of Midland - Bobby Wojciechowski 432-685-7519	X	X	X		Reconstruct Street	RAI	$1,512,308.00	Yes
Midalnd SCR 1232 - Phase 3	Midland, Tx	Midland County - Andrew Avis 432-688-4505	X	X	X		Construct New Roadway	RAI	$8,629,237.00	Yes
Tom Green Co - US 87 - CSJ: 0070-02-091	San Angelo, Tx	TXDOT - Jordan Sefcik, P.E. 325-653-5811	X				Asphalt Paving	RAI	$9,617,975.00	Yes
Andrews Co - US 385 - CSJ: 0228-04-043	Andrews, Tx	TXDOT - Fred Herrera, P.E. 432-694-2195	X			X	Rehabilitate Roadway w/ extend structures	RAI	$37,642,802.00	Yes
Midland Co - SH 191 - CSJ: 2296-02-026	Midland, Tx	TXDOT - Fred Herrera, P.E. 432-694-2195	X	X	X	X	Construct Overpass	RAI	$27,535,250.00	Yes
College Hills Blvd Reconstruction	San Angelo, Tx	City of San Angelo - Kevin Pate, PE 325-657-4263	X	X	X		Full Depth Reconstruct w/ Storm Dr, Water & Sewer	RAI	$32,661,072.00	Yes
Tom Green Co - US 277 - CSJ: 0264-06-043	San Angelo, Tx	TXDOT - Jordan Sefcik, P.E. 325-653-5811	X			X	Add Passing Lanes w/ extend structures	RAI	$17,420,246.00	Yes

Name of Surety Company:
Continental Casualty Company - Cowan-Hill Bonding Agency, Inc. 806-722-2663

$149,464,675.00

ATTACHMENT - C

REECE ALBERT, INC.

9/15/2022

COMPLETED PROJECTS:

Major Projects Completed in the Last 5 Years

PROJECT NAME	LOCATION	OWNER / OWNER'S REP	GC	REECE ALBERT, INC. CONTRACT AMOUNT	APPROX. DATE OF COMPLETION	BONDED
Midland County - Industrial Ave Reconstruct	Midland, Tx	Midland County - Andrew Avis 432-688-4505	RAI	$2,653,395.00	July-22	Yes
San Angelo Reg. Airport Entrance Rd	San Angelo, Tx	City of San Angelo - Kevin Pate, PE 325-657-4263	RAI	$1,601,996.00	May-22	Yes
Midland County - CR 1270	Midland, Tx	Midland County - Andrew Avis 432-688-4505	RAI	$3,790,739.00	May-22	Yes
Crockett Co - SH 137 STP 1902(153)	Ozona, Tx	TXDOT - Chris Henry, P.E. 325-653-5811	RAI	$16,443,411.00	Apr-22	Yes
Tom Green Co. - FM 2105 - STP 2020(653)	San Angelo, Tx	TXDOT - Chris Henry, P.E. 325-653-5811	RAI	$16,659,280.00	Feb-22	Yes
COM - SunGlow Street Paving	Midland, Tx	City of Midland - Bobby Wojciechowski 432-685-7519	RAI	$1,209,983.00	Feb-22	Yes
ODO - University Blvd Reconstruction	Odessa, Tx	City of Odessa - Yervand Hmayakyan - 432-335-3242	RAI	$16,092,678.00	Oct-21	Yes
Ector Co - US 385 - NH 2020(572)	Odessa, Tx	TXDOT - Saul Romero, P.E. 432-498-4770	RAI	$12,243,340.00	Sept-21	Yes
COSA - Gateway Addition Phase 2.1	San Angelo, Tx	City of San Angelo - Kevin Pate, PE 325-657-4263	RAI	$1,260,888.00	Aug-21	Yes
COSA - Gateway Addition Phase 2.2	San Angelo, Tx	City of San Angelo - Kevin Pate, PE 325-657-4263	RAI	$2,386,583.00	Aug-21	Yes
Midland Co - BI 20-E - NH 2020(570)	Midland, Tx	TXDOT - Fred Herrera, P.E. 432-694-2195	RAI	$12,405,830.00	Aug-21	Yes
Midland County - Fairgrounds Road	Midland, Tx	Midland County - Andrew Avis 432-688-4505	RAI	$2,619,774.00	Jun-21	Yes
Midland County - CR 127	Midland, Tx	Midland County - Andrew Avis 432-688-4505	RAI	$1,340,142.00	Feb-21	Yes
Maverick Co - US 277 - NH 1702(331)	Eagle Pass, Tx	TXDOT - David Salazar, P.E. 956-712-7435	RAI	$21,643,980.00	Jan-21	Yes
Midland Co - CS - STP 2017(228)HES	Midland, Tx	TXDOT - Fred Herrera, P.E. 432-694-2195	RAI	$1,861,626.00	Jan-21	Yes
Coke Co - US 277 - C 264-4-54	Bronte, Tx	TXDOT - Chris Henry, P.E. 325-653-5811	RAI	$9,736,188.00	Nov-20	Yes

ATTACHMENT - C

Greathouse Addition - Phase II	Midland, Tx	Los Conchos Ventures - Parkhill Smith & Cooper - Rene Franks, P.E. 432-697-1447	RAI	$2,726,911.00	Oct-17	Yes
Sterling Co - US 87	Sterling City, Tx	TXDOT - John Dewitt, P.E. 325-653-5811	RAI	$8,358,664.00	Oct-17	Yes
Cooper Tire & Vehicle Test Center	Pearsall, Tx	Nate Kear, Manager - 830-334-9092	RAI	$3,388,616.00	Oct-17	No
Glasscock Co - US 87 - NH 2015(931)	Sterling City, Tx	TXDOT - John Dewitt, P.E. 325-653-5811	RAI	$15,980,551.00	Jan-17	Yes
Upton Co - SH 349 - STP 1502(405)	Rankin, Tx	TXDOT - Edward Goebel, P.E. 432-336-3671	RAI	$9,375,143.00	Jul-17	Yes
Ector Co - SH 191 -NH 2016(565)	Odessa, Tx	TXDOT - Fred Herrera, PE 432-498-4770	RAI	$4,607,142.00	Mar-17	Yes
Tom Green Co - VA	San Angelo, Tx	TXDOT - John Dewitt, P.E. 325-653-5811	RAI	$701,104.00	Mar-17	Yes
MIDLAND CO - CS - STP 1502(406)	Midland, Tx	TXDOT - CIRO BAEZA, P.E. 432-694-2195	RAI	$6,201,910.00	Feb-17	Yes

SUBCONTRACTORS & SUPPLIERS

Subcontractors

- DK Contracting - Signs
- TRP Construction - Striping
- FC traffic Control – Traffic Control
- Odessa Fence – Fence Install & Gate
- D&E Logistics – Hot Mix, Base & Excavation Haul
- Performance Equipment – Cement treat base
- Tankstar USA Inc. - cement haul

Material Suppliers

- Troy Vines – Concrete
- Rebar Fab – Rebar, Concrete Accessories
- Shamrock Steel – Rebar (Concrete Pavement)
- Valero – Prime – MC-30
- Ergon – Emulsion
- CSA Materials – Hot Mix & Base
- GCC – Cement Supplier

125 E 11th St | Austin, Texas 78701
512.463.8588
txdot.gov

May 30, 2024

REECE ALBERT, INC.
3001 FOSTER STREET
SAN ANGELO, TX. 76903

RE: TxDOT Vendor Number 00106

Dear Contractor:

Your Confidential Questionnaire is satisfactory and qualifies you to bid on Projects let by the Texas Department of Transportation (TxDOT) from the date of this letter through February 28, 2025.

Your bidding capacity has been set at $272,731,000.00. You may request and receive bidding proposals for projects on which the engineer's estimate does not exceed your bidding capacity less any uncompleted work currently under contract with TxDOT.

If we may be of further assistance, please contact our Pre-qualification Branch at 512/416-2584.

Sincerely,

Greg Williams

Greg Williams
Director, Letting Management Section
Construction Division

SECTION 01 10 00 - SUMMARY

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:
   1. Work covered by Contract Documents.
   2. Contractor use of site and premises.
B. Related Requirements:
   1. Other Division 01 Specification Sections apply to Work of this Section.

1.2 WORK COVERED BY CONTRACT DOCUMENTS

A. Owner: City of Midland.
B. Identification: Midland Landfill Access Road Reconstruction.
C. Location: Midland, Texas.
D. Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Reconstructing the existing asphalt pavement, approx. 11,000 SY, along S CR 1110 (Landfill Access Road) off of SH 158. Project limits are approximately 0.8 miles. This Project includes widening the existing 2-lane road to a 3-lane road for approx. 800 feet. Work includes replacing chain-link fence and a mechanical operated gate, driveway reconstruction, earthwork, pavement markings and signage, seeding, and erosion control. Refer to the Bid Form for the proposed pavement section.

1.3 CONTRACTOR USE OF SITE AND PREMISES

A. Limit use of site and premises to allow:
   1. Owner occupancy.
   2. Public access for ingress and egress.
B. Construction operations: Limited to areas noted on Drawings.
C. Time restrictions for performing Work:
   1. Work may commence between the hours of 7:00 A.M. to 7:00 P.M., Monday through Saturday, unless otherwise approved in advance and in writing by Owner.
   2. Pre-identified adverse weather days.
D. Utility outages and shutdowns.
   1. Coordinate and schedule utility outages/shutdown.
   2. Schedule at least 1 week before outage/shutdown.
   3. Submit outage/shutdown request to Engineer itemizing dates, times, and durations of early requested outage/shutdown.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION

SECTION 01 20 00 - PRICE AND PAYMENT PROCEDURES

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:
   1. Application for Payment.
   2. Change Procedures.
   3. Measurement and payment - unit prices.
   4. Alternates.

B. Related Requirements:
   1. Other Division 01 Specification Sections apply to Work of this Section.

1.2 APPLICATIONS FOR PAYMENT

A. Submit application on Contractor-standard form, approved by Engineer.
B. Content and Format: Utilize Schedule of Values for listing items in Application for Payment.
C. Payment Period: As defined in Owner-Contractor Agreement.
D. Complete Application for Payment includes construction progress schedule and submittal schedule, all required to process Application for Payment.

1.3 CHANGE PROCEDURES

A. Submittals: Submit name of person authorized to receive change documents and responsible for informing others in Contractor's employ or subcontractors of changes to Work.
B. Carefully study and compare Contract Documents before proceeding with fabricating and installing Work. Promptly advise Engineer of any error, inconsistency, omission, or apparent discrepancy.
C. Requests for Information (RFI) and Clarifications: Allot time in construction scheduling for liaison with Engineer. Establish procedures for handling queries and clarifications.
   1. Use Contractor-standard RFI for requesting information.
   2. Engineer may respond with a direct answer on RFI form through Newforma.
D. Engineer will advise of minor changes in the Work not involving adjustment to Contract Price or Time by issuing supplemental instructions through Newforma.
E. Engineer may issue a change order through Newforma, including a detailed description of proposed change with supplementary or revised Drawings and Specifications for executing change. Contractor will prepare and submit proposed change in Contractor Price and/or Time within 7 days.
F. Contractor may propose changes by submitting a request for change to Engineer, describing proposed change, and its full effect on Work. Include a statement describing reason for change, effect on Contract Price and Time, with full documentation.
G. Unit Price Change Order: For Contract unit prices and quantities, Change Order will be executed on a fixed unit price basis. For unit costs or quantities of units not predetermined, execute Work as recommended by Engineer and accepted by Owner and Contractor.
H. Work Directive Change: Engineer may issue directive on signed by Owner, instructing Contractor to proceed with change in Work, for subsequent inclusion in Change Order. Document will describe changes in Work and designate method of determining any change in Contract Price or Time. Promptly execute change.
I. Document each quotation for change in Project Cost or Time with sufficient data to allow evaluation of quotation.

J. Change Order Forms: Engineer provided.
K. Execution of Change Orders: Engineer will issue Change Orders for signatures of parties as provided in Conditions of the Contract.
L. Correlation of Contractor Submittals:
    1. Promptly revise Schedule of Values and Application for Payment forms to record each authorized Change Order as separate line item and adjust Contract Price.
    2. Promptly revise Progress Schedules to reflect change in Contract Time, revise subschedules to adjust times for other items of Work affected by change, and resubmit.
    3. Promptly enter changes in Record Documents.

1.4 UNIT PRICES

A. Authority: Measurement methods delineated in Section 01 22 00 "Measurement and Payment."
B. Take measurements and compute quantities. Engineer to verify.
C. Unit Quantities: Quantities and measurements indicated in Bid Form are for Contract purposes only. Quantities and measurements supplied or placed in Work determine payment. When actual Work requires more or fewer quantities than those indicated, provide required quantities at contracted unit prices.
D. Payment Includes:
    1. Full compensation for required labor, products, tools, equipment, plant, transportation, services, and incidentals;
    2. Erection, application, or installation of Work item;
    3. Overhead and profit.
E. Final payment for Work governed by unit prices will be made based on actual measurements and quantities accepted by Engineer multiplied by unit price for Work incorporated in or made necessary by Work.

1.5 ALTERNATES

A. Owner will review and accept/reject Alternates quoted on Bid Form. Accepted Alternates are identified in Owner-Contractor Agreement as accepted.
B. Coordinate related Work and modify surrounding Work as required.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION

SECTION 01 22 00 - MEASUREMENT AND PAYMENT

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:
   1. Procedures for measurement and payment.
   2. Unit price items.
   3. Lump sum items.

B. Related Requirements:
   1. Section 00 41 00 "Bid Form."
   2. Other Division 01 Specification Sections apply to Work of the Section.

1.2 PROCEDURES FOR MEASUREMENT AND PAYMENT

A. Cost of Work or materials shown on Drawings or called for in Specifications and on which no separate payment is made, included in Bid prices on various items.

B. Roadway Bid Items:
   1. Quantities listed in Section 00 41 00 “Bid Form,” are estimated to compare bids.
   2. Payment for each item will be made for the actual Work measured in the field, or per Plans quantity, as specified in the applicable item.
   3. For all Roadway Bid Items, refer to applicable TxDOT Specification for measurement and payment method.

C. Mechanical Gate:
   1. Measurement and payment, and specification are provided in this document.

1.3 UNIT PRICE ITEMS

A. Unit price items, not otherwise included herein, paid at a unit price per unit.

B. Payment will include all Work and material for installing unit price item as specified.

C. Measurement made in units shown on Section 00 41 00 "Bid Form."

1.4 LUMP SUM ITEMS

A. For all Roadway Bid Items, refer to applicable TxDOT Specification for measurement and payment method.

1.5 MECHANICAL GATE

A. Measurement and payment shall be on a lump sum basis.

B. Payment made for the lump sum price as indicated on Bid schedule and will be compensated in full for all labor, materials, equipment, and incidentals required to remove, furnish, and install the mechanical fence, operator, keypads, and key pad foundation and accessories.

C. Included in the cost shall be coordination with Owner, other construction trades, and Engineer for completion of this Work, equipment start/up and testing, and extended warranties as specified. Payment for this item is furnishing all material, labor, equipment, and tools required for complete installation of the items included under this Bid item.

1.6 ELECTRICAL WORK

A. Measurement and payment shall be on a lump sum basis.
B. Payment made for the lump sum price as indicated on Bid schedule and will be compensated in full for all labor, materials, equipment, and incidentals required to furnish and install breakers, power conduit, power conductors, trenching and backfill and related appurtenances as indicated and detailed within Project documents.
C. Included in the cost shall be coordination with Owner, authorities having jurisdiction, other construction trades, and Engineer for completion of this Work, equipment start/up and testing, and extended warranties as specified. Payment for this item is furnishing all material, labor, equipment, and tools required for complete installation of the items included under this Bid item.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION

SECTION 01 25 00 - SUBSTITUTION PROCEDURES

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:
   1. Quality assurance.
   2. Product options.
   3. Product substitution procedures.

B. Related Requirements:
   1. Other Division 01 Specification Sections apply to Work of this Section.

1.2 QUALITY ASSURANCE

A. Contract is based on products and standards established in Contract Documents without consideration of proposed substitutions.

B. Products specified define standard of quality, type, function, dimension, appearance, and performance required.

C. Substitution Proposals: Permitted for specified products except where specified otherwise. Do not substitute products unless Owner accepts substitution and approves in writing.

1.3 PRODUCT OPTIONS

A. See Section 01 60 00 "Product Requirements."

1.4 PRODUCT SUBSTITUTION PROCEDURES

A. Engineer will consider requests for substitutions only within 30 days after date established in Notice to Proceed.

B. Substitutions may be considered when product becomes unavailable through no fault of Contractor.

C. Document each request with complete data, substantiating compliance of proposed substitution with Contract Documents, including:
   1. Manufacturer name and address, product, trade name, model, or catalog number, performance and test data, and reference standards.
   2. Itemized point-by-point comparison of proposed substitution with specified product, listing variations in quality, performance, and other pertinent characteristics.
   3. Reference to Article numbers in Specifications.
   4. Cost data comparing proposed substitution with specified product and amount of net change to Contract Sum.
   5. Changes required in other Work.
   6. Availability of maintenance service and source of replacement parts, as applicable.
   7. Certified test data to show compliance with performance characteristics specified.
   8. Samples when applicable or requested.
   9. Other information as necessary to assist Engineer's evaluation.

D. A request constitutes a representation Contractor:
   1. Investigated proposed product and determined it meets/exceeds quality level of specified product.
   2. Will provide same warranty for substitution as specified product.
   3. Will coordinate installation and make changes to other Work required for Work to complete with no additional cost to Owner.
   4. Waives claims for additional costs/time extension that subsequently become apparent.
   5. Will coordinate installation of accepted substitute, making required changes for Work to complete in all respects.
   6. Will reimburse Owner for review/redesign services associated with reapproval by authorities having jurisdiction.

E. Substitutions not considered when indicated/implied on Shop Drawing or Product Data submittals without separate written request or acceptance requires revision to Contract Documents.

F. Substitution Submittal Procedure:
   1. Submit requests for substitutions on Contractor-standard or Engineer-provided form.
   2. Submit electronic files to Project website of Request for Substitution for consideration. Limit each request to one proposed substitution.
   3. Submit Shop Drawings, Product Data, and certified test results attesting to proposed product equivalence. Burden of proof is on Contractor.
   4. Engineer will notify Contractor in writing of decision to accept/reject request.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION

SECTION 01 30 00 - ADMINISTRATIVE REQUIREMENTS

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:
   1. Project Information Management.
   2. Coordination.
   3. Preconstruction meeting.
   4. Electronic Drawing file (digital data) request.
   5. Request for information.
   6. Progress meetings.
   7. Preinstallation meetings.

B. Related Requirements:
   1. Other Division 01 Specification Sections apply to Work of this Section.

1.2 PROJECT INFORMATION MANAGEMENT

A. Project Website:
   1. Use Newforma Info Exchange at https://projects.team-psc.com/UserWeb/Login to send and receive Project information.
   2. Contact Engineer to set up username and password information.
   3. If Project is not listed when logged in, contact Engineer to add Project to your account.

B. Project information includes, but is not limited to:
   1. Edit to coordinate with Project information choice.
   2. Product Submittals.
   3. Requests for Information (RFI).
   4. Applications for Payment.
   5. Schedules.
   6. Construction Change Requests (CCRs).
   7. Close-out Documents.
   8. Construction Document Files.

1.3 COORDINATION

A. Coordinate scheduling, submittals, and Work to assure efficient and orderly sequence of installation of construction elements.

B. Coordinate space requirements and installation of mechanical and electrical work indicated diagrammatically on Drawings. Follow routing as closely as practicable. Utilize spaces efficiently to maximize accessibility for other installations, maintenance, and repairs.

C. Coordinate completion and clean-up of Work of separate Sections in preparation for Substantial Completion.

1.4 PRECONSTRUCTION MEETING

A. Engineer will schedule a meeting after Notice to Proceed.
B. Attendance Required:
    1. Owner.
    2. Engineer.
    3. Contractor.
C. Agenda:
    1. Distribute Contract Documents.
    2. Submit lists of subcontractors and products, Schedule of Values, submittal schedule, and progress schedule.
    3. Designate personnel representing each party in Contract and Engineer.
    4. Procedures and processing field decisions, submittals, substitutions, Applications for Payments, proposal request, Change Orders, Request for Information (RFI), and Contract closeout procedures.
    5. Review Notice to Proceed and Substantial/Final Completion Dates.
    6. Workmen's identification and background checks.
    7. Stormwater Pollution and Prevention Plan (SWPPP), if necessary.
    8. Scheduling:
        a. Temporary utilities provided by Owner.
        b. Security and housekeeping procedures.
        c. Construction progress meetings.
        d. Procedures for testing.
        e. Procedures for maintaining record documents.
        f. Inspection and acceptance of equipment put into service during construction.
    9. Scheduling activities of Construction Material Testing lab, geotechnical Engineer.
D. Engineer shall record minutes and distribute copies to participants.

1.5 ELECTRONIC DRAWING FILE (DIGITAL DATA) REQUEST

A. During Procurement Phase:
    1. Bidders and Proposers may purchase a Digital Data file. Digital Data file will be provided in software release currently used by Engineer. File will be provided via Engineer’s Project website.
    2. Revit® BIM Model files (.RVT) are available for purchase from Engineer upon request. Cost of model files are $150.00 for each model plus applicable tax. All details, detail annotation, and reference are omitted and not part of the Model file.
    3. Prior to delivery of file(s), purchaser shall sign a Digital Data Licensing Agreement. Payment for Digital Data file(s) shall occur upon delivery of file to purchaser.
    4. Digital Data file(s) shall be used only for preparing Bids and Proposals required by this Project not used in any other form, in whole or in part.

B. Upon Award of Contract:

1. At pre-construction meeting, Contractor shall bring the executed Digital Data Licensing Agreement (AIA C106-2022) at the end of this Section for release of electronic files. Upon Contractor submitting the executed Agreement to Engineer, Engineer will provide Contractor one electronic copy of the Revit® BIM Model file(s), AutoCAD (.DWG) file(s), when Revit® BIM Model file is not available, and Portable Document Format (.PDF) file(s) at no charge within five working days. Note that CAD files associated with the Work can be accessed and exported from the Revit® BIM Model provided to Contractor through Revit® software; therefore, Engineer will not provide individual CAD files. Files and Formats to be as followed:

   a. Civil Overall master file in AutoCAD format.
      1) Overall Site Plan with utility and grading information.
      2) All details, detail annotation, and references are omitted and not part of the AutoCAD file.

   b. Landscape: Overall master file in AutoCAD format.
      1) Overall Site Plan with grading, flatwork, irrigation, and planting plans.
      2) All details, detail annotation, and references are omitted and not part of the AutoCAD file.

   c. Structural: Revit® BIM Model and associated working plans views.
      1) Overall Site Plan with utility and grading information.
      2) All details, detail annotation, and reference are omitted and not part of the AutoCAD file.

   d. Architectural/Interior: Revit® BIM Model and associated working plan views.
      1) Plan views contain overall and enlarged section plan view set-up of floor plans, floor patterns, reflected ceilings, and roof plans only. All plan views contain grids, dimensions, room names, and general annotation.
      2) Reflected Ceiling Plans contain ceilings grids and types only. Lighting and mechanical are provided as part of the MEP Model.
      3) Roof Plans contain grids and general annotation only. Mechanical is provided as part of the MEP Model.
      4) Interior and exterior elevations and schedules.
      5) Finish plans and finish schedules.
      6) All details, details annotation, and references are omitted and not part of the model life.

   e. Mechanical, Electrical, and Plumbing: Revit® BIM Model and associated working plan views.
      1) Plan views contain overall and enlarged plan section view set-up of mechanical, electrical lighting, electrical power, and plumbing plans only.
      2) All details, detail annotation, and references are omitted and not part of the model file.

   f. Other Disciplines: Revit® BIM Model and associated working plan views.
      1) Plan views contain overall and enlarged plan section view set-up showing all device locations and general annotation.
      2) All details, detail annotation and references are omitted and not part of the model file.

2. Revit® BIM Model file provided to Contractor is NOT FOR CONSTRUCTION PURPOSES, but convenience only. This BIM Model will consist of the original model utilized for base bid. It is Contractor responsibility to coordinate all accepted alternated, addenda, RFI, Proposal Request, and any other changes realized during procurement and construction phases. Engineer will not provide up-to-date Contract Documents or update BIM Models to Contractor unless otherwise stated within the Owner/Engineer Agreement.
3. Conformed Construction Documents: If required by Owner/Engineer Agreement, they will be provided in PDF. Conformed Construction Documents are Drawings and Specifications modified to include any Addenda issued before execution of the Contract.
    a. To the extent Conformed Construction Documents are provided to Contractor, the following provisions shall apply:
        1) Conformed Construction Documents and related information contained therein, are provided for Contractor's convenience only, and does not relieve Contractor from Contract Document requirements. Specifically, to the extent that any discrepancy or conflict exist between Issue for Bid documents, including any Addenda issued prior to execution of Contact or Modifications issued after execution of Contact on the one hand, and Conformed Construction Documents on the other; Issue for Bid documents Addenda, and Modifications shall control unless otherwise specified in writing by Engineer.
        2) Contractor shall not use such Drawings, documents, or other data, in whole or in part, for any purpose or project other than this Project, in preparation of Shop Drawings and other submittals.
        3) Contractor acknowledges that such Drawings, documents, or other data obtained prior to use by them for any purpose.
        4) Any Conformed Construction Documents, including any Drawings Specifications, documents, or other data related thereto, are provided "as is" without representation or warranty by Engineer, either expressed or implied.
        5) Contractor acknowledges that Conformed Construction Documents provide by Engineer are as courtesy to Contractor, at their specific request, and accordingly, CONTRACTOR HEREBY AGREES TO RELEASE, HOLD HARMLESS, DEFEND AND INDEMNIFY ENGINEER AND OWNER FROM ANY AND ALL CLAIMS, DEMANDS, OR CAUSES OF ACTION, WHICH CONTRACTOR OR ANY THIRD PARTY MAY HAVE BY REASON OF ANY INJURY OR DAMAGE SUSTAINED BY CONTRACTOR OR THIRD PARTY ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF SUCH CONFORMED CONSTRUCTION DOCUMENTS.

1.6 REQUEST FOR INFORMATION (RFI)

A. RFI requests from subcontractors or material suppliers will not be considered.
B. Information indicated on RFI shall be complete before submission. If Engineer determines request can be answered with information provided, Engineer will assign RFI tracking number. If Engineer determines request is not an RFI, request will be returned to Contractor electronically and deleted from Engineer's electronic tracking software without assigning an RFI tracking number. A transmittal document returning denied RFI request will be provided with a response indicating action to be taken by Contractor.
C. RFIs may contain more than one item when items are related. Otherwise, only one item shall be addressed on each RFI request.
D. Allow seven days for Engineer's response to each RFI.
E. Response to RFI will be issued to Contractor and Owner per Section 01 33 00 "Submittal Procedures."
F. Responses from Engineer are not changes unless issued with a change per Section 01 20 00 "Price and Payment Procedures."
G. A sample RFI Form is attached at the end of this Section. Contractor will be provided a blank form for its use.

1.7 PROGRESS MEETINGS

A. Schedule and administer as necessary meetings throughout Work progress, at minimum.
B. Engineer will Arrange meetings, prepare agenda with copies for participants, preside at meetings.
C. Attendance Required:
    1. Owner.
    2. Job superintendent.
    3. Major subcontractors.
    4. Suppliers.
    5. Engineer.
D. Agenda:
    1. Review minutes of previous meetings.
    2. Review Work progress.
    3. Field observations, problems, and decisions.
    4. Identify problems which impede planned progress.
    5. Review submittal schedule and status of submittals.
    6. Review RFI log.
    7. Maintenance of progress schedule.
    8. Corrective measures to regain projected schedules.
    9. Planned progress during succeeding Work period.
    10. Coordinate projected progress.
    11. Maintenance of quality and work standards.
    12. Effect of proposed changes on progress schedule and coordination.
    13. Testing.
    14. Other business relating to Work.
E. Record minutes and distribute copies within 5 days to Engineer, participants, and those affected by decisions made.

1.8 PREINSTALLATION MEETING

A. When required in individual Specifications, convene a preinstallation meeting at site before installing Work.
B. Require attendance of parties directly affecting, or affected by, Work.
C. Notify Engineer 7 days in advance of meeting date.
D. Prepare agenda and preside at meeting.
    1. Review conditions of installation, preparation, and installation procedures.
    2. Review coordination with related work.
E. Record minutes and distribute copies within 5 days after meeting to participants and copy Engineer.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION

Parkhill

RFI No. _____

TO:	**Parkhill**
FROM:	
SUBMITTED BY:	
PROJECT NAME:	
PARKHILL PROJECT NO.:	

* Items to be completed by Contractor before submittal to Parkhill for review. RFI form must be fully completed for Parkhill to respond.

Issue Date:		***Requested Reply Date:**	

***RFI DESCRIPTION:** *(Fully describe the question or type of information requested. Provide photos and/or sketches as applicable to help with the description. Additional pages may be attached, if needed.)*

***REFERENCES/ATTACHMENTS:** *(List specific documents researched when seeking the information requested.)*

Specifications	Drawings	Other

**Disciplines involved (select one or more):*

☐Architect ☐Civil ☐Landscape Architect ☐Interior Designer ☐Structural ☐Mechanical ☐Plumbing
☐Electrical ☐List Other_____

***CONTRACTOR'S PROPOSED SOLUTION:** *(If RFI concerns a site or construction condition, the sender shall provide a recommended solution, including cost and/or schedule considerations before Parkhill can respond. The proposal solution shall consist of a revised text, sketches, drawings, etc. as applicable to a full and complete explanation.)*

RESPONSE: *(Provide answer to RFI, including cost and/or schedule considerations, revised text, sketches, drawings, etc. as applicable to fully explain response. Additional pages may be attached, if needed.)*

Response by:_____ ☐ Attachments:

Copies: ☐ Owner ☐ Consultants

Note: This reply is not an authorization to proceed with work involving additional cost, time or both. If any reply requires a change to the Contract Documents, a Change Order, Construction Change Directive or a Construction Change Request must be executed in accordance with the Contract Documents.

AIA® Document C106™ – 2022

Digital Data Licensing Agreement

AGREEMENT made as of the day of in the year
(In words, indicate day, month, and year.)

BETWEEN the Party transmitting Digital Data ("Transmitting Party"):
(Name, address, and contact information, including electronic addresses)

and the Party receiving the Digital Data ("ei ng rty"
(Name, address, and contact mation, in din tron addresses)

for the following ct:
(Name and location or address of the Project)

for the following Digital Data ("Digital Data"):
(Identify below, in detail, the information created or stored in digital form that the Parties intend to be subject to this Agreement.)

[Revit Models (.rvt files)]
[AutoCAD (.dwg files)]
[Portable Document Format (.pdf)]

The Transmitting Party and Receiving Party agree as follows.

DDITIONS AND DELETIONS:
The author of this document has ad information needed for its ompletion. The author may also ave revi the text of the original A ndard form. An *Additions and letions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

SAMPLE

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User Notes: (913993287)

TABLE OF ARTICLES

1 GENERAL PROVISIONS

2 TRANSMISSION OF DIGITAL DATA

3 LICENSE CONDITIONS

4 LICENSING FEE OR OTHER COMPENSATION

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The purpose of this Agreement is to grant a license from the Transmitting Party to the Receiving Party for the Receiving Party's use of Digital Data and to set forth the license terms.

§ 1.2 This Agreement is the entire and integrated agreement between the Parties. Except as specifically set forth herein, this Agreement does not create any other contractual relationship between the Parties.

§ 1.3 Confidential Digital Data is Digital Data containing confidential or business proprietary information that the Transmitting Party designates as "confidential."

ARTICLE 2 TRANSMISSION OF DIGITAL DATA

§ 2.1 The Transmitting Party grants to the Receiving Party a nonexclusive limited license to use the Digital Data solely and exclusively for the uses, and in accordance with the terms, set forth in Article 3.

§ 2.2 Only the Receiving Party is permitted to access and use the Digital Data. Unl nsed and unauthorized access or use by third parties is strictly prohibited except as set forth in Section 2.4.1.

§ 2.3 The transmission of Digital Data constitutes a warranty by the ansmitting Par o the Rec ving Party that the Transmitting Party is the copyright owner of the Digital Data or other se has permissi to nsmit the Digital Data to the Receiving Party for its use on the Project in accord h the ms and condit s of this Agreement.

§ 2.4 Where the Transmitting Party has designa d inf rnished nt to this Agreement as "confidential," the Receiving Party shall keep form confidential and shall not disclose it to any other person or entity except as set forth in Section .4.1.

§ 2.4.1 The Receiving Party may disc se nf nti Digital Data after seven (7) days' notice to the Transmitting Party where disclosure uired by la inc g a subpoena or other form of compulsory legal process issued by a court or governmental e by cour arbi tor(s) order. The Receiving Party may also disclose Confidential Digital Data to its emplo ltants, reties, subcontractors and their employees, sub-subcontractors, and others o ne d to know nten such information solely and exclusively for the Project and who agree to maint the confidential of such information.

§ 2.5 By transmitti Digital Data, the Transmitting Party does not convey any ownership right in the Digital Data or in the softw re us o generate the Digital Data. Unless otherwise granted in a separate license, the Receiving Party's right to use, modify, or further transmit Digital Data is specifically limited to those uses, and in accordance with the terms, set forth in Article 3, and nothing contained in this Agreement conveys any other right to use the Digital Data.

§ 2.6 To the fullest extent permitted by law, the Receiving Party shall indemnify and defend the Transmitting Party from and against all claims arising from or related to the Receiving Party's modification to, or unlicensed use of, the Digital Data.

§ 2.7 Transmission of the Digital Data does not abridge or extinguish the Transmitting Party's rights, including, to the extent applicable, exclusive ownership interest, in such information under all applicable state, federal, and international laws including, without limitation, laws governing the protection of copyrights and intellectual property.

§ 2.8 The provisions of this Article 2 shall survive the termination of this Agreement.

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User Notes: (913993287)

ARTICLE 3 LICENSE CONDITIONS

§ 3.1 The Receiving Party may use and rely upon the Digital Data to the extent set forth in this Article 3.

(Paragraph deleted)

[X] **§ 3.1.1** The Digital Data is transmitted solely for the Receiving Party's information. Receiving Party acknowledges that any use of the Digital Data shall be at Receiving Party's sole risk. he Receiving Party accepts the Digital Data "as is" without any warranty or representations fro the Transmitting Party as to whether the Digital Data is accurate, complete, or fit for use as in ed by the Receiving Party. The Receiving Party is solely responsible for verifying whether the Dig Da s accurate, complete, or fit for the Receiving Party's intended use.

(Paragraphs deleted)

§ 3.1.1.1 This Digital Data is part of the Transmit nstr ents of Se vice and shall not be used by Receiving Party or anyone else receiving ugh or m Receiving Party for any purpose other than as a convenience in t epara id submitta shop drawings, coordination drawings, construction phase submittals, d eld la t and staking required by the Owner for the exclusive use of the referenced ct. A u or reu by the Receiving Party or by others will be at the Receiving Party's sole risk hou ab y or l al exposure to Transmitting Party. The Receiving Party agr s to make n lai a here waive, to the fullest extent permitted by law, any claim or cause of a any natu agai Transmitting Party, its officers, directors, employees, or subconsultants that out of in connection with Receiving Party's use of this Digital Data.

§ 1.1.2 No represe on as to the compatibility of this Digital Data with Receiving Party's h war twar provided.

§ 3.1.1.3 This gital Data is not a Construction Document. Differences may exist between this Digita nd corresponding two-dimensional hard-copy Construction Document. The Transmitting Party makes no representation regarding the accuracy or completeness of the Digital Data the Receiving Party receives. In the event that a conflict arises between the signed/sealed two-dimensional hard-copy Construction Document prepared by Transmitting Party and the Digital Data, the signed/sealed two-dimensional hard-copy Construction Document shall govern. The Receiving Party is responsible for determining if any conflict exists. By the Receiving Party's use of this Digital Data, Receiving Party is not relieved of their duty to fully comply with the Contract Documents, including, and without limitation, the need to check, confirm and coordinate all dimensions and details, field measurements, verify field conditions and coordination of work with that of other contractors for the Project.

§ 3.1.1.4 Because information presented in the Digital Data can be modified, unintentionally or otherwise, the Transmitting Party reserves the right to remove all indicia of ownership and/or involvement from each Digital Data.

§ 3.1.1.5 Under no circumstances shall delivery of this Digital Data for use by the Receiving Party be deemed a sale of document ownership by Transmitting Party, and no warranties, either express or implied, of merchantability or fitness for any particular purpose is made. In no event shall the Transmitting Party be liable for any loss of profit or any consequential damages as a result of the Receiving Party's use or reuse of this Digital Data.

§ 3.1.1.6 The Digital Data file does not necessarily contain all the information that is required to produce finished Construction Documents. Because of this, there may be data within the Digital Data that is missing, incomplete or even contradictory to the information provided in the final two dimensional Construction Documents.

§ 3.1.1.7 Professional judgment will need to be used by the Receiving Party, along with reasonable expectations and interpretations in order to use the Digital Data for its intended purpose. Should the Transmitting Party provide revised and updated copies of the Digital Data to the Receiving Party throughout the Project, all terms and conditions of this agreement will be applicable and unchanged for all subsequent transmissions of the Digital Data

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User Notes: (913993287)

ARTICLE 4 LICENSING FEE OR OTHER COMPENSATION

The Receiving Party agrees to pay the Transmitting Party the following fee or other compensation for the Receiving Party's use of the Digital Data:

(State the fee, in dollars, or other method by which the Receiving Party will compensate the Trans ing Party for the Receiving Party's use of the Digital Data.)

This Agreement is entered into as of the day and year first written ab d term ates one year f said date, except as set forth below.

(Indicate when this Agreement will terminate, if other than one e date wa ntered into, and other conditions related to termination.)

N/A

PARKHILL	**[RECEIVING PARTY]**
TRANSMITTING RT *ture*	**RECEIVING PARTY** *(Signature)*
(Printed name and titl	*(Printed name and title)*

SAMPLE

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SECTION 01 32 16 - CONSTRUCTION PROGRESS SCHEDULE

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:
   1. Submittals.
   2. Gantt chart schedules.
   3. Review and evaluation.
   4. Updating schedules.
   5. Distribution.

B. Related Requirements:
   1. Other Division 01 Specification Sections apply to Work of this Section.

1.2 SUBMITTALS

A. Submit initial progress schedule for Engineer review within 15 days after established Notice to Proceed date.

B. Schedule Updates:
   1. Submit with each Application for Payment.
   2. Projected and actual percent of completion.
   3. Completion progress by listed activity and subactivity, to within 5 working days prior to submittal.
   4. Changes in Work scope and activities modified since submittal.
   5. Delays in submittals or resubmittals, deliveries, or Work.
   6. Adjusted or modified sequences of Work.
   7. Other identifiable changes.
   8. Revised projections of progress and completion.

C. Narrative Progress Report:
   1. Submit with each Application for Payment.
   2. Summary of Work completed during past period between reports.
   3. Work planned during next period.
   4. Explanation of differences between summary of Work completed and Work planned in previously submitted report.
   5. Current and anticipated delaying factors and estimated impact on other activities and completion milestones.
   6. Corrective action taken or proposed.

1.3 GANTT CHART SCHEDULES

A. Format Gantt chart Schedule, to include at least:
   1. Identification and listing, in chronological order, activities reasonably required to complete Work, including:
      a. Subcontract Work.
      b. Move-in and other preliminary activities.
      c. Project closeout and cleanup.
      d. Work sequences, constraints, and milestones.
   2. Listings identified by Specification Section number.

3. Identification of:
    a. Horizontal time frame by year, month, and week.
    b. Duration, early start, and completion for each activity and subactivity.
    c. Critical activities and Project float.
    d. Sub-schedules to further define critical portions of Work.

1.4 REVIEW AND EVALUATION

A. Participate in joint review and evaluation of schedules with Engineer at each Progress Meeting or Application for Payment submittals.
B. Evaluate Project status to determine Work behind and ahead of schedule.
C. After review, revise schedules incorporating results of review, and resubmit within 10 days.

1.5 UPDATING SCHEDULES

A. Maintain schedules to record actual start and finish dates of completed activities.
B. Indicate progress of each activity to date of revision, with projected completion date of each activity. Update schedules to depict current status of Work.
C. Identify activities modified since previous submittal, major changes in Work, and other identifiable changes.
D. Upon approval of Change Order, include change in next schedule submittal.
E. Indicate changes required to maintain Date of Substantial Completion.
F. Prepare narrative report to define problem areas, anticipated delays, and impact on schedule. Report corrective action taken or proposed and effect including effects of changes on schedules of separate contractors.

1.6 DISTRIBUTION

A. Following joint review, distribute copies to subcontractors, suppliers, Engineer, Owner, and other concerned parties.
B. Instruct recipients to promptly report, in writing, problems anticipated by projections shown in schedules.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION

SECTION 01 33 00 - SUBMITTAL PROCEDURES

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:
   1. Submittal procedures.
   2. Resubmittal requirements.
   3. Proposed products list.
   4. Requirements for complete Shop Drawings.
   5. Product data.
   6. Samples.
   7. Test reports.
   8. Manufacturer instructions.

B. Related Requirements:
   1. Other Division 01 Specification Sections apply to Work of this Section.

1.2 SUBMITTAL PROCEDURES

A. Submit to Engineer for review to check for conformance with information given and design concept expressed in Contract Documents.

B. Produce copies and distribute in accordance with this Article.

C. Use Project website to submit record documents as described in Section 01 70 00 "Execution and Closeout Requirements."

D. Transmit each submittal separately with Contractor's standard transmittal letter including Contractor name, address, and phone number. Each submittal shall contain only one Specification Section.

E. Sequentially number transmittal forms using Section number or Contractor’s sequential numbering system.

F. Identify Project, Contractor, subcontractor, or supplier, pertinent Drawing sheet and detail number(s), and Specification Section number appropriate to submittal.

G. Apply Contractor's stamp, signed or initialed certifying review, verification of products required, field dimensions, adjacent construction Work, and coordination of information, is per requirements of Work and Contract Documents.

H. Schedule submittals to expedite Project and deliver to Engineer. Coordinate submission of related items.

I. For each submittal for review, allow 10 working days excluding delivery time to and from Contractor.

J. Identify variations from Contract Documents and product or system limitations detrimental to successful performance of completed Work. Information, comments, field verifications, responses, or other notations marked on submittals by Contractor shall be in blue or green colors only.

K. Distribute copies of reviewed submittals to concerned parties. Instruct parties to promptly report any inability to comply with provisions.

L. Unrequested Submittals will not be recognized or processed.

M. Format:
   1. Submit all submittals digitally using PDF file extension. Each submittal shall be a single PDF file including transmittal letter. Multiple files for same submittal will not be accepted.
   2. Submittals in any other format, including ZIP files, will be rejected.
   3. Hard copies not accepted.
   4. To ensure each page is legible, PDF pages of Drawings shall be same size/scale as hard copy. Where applicable, provide scale symbols to indicate scale. Illegible submittals will be rejected.
   5. Upload submittals to Project website.

N. Submittal procedures described herein apply to construction progress schedule, products list, Shop Drawings, product data, samples (actual samples and digital files of same), design data, test reports, certificates, manufacturer's instructions and field reports, erection Drawings, RFIs, and other submittals submitted to Engineer.

1.3 RESUBMITTAL REQUIREMENTS

A. Revise submittals as required and resubmit to meet requirements specified and noted on submittal reviews.
B. Mark as *Resubmittal*.
C. Reuse original transmittal number and supplement with sequential alphabetical or numeric suffix for each resubmittal.

1.4 PROPOSED PRODUCTS LIST

A. Within 15 days after date of Notice to Proceed, submit complete list of major products proposed for use, with name of manufacturer, trade name, and model number of each product.
B. For products specified only by reference standards, give manufacturer, trade name, model or catalog designation, and reference standards.

1.5 REQUIREMENTS FOR COMPLETE SHOP DRAWINGS

A. Printable Image Size: Minimum 8-1/2 by 11 inches, maximum 30 by 42 inches.
B. Draw details to a noted scale.
C. Draw site plans to same scale indicated on Contract Drawings.
D. Engineer-issued Construction Documents (electronic or paper format) cannot be used in any shape, form, or fashion in creating and developing Shop Drawings, except electronic files containing floor, site plans, or layout plans purchased from Engineer may be used as backgrounds for Contractor, subcontractors, sub-subcontractors, and material suppliers in Shop Drawing process.

1.6 PRODUCT DATA

A. Mark each copy to identify applicable products, models, options, and other data. Supplement manufacturers' standard data to provide information unique to Project.
B. Include recommendations for application and use, and reference to compliance with specified standards of trade associations and testing agencies.
C. After review, distribute per Article 1.2 "Submittal Procedures," and provide copies for Record Documents described in Section 01 70 00 "Execution and Closeout Requirements."

1.7 TEST REPORTS

A. Submit for Engineer’s knowledge as Contract Administrator or Owner.
B. Submit test reports for information to assess conformance with information given and design concept expressed in Contract Documents.

1.8 MANUFACTURER INSTRUCTIONS

A. When specified in individual Specifications, submit manufacturer-printed instructions for delivery, storage, assembly, installation, startup, adjusting, and finishing.
B. Identify conflicts between manufacturers' instructions and Contract Documents.
C. Indicate special procedures, conditions requiring special attention and special environmental criteria required for application or installation.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION

SECTION 01 40 00 - QUALITY REQUIREMENTS

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:
   1. Quality control.
   2. Testing and inspection services.
   3. Tolerances
   4. Manufacturer's field services.

B. Related Sections:
   1. Other Division 01 Specification Sections apply to Work of this Section.

1.2 QUALITY CONTROL

A. Monitor quality control over suppliers, manufacturers, products, services, site conditions, and workmanship, to produce Work of specified quality.

B. Comply with manufacturer's instructions. If manufacturer's instructions conflict with Contract Documents, request clarification from Engineer before proceeding.

C. Perform Work using persons qualified to produce required and specified quality.

D. Products, materials, and equipment may be subject to inspection by Engineer at place of manufacture or fabrication. Such inspections shall not relieve Contractor of complying with requirements of Contract Documents.

E. Supervise performance of Work to ensure Work, whether completed or in progress, will not be subjected to harmful, dangerous, damaging, or otherwise deleterious exposure during construction.

1.3 TESTING AND INSPECTION SERVICES

A. Owner will employ and pay for specified services of an independent firm to perform testing and inspection.

B. Independent firm will perform tests, inspections, and other services specified in individual Specifications and as required by Engineer.

C. Testing, inspections, and source quality control may occur on or off Project site. Perform off-site testing as required by Engineer.

D. Cooperate with independent firm. Furnish samples of materials, design mix, equipment, tools, storage, safe access, and assistance by incidental labor, as requested.
   1. Notify Engineer and independent firm 24 hours before expected time for operations requiring services.

E. Employment of testing agency or laboratory shall not relieve Contractor of obligation to perform Work per requirements of Contract Documents.

F. Independent Firm Responsibilities:
   1. Test Samples of mixes submitted by Contractor.
   2. Provide qualified personnel at Site. Cooperate with Engineer and Contractor in performance of services.
   3. Perform indicated sampling and testing of products per specified standards.
   4. Ascertain compliance of materials and mixes with Contract Document requirements.

5. Promptly notify Engineer and Contractor of observed irregularities or nonconformance of Work or products.
6. Perform additional tests required by Engineer.
7. Attend preconstruction and progress meetings.

G. Independent Firm Reports. After each test, promptly submit report to Engineer and Contractor and provide interpretation of test results. Include:
1. Date issued.
2. Project title and number.
3. Name of inspector.
4. Date and time of sampling or inspection.
5. Identification of product and Specifications.
6. Location in Project.
7. Type of inspection or test.
8. Date of test.
9. Results of tests.
10. Conformance with Contract Documents.

1.4 TOLERANCES

A. Monitor fabrication and installation tolerance control of products to produce acceptable Work. Do not permit tolerances to accumulate.
B. Comply with manufacturers' recommended tolerances and tolerance requirements in reference standards. When tolerances conflict with Contract Documents, request clarification from Engineer before proceeding.
C. Adjust products to appropriate dimensions; position before securing products in place.

1.5 MANUFACTURER'S FIELD SERVICES

A. When specified in individual Specifications, require material or product suppliers or manufacturers to provide qualified staff personnel to observe site conditions, conditions of surfaces and installation, quality of workmanship, equipment startup, testing, adjusting, and balancing equipment, and commissioning, as applicable, and initiate instructions when necessary.
B. Submit qualifications of observer to Engineer 30 days before required observations. Observer is subject to Engineer approval.
C. Report observations and site decisions or instructions given to applicators or installers that are supplemental or contrary to manufacturer's written instructions.
D. Refer to Section 01 33 00 "Submittal Procedures," Article 1.8 - Manufacturer Field Reports.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION

SECTION 01 50 00 - TEMPORARY FACILITIES AND CONTROLS

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:
   1. Temporary Utilities:
      a. Electricity.
      b. Water.
   2. Construction Facilities:
      a. Vehicular access.
      b. Progress cleaning.
      c. Traffic regulation.
   3. Temporary Controls:
      a. Barriers.
      b. Water control.
      c. Dust control.
      d. Erosion and sediment control.
      e. Pollution control.
      f. Protect Work.
   4. Remove utilities, facilities, and controls.

B. Related Requirements:
   1. Other Divisions 01 Specification Sections apply to Work of this Section.

1.2 ELECTRICITY

A. Provide separate metering and pay utility provider for cost of energy used.

1.3 WATER

A. Provide separate metering and reimburse Owner for cost of water used.

1.4 VEHICULAR ACCESS

A. Extend and relocate vehicular access as Work progress requires, providing necessary detours for unimpeded traffic flow.
B. Location as approved by Engineer.
C. Provide unimpeded access for emergency vehicles. Maintain 20-foot-wide driveways with turning space between and around combustible materials.
D. Provide and maintain access to fire hydrants and control valves free of obstructions.
E. Provide means of removing mud from vehicle wheels before entering public streets.

1.5 PROGRESS CLEANING

A. Maintain areas free of waste materials, debris, and rubbish. Maintain a clean and orderly site.
B. Remove debris and rubbish from pipe chases, plenums, attics, crawl spaces, and other closed or remote spaces, before enclosing space.

C. Sweep and vacuum interior areas clean before surface finishing and continue cleaning to eliminate dust.
D. Remove waste materials, debris, and rubbish from site and dispose off-site as required to maintain clean site.

1.6 TRAFFIC REGULATION

A. Barricades, Signs, and Traffic Handling:
   1. Provide, install, move, replace, maintain, clean, and remove all traffic control devices as shown on the plans and as directed.
   2. SH 158 barricades, signs, and traffic handling as shown on the plans and as directed. Landfill Access Road barricades, signs, and traffic handling as shown on the plans and as directed.
   3. Traffic cones, drums, and flagperson and equipment as shown on the plans and as directed.
B. Flagpersons: Provide trained and equipped flagpersons to regulate traffic when construction operations or traffic encroach on public traffic lanes.
C. Flares and Lights: Use during hours of low visibility to delineate traffic lanes and guide traffic.
D. Haul Routes:
   1. Consult with authority having jurisdiction, establish public thoroughfares to use for haul routes and site access.
   2. Confine construction traffic to designated haul routes.
   3. Provide traffic control at critical areas of haul routes to regulate traffic and minimize interference with public traffic.
E. Traffic Signs:
   1. Provide, operate, and maintain traffic control signals to direct and maintain orderly flow of traffic in areas under Contractor’s control and areas affected by Contractor operations.
   2. Relocate as Work progresses to maintain effective traffic control.
F. Removal:
   1. Remove equipment and devices when no longer required.
   2. Repair damage caused by installation.
   3. Remove post settings to 2-foot depth.

1.7 BARRIERS

A. Provide barriers to prevent unauthorized entry to construction areas as well as protect existing facilities and adjacent properties from damage from construction operations. Allow for Owner's use of site.
B. Replace damaged items condition to original condition and protect items designated to remain:
   1. Trees.
   2. Shrubbery.
   3. Lawns.
C. Protect site improvements including but not limited to pavements, walkways, and drainage structures from damage. Replace damaged site improvements to original condition.
D. Protect non-owned vehicular traffic and stored materials from damage.

1.8 WATER CONTROL

A. Grade site to drain.
B. Maintain excavations free of water.
C. Provide, operate, and maintain pumping equipment.
D. Protect site from puddling and running water. Provide water barriers required to protect site from soil erosion.

1.9 DUST CONTROL

A. Execute Work to minimize raising dust from construction operations.
B. Provide positive means to prevent airborne dust from dispersing into atmosphere.

1.10 EROSION AND SEDIMENT CONTROL

A. Plan and execute construction to control surface drainage from cuts, fills, borrow, and waste disposal areas. Prevent erosion and sedimentation.
B. Minimize surface area of bare soil exposed at one time.
C. Provide temporary measures including berms, dikes, drains, and other devices to prevent water flow resulting in erosion.
D. Construct fill and waste areas by selective placement to avoid erosive surface silts or clays.
E. Periodically inspect earthwork to detect evidence of erosion and sedimentation. Promptly apply corrective measures.
F. Comply with site Section 01 57 23 "Temporary Stormwater Pollution Control."

1.11 POLLUTION CONTROL

A. Provide methods, means, and facilities to prevent contamination of soil, water, and atmosphere from discharge of noxious, toxic substances, and pollutants produced by construction operations.
B. Comply with pollution and environmental control requirements of authorities having jurisdiction.

1.12 PROTECT WORK

A. Protect installed Work and provide special protection where specified in Specifications.
B. Provide temporary and removable protection for installed Products. Control activity in immediate work area to minimize damage.
C. Prohibit traffic from seeded areas.

1.13 REMOVE UTILITIES, FACILITIES, AND CONTROLS

A. Backfill excavations as specified in other sections and grade site as indicated.
B. Clean and repair damage caused by installation or temporary work.
C. Restore existing facilities used during construction to original condition. Restore permanent facilities used during construction to specified condition.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION

SECTION 01 57 23 - TEMPORARY STORMWATER POLLUTION CONTROL

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:
   1. Contractor responsibilities.
   2. Submittals.
   3. Erosion and sediment controls.

B. Related Requirements:
   1. Local jurisdiction requirements.
   2. Other Division 01 Specification Sections apply to Work of this Section.

1.2 CONTRACTOR RESPONSIBILITIES

A. Contractor is solely responsible for meeting all TCEQ and EPA requirements for stormwater pollution prevention:
   1. Develop a Stormwater Pollution Prevention Plan (SWPPP) if not provided;
   2. File Notice of Intent (NOI) and include Owner as an "Operator;"
   3. Install and maintain all erosion control measures and best management practices (BMPs);
   4. Perform inspections and prepare reports; and
   5. File Notice of Termination (NOT).

1.3 SUBMITTALS

A. Submit to Engineer, SWPPP, Submittal Procedures, and all other related documentation conforming to Section 01 33 00 "Submittal Procedures."

1.4 EROSION AND SEDIMENT CONTROLS

A. Implement structural measures to divert flows from exposed soils, temporarily store flows, or otherwise limit run-off and discharge of pollutants from exposed areas of site. Timely implement structural practices as specified in SWPPP during construction to minimize erosion and sediment run-off.

B. Stabilized Ingress/Egress:
   1. Provide stabilized access to/from construction site as soon as practical per SWPPP.
   2. Ensure any soil tracked off-site is cleaned from existing roads, alleys, and any adjacent properties as soon as possible. Check for any pollutants (mud, silt, sand, cement, construction materials, etc.) tracked or washed off-site and perform necessary clean-up measures at the end of each workday.

C. Silt Fences/Diversion Berms: Provide as a temporary structural practice to minimize erosion and sediment runoff, as necessary. Properly install silt fences and/or diversion berms to effectively retain sediment immediately after completing each phase of work where erosion would occur as sheet and rill erosion (clearing and grubbing, excavation, embankment, grading, etc.).

D. Sand/Gravel Bags: Provide as a temporary structural practice to minimize erosion and sediment runoff. Properly place bags to effectively retain sediment immediately after completing each phase of work (clearing and grubbing, excavation, embankment, grading, etc.) in each independent runoff area (after clearing and grubbing between ridge and drain, place bags as work progresses, remove/replace/relocate bags as needed for work to progress in drainage area). Replace sand/gravel bags no longer in good condition, as needed.

E. Site Stabilization:
   1. Minimize surface area of base soil material at one time.
   2. Implement necessary stabilization measures including:
      a. Temporary/permanent seeding/sodding;
      b. Mulching;
      c. Geotextiles;
      d. Vegetative buffer strips;
      e. Paving;
      f. Rock riprap; and/or
      g. Rock-filled gabions.
      h. Inlet protection.
   3. Implement stabilization measures per SWPPP.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION

SECTION 01 60 00 - PRODUCT REQUIREMENTS

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:
   1. Products.
   2. Product delivery requirements.
   3. Product storage and handling requirements.

B. Related Requirements:
   1. Other Division 01 Specification Sections apply to Work of this Section.

1.2 PRODUCTS

A. At minimum, comply with specified requirements and reference standards.

B. Specified products define standard of quality, type, function, dimension, appearance, and performance required.

C. Furnish products of qualified manufacturers suitable for intended use. Furnish products of each type by single manufacturer unless specified otherwise. Confirm manufacturer production capacity can provide sufficient product, on time, to meet Project requirements.

1.3 PRODUCT DELIVERY REQUIREMENTS

A. Transport and handle products per manufacturer instructions.

B. Promptly inspect shipments to ensure products comply with requirements, quantities are correct, and products are undamaged.

C. Provide equipment and personnel to handle products. Prevent soiling, disfigurement, or damage.

D. Owner will not assist in offloading or accepting product deliveries.

1.4 PRODUCT STORAGE AND HANDLING REQUIREMENTS

A. Store and protect products per manufacturer instructions.

B. Store products with seals and labels intact and legible.

C. Store sensitive products in weathertight, climate-controlled enclosures in an environment suitable to product.

D. Cover products subject to deterioration with impervious sheet covering. Provide ventilation to prevent condensation and degradation of products.

E. Store loose granular materials on solid flat surfaces in well-drained area. Prevent mixing with foreign matter.

F. Provide equipment and personnel to store products. Prevent soiling, disfigurement, or damage.

G. Arrange product storage to permit access for inspection. Periodically inspect to verify products are undamaged and maintained in acceptable condition.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION

SECTION 01 70 00 - EXECUTION AND CLOSEOUT REQUIREMENTS

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:
1. Closeout procedures.
2. Demonstration and instructions.
3. Project record documents.
4. Operation and maintenance data.
5. Spare parts and maintenance products.
6. Product warranties and product bonds.
7. Examination.
8. Preparation.
9. Execution.
10. Protecting installed construction.
11. Final cleaning.

B. Related Requirements:
1. Other Division 01 Specification Sections apply to Work of this Section.

1.2 CLOSEOUT PROCEDURES

A. Prerequisites to Substantial Completion. Complete following items before requesting Certification of Substantial Completion, either for entire Work or portions of Work:
1. Submit maintenance manuals, Project record documents, and other similar final record data per this Section.
2. Complete facility startup, testing, adjusting, balancing systems and equipment, demonstrations, and instructions to Owner's operating and maintenance personnel as specified per this Section.
3. Conduct inspection to establish basis for request that Work is substantially complete. Create comprehensive list (initial punch list) indicating items to complete or correct, value of incomplete or nonconforming Work, reason for incompletion, and date of anticipated completion for each item. Include copy of list with request for Certificate of Substantial Completion.
4. Obtain and submit releases enabling Owner's full, unrestricted use of Project and access to services and utilities. Include certificate of occupancy, operating certificates, and similar releases from authorities having jurisdiction and utility companies.
5. Deliver tools, spare parts, extra stocks of material, and similar physical items to Owner.
6. Change locks and transmit keys directly to Owner. Advise Owner's personnel of change-over in security provisions.
7. Discontinue or change over and remove temporary facilities and services from Project Site, along with construction tools, mockups, and similar elements.
8. Perform final cleaning per this Section.

B. Substantial Completion Inspection:
   1. When Contractor considers Work substantially complete, submit to Engineer and Owner:
      a. Written certificate that Work, or designated portion, is substantially complete.
      b. List of items to complete or correct (initial punch list).
   2. Within 7 days after receipt of request for Substantial Completion, Engineer and Owner will inspect to determine if Work or designated portion is substantially complete.
   3. If Engineer and Owner determine Work is NOT substantially complete:
      a. Engineer and Owner will promptly notify Contractor in writing, stating reasons for opinion.
      b. Contractor shall remedy deficiencies in Work and send second written request for Substantial Completion to Engineer and Owner.
      c. Engineer and Owner will reinspect Work.
      d. Repeat until Work passes inspection.
   4. When Engineer and Owner finds Work is substantially complete, they will:
      a. Prepare Certificate of Substantial Completion on EJCDC C-625 - Certificate of Substantial Completion, accompanied by Contractor's list of items to complete or correct as verified and amended by Engineer and Owner (final punch list).
      b. Submit Certificate to Owner and Contractor for written acceptance of responsibilities assigned in Certificate.
   5. After Work is substantially complete:
      a. Allow Owner occupancy of Project under provisions stated in Certificate of Substantial Completion.
      b. Complete Work listed for completion or correction within time stipulated.

C. Prerequisites for Final Completion. Complete following items before requesting final acceptance and final payment:
   1. When Contractor considers Work complete, submit written certification that:
      a. Contract Documents were reviewed.
      b. Work was examined for compliance with Contract Documents.
      c. Work was completed per Contract Documents.
      d. Work is complete and ready for final inspection.
   2. Submit:
      a. Final punch list indicating all items are complete or correct.
      b. Final payment request with final releases and supporting documentation not previously submitted and accepted. Include certificates of insurance for products and completed operations, where required.
      c. Specified warranties, workmanship/maintenance bonds, maintenance agreements, and other similar documents.
      d. Accounting statement for final changes to Contract Sum.
      e. Contractor's Affidavit of Payment of Debts and Claims on Contractor form.
      f. Contractor Affidavit of Release of Liens on Contractor form.
      g. Consent of Surety to Final Payment on Contractor form.
   3. Perform final cleaning for Contractor-soiled areas per this Section.

D. Final Completion Inspection:
   1. Within 7 days after receipt of request for final inspection, Engineer and Owner will inspect to determine if Work or designated portion is complete.
   2. If Engineer and Owner consider Work incomplete or defective:
      a. Engineer and Owner will promptly notify Contractor in writing, listing incomplete or defective Work.
      b. Contractor shall remedy stated deficiencies and send second written request to Engineer and Owner that Work is complete.
      c. Engineer and Owner will reinspect Work.
      d. Redo and Inspect Deficient Work: Repeated until Work passes inspection.
      e. Engineer and Owner inspection.

1.3 DEMOSTRATION AND INSTRUCTIONS

A. Demonstrate operation and maintenance (O&M) of products to Owner personnel 2 weeks before date of Substantial Completion.
B. Demonstrate Project equipment by qualified or representative who is knowledgeable about Project.
C. Use O&M manuals as basis for instruction. Review contents of manual with Owner personnel in detail to explain all aspects of operation and maintenance.
D. Demonstrate startup, operation, control, adjustment, troubleshooting, servicing, maintenance, and shutdown of each equipment at agreed time, at equipment location.
E. Prepare and insert additional data in O&M manuals when need for additional data is apparent during instruction.
F. Required instruction time for each item of equipment and system is specified in individual Specifications.

1.4 PROJECT RECORD DOCUMENTS

A. Maintain onsite, 1 set of these record documents and record actual revisions to Work:
   1. Drawings.
   2. Specifications.
   3. Addenda.
   4. Change Orders and other modifications to Contract.
   5. Reviewed Shop Drawings, product data, and Samples.
   6. Manufacturer's instruction for assembly, installation, and adjusting.
B. Ensure entries are complete and accurate, enabling future reference by Owner.
C. Store record documents separate from documents used for construction.
D. Record information concurrent with construction progress, not less than weekly.
E. Specifications: Legibly mark and record, at each product Section, description of actual products installed, including:
   1. Manufacturer name, product model, and number.
   2. Product substitutions or alternates used.
   3. Changes made by Addenda and modifications.
F. Record Drawings. Legibly mark each item to record actual construction as:
   1. Include Contract modifications such as Addenda, supplementary instructions, change directives, field orders, minor changes in Work, and change orders.
   2. Include locations of concealed elements of Work.
   3. Identify depth of buried utility lines and provide dimensions showing distances from permanent facility components parallel to utilities.

4. Dimension ends, corners, and junctions of buried utilities to permanent facility components using triangulation.
5. Identify and locate existing buried or concealed items encountered during Project.
6. Measured horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements.
7. Measured locations of internal utilities and appurtenances concealed in construction, referenced to visible and accessible features of Work.
8. Field changes of dimension and detail.
9. Details not on original Drawings.

G. Submit marked-up paper copy documents to Engineer with claim for final Application for Payment.

H. Submit PDF electronic files of marked-up documents to Engineer with claim for final Application for Payment.

1.5 OPERATION AND MAINTENANCE DATA

A. Submit in PDF composite electronic indexed file.

B. Submit data bound in 8-1/2- by 11-inch text pages, three D-side-ring binders with durable plastic covers.

C. Prepare binder cover with printed *Operation and Maintenance Instructions*, title of Project, and subject matter of binder when multiple binders required.

D. Internally subdivide binder contents with permanent page dividers, logically organized as described, with tab titling clearly printed under reinforced laminated plastic tabs.

E. Drawings: Provide with reinforced punched binder tab. Bind in with text. Fold larger Drawings to size of text pages.

F. Contents: Prepare table of Contents (TOC) for each volume, with each product or system description identified, typed on white paper, in 3 parts as:

1. Part 1: Directory, listing names, addresses, and phone numbers of Engineer, Contractor, subcontractors, and major equipment suppliers.
2. Part 2: O&M instructions for each category, identify names, addresses, and phone numbers of subtractors and suppliers. Include:
    a. Significant design criteria.
    b. List of equipment.
    c. Parts list for each component.
    d. Operating instructions.
    e. Maintenance instructions for equipment and systems.
    f. Maintenance instructions for special finishes, including recommended cleaning methods and materials, and special precautions identifying detrimental agents.
    g. Safety precautions to take when operating and maintaining or working near equipment.
3. Part 3: Project documents and certificates, including:
    a. Shop Drawings and product data.
    b. Certificates.
    c. Originals of warranties.

1.6 SPARE PARTS AND MAINTENANCE PRODUCTS

A. Furnish spare parts, maintenance, and extra products in quantities specified in individual Specifications.

B. Deliver to place in location as directed by Owner. Obtain receipt before final payment.

1.7 PRODUCT WARRANTIES AND PRODUCT BONDS

A. Obtain warranties and bonds executed by responsible subcontractors, suppliers, and manufacturers within 10 days after completion of applicable item of Work.
B. Execute and assemble transferable warranty documents and bonds from subcontractors, suppliers, and manufacturers.
C. Verify documents are in proper form, contain full information, and notarized.
D. Co-execute submittals when required.
E. Include TOC and assemble in three D-side-ring binder with durable plastic cover.
F. Submit before final Application for Payment.
G. Time of Submittals:
    1. For equipment or component parts of equipment put into service during construction with Owner permission, submit documents within 10 days after acceptance.
    2. Make other submittals within 10 days after date of Substantial Completion, before final Application for Payment.
    3. For items of Work for which acceptance is delayed beyond Substantial Completion, submit within 10 days after acceptance, listing date of acceptance as beginning of warranty or bond period.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION

3.1 EXAMINATION

A. Verify existing Site conditions and substrate surfaces are acceptable for subsequent Work.
B. Beginning new Work means acceptance of existing conditions.
C. Verify existing substrate can structurally support or attach new Work applied.
D. Examine and verify specific conditions described in individual Specifications.
E. Verify utility services are available with correct characteristics and in correct locations.

3.2 PREPARATION

A. Clean substrate surfaces before applying next material or substance per manufacturer instructions.
B. Seal cracks or openings of substrate before applying next material or substance.
C. Apply manufacturer-required or -recommended substrate primer, sealer, or conditioner before applying new material or substance in contact or bond.

3.3 EXECUTION

A. Comply with manufacturer installation instructions, performing each step, in sequence. Maintain 1 set of manufacturer installation instructions at Project Site during installation and until completion of construction.
B. When manufacturer installation instructions conflict with Contract Documents, request clarification from Engineer before proceeding.
C. Verify field measurements are as indicated on approved Shop Drawings or as instructed by manufacturer.

D. Secure products in place with positive anchorage devices designed and sized to withstand stresses, vibration, physical distortion, or disfigurement.
   1. Secure Work true-to-line and level and within specified tolerances, or if not specified, industry-recognized tolerances.
   2. Physically separate products in place, provide electrical insulation, or provide protective coatings to prevent galvanic action or corrosion between dissimilar metals.
   3. Exposed Joints: Provide uniform joint width and arrange to obtain best visual effect. Refer questionable visual-effect choices to Engineer for final decision.

E. Climatic Conditions and Project Status: Install each unit of Work under conditions to ensure best possible results in coordination with entire Project.
   1. Isolate each unit of Work from incompatible Work necessary to prevent deterioration.
   2. Coordinate enclosure of Work with required inspections and tests to minimize necessity of uncovering Work for those purposes.

F. Mounting Heights: Where not indicated, mount individual units of Work at industry-recognized standard mounting heights for particular application indicated.
   1. Refer questionable mounting heights choices to Engineer for final decision.
   2. Elements Identified as Accessible to Handicapped: Comply with applicable codes and regulations.

G. Adjust operating products and equipment to ensure smooth and unhindered operation.

H. Clean and perform maintenance on installed Work as frequently as necessary through remainder of construction. Lubricate operable components recommended by manufacturer.

3.4 PROTECTING INSTALLED CONSTRUCTION

A. Protect installed Work and provide special protection where specified.

B. Control activity in immediate Work area to prevent damage.

3.5 FINAL CLEANING

A. Execute final cleaning before final Project assessment. Employ experienced personnel or professional cleaning firm.

B. Clean site. Sweep paved areas and rake landscaped surfaces clean.

C. Remove waste and surplus materials, rubbish, and construction facilities from site.

END OF SECTION

SECTION 32 31 00 –STRUCTURAL CANTILEVER SLIDE GATE SYSTEM

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes: Work in this Section shall include furnishing all labor, materials, equipment and appliances necessary to complete all Cantilever Gate System(s) required for this Project in strict accordance with this Specification Section and Drawings. The gate and operator shall be specifically designed to complement each other as a system and be provided by a single manufacturer. Components (operator from one source and gate panel from another) assembled at the job site to form a system will not be approved.

B. Related Requirements:
   1. Other Division 01 Specification Sections apply to Work of this Section.

1.2 REFERENCES

A. UL 325 Gate Operator Requirements. See 2.01 D.
   1. Automated / operated vehicular gates are not to be used for pedestrian traffic. Separate pedestrian gates must always be provided if pedestrian traffic is expected.

B. ASTM F2200 – Standard Specification for Automated Vehicular Gate Construction. See 2.01 D.

C. ASTM F1184 – Standard Specification for Industrial and Commercial Horizontal Slide Gates, Type II, Class 2. See 3.02 B.

D. American Welding Society AWS D1.2 Structural Welding Code. See 2.01 C.

1.3 SUBMITTAL

A. Product Data:
   1. Provide manufacturer’s catalog cuts with printed specifications and installation instructions.
   2. Deliver 2 copies of operation and maintenance data covering the installed products. Manual to include parts list showing manufacturer’s names and part numbers for the gate operator.

B. Shop Drawings:
   1. Supply Shop Drawings showing the relationship of operating systems with gate components, including details of all major components.
   2. Include complete details of gate construction, gate height and post spacing dimensions.

C. Certification of Performance Criteria:
   1. Manufacturer of gate system shall provide certification stating the gate system includes the following material components that provide superior performance and longevity. Alternate designs built to minimum standards that do not include these additional structural features shall not be accepted.
      a. Gate track system shall be keyed to interlock into gate frame member (providing 200 percent additional strength when compared to weld only keyless systems). When interlocked with and welded to the "keyed" frame top member, gate track forms a composite structure.

b. Gate shall have a minimum counterbalance length of 50 percent opening width which provides a 36 percent increase in lateral resistance (when compared to ASTM minimum of 40 percent counterbalance). If gate is ever to be automated, counterbalance section shall be filled with fabric or other specified material.
c. To provide superior structural integrity, intermediate vertical members shall be used - with spacing between verticals to be less than 50 percent of the gate frame height.
d. Entire gate frame (including counterbalance section) shall include 2 adjustable stainless or galvanized steel cables (minimum 3/16-inch) per bay to allow complete gate frame adjustment (maintaining strongest structural square and level orientation).
e. Gate truck assemblies shall be tested for continuous duty and shall have precision ground and hardened components. Bearings shall be pre-lubricated and contain shock resistant outer races and captured seals.
f. Gate truck assemblies shall be supported by a minimum 5/8-inch plated steel bolt with self aligning capability, rated to support a 2,000 pound reaction load.
g. Hanger brackets shall be hot dipped galvanized steel with a minimum 3/8-inch thickness that is also gusseted for additional strength.
h. Gate top track and supporting hangar bracket assemblies shall be certified by a licensed professional engineer to withstand a 2,000 pound vertical reaction load without exceeding allowable stresses.
i. Gate is to be designed to meet specified ASCE-7 wind load requirements with the gate in the closed and latched condition only. Typical gate design is expected to operate satisfactorily in winds up to 30 MPH. Depending on gate panel infill, winds higher than 30 MPH may cause gate operational problems (if automated, operator entrapment may trigger; gate panel may not engage receiver). For sites with higher operational, non-typical, or specified wind loadings, manufacturer should be advised of the site conditions and a specifically engineered design will be offered.

D. Certifications:
1. Gate in compliance with ASTM F2200, Standard Specification for Automated Vehicular Gate Construction per section 2.01 C.
2. If operated gate system, gate operator shall be in compliance with UL 325 as evidenced by UL listing label attached to gate operator.
3. The aluminum welders and welding process must be certified per section 2.03 E.
4. Manufacturer shall supply gate design performance certification as per section 1.03 C.

PART 2 - PRODUCTS

2.1 CANTILEVER SLIDE GATE SYSTEM MANUFACTURERS

A. The cantilever sliding gate system shall be the Ty Metal Fortress TYM-2000 Structural Gate System, or approved equal.
B. Submit gate system and manufacturer to Engineer for review.
C. Gate manufacturer shall provide independent certification as to the use of a documented Welding Procedure Specification and Procedure Qualification Record to insure conformance to the AWS D1.2 welding code. Upon request, Individual Certificates of Welder Qualification documenting successful completion of the requirements of the AWS D1.2 code shall also be provided. See 1.02 D.

D. Gate manufacturer shall certify gate is manufactured in compliance with ASTM F2200, Standard Specification for Automated Vehicular Gate Construction and the operators are UL 325 compliant. See 1.03 C.1.

2.2 VEHICULAR SLIDE GATE OPERATOR

A. The slide gate operator shall open and close cantilever, overhead, or track gates, to provide convenience and security. The operator must be able to function with common industry accessories including radio controls, electro-mechanical locks, single and 3 button control stations, digital keypads, coded cards, and revenue control equipment. The operator utilizes 230 Volt AC single phase power. Control voltage in each case is 5 Volt DC.
B. The gate operator shall include a controller with integrated radio receiver, surge protection, and easy to read labeling standard.
C. Capacity:
    1. The gate operator shall be rated to operate a gate weighing up to 2,000 pounds.
D. The gate operator shall be UL 325 compliant for Class I, II, III, and IV.
E. Design Criteria:
    1. Operation shall be by means of a 1 horsepower single phase instant reversing motor, transferring power to a four inch diameter pulley, to a right angle oil bath gear reducer using another four inch diameter pulley and V-belt. Power is then transferred through a sliding collar disconnect system to the output drive shaft equipped with a #40 drive sprocket and roller chain which attaches to the gate with heavy-duty gate attachment brackets. Intermediate chain supports with anti-catch design shall also be supplied.
    2. The operator shall open the gate at a rate of approximately 11 inches per second.
    3. The #40 chain shall be coated with “Armor Coat” corrosive resistant chain coating. Corrosive resistance exceeds nickel plating.
F. Components:
    1. Standard mechanical components shall include as a minimum:
        a. 3/16-Inch-Thick, weather resistant UV-stabilized polyethylene 1 piece cover which is fully removable and lockable.
        b. Heavy-duty, plated frame with mounting legs for pad mounting standard.
        c. Pedestal to raise operator from ground level and protect from high water.
        d. 20:1 Right-angle oil bath gear reducer.
        e. Arctic package with immersion heater.
        f. One inch solid steel output drive shaft.
        g. Spring loaded manual disconnect.
        h. Steel “critter” plate to prevent entry of ground pests.
    2. Standard electrical components shall include as a minimum:
        a. One HP motor with thermal overload protection in 230 VAC single phase.
        b. Solid state logic controls featuring 15 diagnostic L.E.D. indicators and auto-close timer (1 second to 9 minutes).
        c. Inherent, fully adjustable motor over-current sensing to detect obstructions via precision 24 turn potentiometer, with separate adjustments for opening and closing directions.
        d. Controller housed in zinc plated control box with separate box provided for connection of field power.
        e. Power On/Off switch.

G. Access Control:
1. Entry:
a. A programmable four digit, 1,000 code digital keypad (ADV-1000) shall be installed on both sides of the gate opening and function as the primary entry/ingress device. The digital keypad shall be mounted on an approved pedestal. Pedestal and keypad type and location shall be approved by Engineer.
b. Four single button radio tranmitters shall be provided and function as the secondary entry/ingress devices. The receiver shall be an inherent component of the gate operator.
2. Exit:
a. A programmable four digit, 1,000 code digital keypad (ADV-1000) shall be installed on both sides of the gate opening and function as the primary entry/ingress device. The digital keypad shall be mounted on an approved pedestal. Pedestal and keypad type and location shall be approved by Engineer.
3. Reversing Devices:
a. Miller reversing/sensing edges shall be installed on the leading and trailing edges of the gate panel.

H. Factory Inspection and Testing:
1. Manufacturer shall test each operator at factory to assure smooth, quiet operation.
2. Manufacturer shall test all control inputs to ensure proper function.
3. Manufacturer shall certify that operator has been tested as part of a complete gate system in excess of 50,000 cycles.

2.3 CANTILEVER SLIDE GATE

A. Gate Width:
1. Structural Gate may be used for clear openings up to 40 feet wide.

B. Structural Gate Frame:
1. The gate frame shall be fabricated from 6063-T6 aluminum alloy extrusions. The top member shall be a 3- by 5-inch aluminum structural channel/tube extrusion weighing not less than 3.0 lb/lf. To maintain structural integrity this frame member shall be "keyed" to interlock with the "keyed" track member. If fabricated as a single horizontal piece, the bottom member shall be a 2- by 5-inch aluminum structural tube weighing not less than 2.0 lb/lf. If fabricated in 2 horizontal pieces, the bottom member shall be a 5-inch aluminum structural channel weighing not less than 2.65 lb/lf, and the 2 horizontal pieces or sections shall be spliced in the field (the gate frame shall be fabricated in a or multiple sections depending on size requirements or project constraints).
2. Vertical Members:
a. The vertical members at the ends of the opening portion of the frame shall be "P" shaped in cross section with a nominal base dimension of no less than 2- by 2-inch and weighing not less than 1.6 lb/lf. The intermediate vertical members shall alternate between 2- by 2-inch and 1- by 2-inch in cross section weighing not less than 1.1 lb/lf and 0.82 lb/lf, respectively.
b. Intermediate 1- by 2-inch vertical members weighing not less than 0.82 lb/lf shall alternate between 2- by 2-inch major members.

C. Splicing:
   1. A 1/4- by 5- by 24-inch galvanized steel splice plate shall be used to secure the 2 bottom channel members together utilizing 8 plated carriage bolts with lock nuts. The top members will be spliced together using a 1/4- by 2- by 24-inch aluminum splice plate secured with 6 drive rivets on 1 side and welded to the top member on the other side. The track is overlapped onto the opposing section in an alternating fashion, interlocking with the top primary member.

D. Gate Track:
   1. The gate shall have a separate semi-enclosed “keyed” track, extruded from 6005A-T61 or 6105-T5 aluminum alloy, weighing not less than 2.9 lb/lf. Track members are to be located on each side of the top member. When interlocked and welded to the “keyed” top member, it forms a composite structure with the top of the gate frame. Welds are to be placed alternately along the top and side of the track at 9-inch centers with welds being a minimum of 2 inches long.

E. All welds on the gate frame shall conform to Welding Procedure Specification and Procedure Qualification Record to insure conformance to the AWS D1.2 Structural Welding Code. All individual welders shall be certified to AWS D1.2 welding code. See 1.02 D.

F. Gate Mounting:
   1. The gate frame is to be supported from the track by 4 swivel type, self-aligning, 4-wheeled, sealed lubricant, ball-bearing truck assemblies.
   2. The bottom of each support post shall have a bracket equipped with a pair of 3-inch UHMW guide wheels Wheel cover protectors shall be included with bottom guides to comply with UL325.
   3. Gap protectors shall be provided and installed, compliant with ASTM F 2200-05.

G. Diagonal Bracing:
   1. Diagonal "X" bracing of 3/16-inch or 1/4-inch diameter stainless or galvanized steel cable shall be installed throughout the entire gate frame.

H. The gate shall be completed by installation of approved filler as specified.
   1. Chain Link: 2- by 2-inch by 9-gauge aluminized steel chain link fabric shall extend the entire length of the gate (if operated gate, counterbalance must also have fabric to prevent reach through and comply with ASTM F2200, see 1.03 C.1). Fabric shall be attached at each end of the gate frame by standard fence industry tension bars and tied at each 2- by 2-inch vertical member with standard fence industry ties. ASTM F2200 requires attachment method that leaves no leading or bottom edge protrusions (cannot exceed 0.5-inch).

I. Posts:
   1. Double sets of support posts shall be minimum 4-inch O.D. round SS40 or 4- by 4- by 3/16-inch wall square steel tubing, grade 500. Gate posts shall be galvanized or coated and supported in concrete footings as specified by the design team.

J. Finish:
   1. Gate to be mill finish aluminum or color coated with polyester powder as specified. If powder coated, the gate (including track member) and all accessories shall be pretreated chemically by sand blasting or other acceptable method to ensure proper coating adherence.

2.4 WARRANTY

A. The cantilever slide gate and operator system shall be warranted by the manufacturer against manufacturing defects for a period of 3 years from date of sale. The truck assembly shall be warranted against manufacturing defects by the manufacturer for a period of 5 years from date of sale.

PART 3 - EXECUTION

3.1 SITE INSPECTION

A. Examine final grades and installation conditions.
B. Do not begin work until all unsatisfactory conditions are corrected.

3.2 INSTALLATION

A. Install equipment of this Section in strict accordance with the company's printed instructions unless otherwise shown on the Contract Drawings.
B. The gate and installation shall conform to ASTM F1184 standards for aluminum cantilever slide gates, Type II, Class 2. See 1.02 C.
C. The gate system is to comply with ASTM F2200 and UL 325. See 1.02 B and 1.02 A, respectively.
D. Obstruction Sensing Systems:
    1. The inherent motor current sensors are part of the gate operator system and may not be removed or bypassed.
    2. The installing Contractor shall be responsible to ensure that appropriate external secondary entrapment protection devices be installed for the specific site conditions to protect against all potential entrapment zones. Proper operation of these safety devices shall be verified and training as to the operation and maintenance of these devices for the users and owners shall be documented.

3.3 SYSTEM ACCEPTANCE & VALIDATION

A. Acceptance Test:
    1. Test each system function.
    2. Supply all equipment necessary for system adjustment and testing.
B. Test and Explain Safety Features:
    1. Each system feature and device is a separate component of the gate system.
    2. Read and follow all instructions for each component.
    3. Ensure that all instructions for mechanical components, safety devices and the gate operator are available for everyone who will be using the gate system.
    4. The warning signs shipped with the gate operator must be installed in prominent position on both sides of the gate.
C. System Validation:
    1. The complete system shall be adjusted to assure it is performing properly.
    2. The system shall be operated for a sufficient period of time to determine that the system is in proper working order.
    3. Ensure Owner is clear with regard to the safety points concerning the basic operational guidelines of the safety features of the gate operator system. These safety points are listed in the operator manual and must be read prior to system use.
    4. Installer and customer shall complete Operated Gate System Installation Checklist (see operator manual).

END OF SECTION

City Council Meeting

Item Number: 9

Meeting Date: October 22, 2024

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: MOTION REJECTING ALL STATEMENTS OF QUALIFICATIONS SUBMITTED IN RESPONSE TO THE ADVERTISEMENT OF A REQUEST FOR QUALIFICATIONS FOR ARCHITECTURAL AND ENGINEERING SERVICES ASSOCIATED WITH THE MULTIMODAL WILDCATTER TRAIL – CHAMPIONS, TRADEWINDS, AND DEAUVILLE PROJECT (DISTRICT: NONE) (GENERAL SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

Motion rejecting all statements of qualifications submitted in response to the advertisement of a request for qualifications for Architectural and Engineering Services Associated with the Multimodal Wildcatter Trail – Champions, Tradewinds, and Deauville Project.

Recommended City Council Action:

Approve

Fiscal Impact:

No funding needed.

Strategic Priority:

(Quality of Life and Place)

Discussion:

Motion No. 076-2024 approved the advertisement of a request for qualifications for Architectural and Engineering Services Associated with the Multimodal Wildcatter Trail – Champions, Tradewinds, and Deauville Project. We sent bid requests to seventy (70) vendors. Staff recommends rejecting all qualifications for the RFQ concerning the Wildcatter Trail Planning and

Design, following TxDOT guidance, and will offer a replacement opportunity aligned with program guidelines. Please see attached memo for additional information.

Therefore, please consider a resolution rejecting all statements of qualifications submitted in response to the advertisement of a request for qualifications for Architectural and Engineering Services Associated with the Multimodal Wildcatter Trail – Champions, Tradewinds, and Deauville Project.

Morris Williams Jr.

City Manager's Office

INTEROFFICE MEMORANDUM

TO: Erika Martinez; City of Midland, Purchasing Manager

FROM: Jose E. Ortiz, P.E.; City of Midland, City Engineer

SUBJECT: Wildcatter Trail ♦ Engr. Project No. Z24-04
♦ REQ # 24005725

DATE: October 11, 2024

Erika,

The City of Midland is rejecting all statements of qualifications concerning the RFQ for the Wildcatter Trail Planning and Design following TxDOT guidance. Guidelines of the TxDOT Transportation Alternatives program which is providing funding for the Wildcatter Trail project require specific approvals and procedures to receive fiscal reimbursement for project activities. The City will provide a replacement opportunity in alignment with program guidelines at a later date in accordance with TxDOT's timeline.

Jose E. Ortiz, P.E.
City Engineer

Cc: Kirby Jones
Bobby Wojciechowski
Michele Hagemann
Lindsey Adams
Regina Stephenson

City Council Meeting

Item Number: 10

Meeting Date: October 22, 2024

To: City Council / City Manager

From: Erika Martinez, Manager, Purchasing

Subject: RESOLUTION AWARDING A CONTRACT FOR THE PEGGY-SUE DRAINAGE IMPROVEMENTS TO DUFRANE CONSTRUCTION LLC FOR A COST OF $89,950.00; APPROVING $17,990.00 FOR CONTINGENCIES; AND TRANSFERRING AND APPROPRIATING FUNDS (DISTRICT: 4) (GENERAL SERVICES) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)

Purpose:

Resolution awarding the execution of a contract for the Peggy-Sue Drainage Improvements to Dufrane Construction LLC. for cost of $89,950.00 plus $17,990.00 in continencies for a total cost of $107,940.00.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available the Utilities Fund FY25 Operating Budget and will be transferred and appropriated to a project for this purpose.

Strategic Priority:

(Provide Sound Governance & Fiscal Management)

Discussion:

Staff recommends awarding a contract for the Peggy-Sue Drainage Improvements for the Utilities Department. One hundred twenty (120) requests for proposals were issued. We received seven (7) proposals. Staff recommends awarding the contract to Dufrane

Construction LLC. Please see the attached memo from Carl Craigo, Utilities Director, for additional information.

Therefore, please consider a resolution awarding a contract to Dufrane Construction LLC. of Andrews, Texas for the Peggy-Sue Drainage Improvements for cost of $89,950.00 plus $17,990.00 in continencies for a total cost of $107,940.00.

Morris Williams Jr.

City Manager's Office

INTEROFFICE MEMORANDUM

TO: Erika Martinez; City of Midland, Purchasing Manager

FROM: Joshua C. Ferguson; City of Midland, Assistant City Engineer

SUBJECT: Peggy-Sue Drainage Improvements – Engr. Project No. D23-02 ♦ Bid Tabulation ♦ Funding #_____

DATE: June 12th, 2024

Erika,

Engineering staff has reviewed the bid tabulation for the Peggy-Sue Drainage Improvements project. Dufrane Construction LLC of Andrews, Texas, is the apparent successful bidder. Staff recommends awarding the Peggy-Sue Drainage Improvements project to Dufrane Construction LLC.

Funding is available for this project.

The apparent successful bidder was selected based on the base bid amount of **$89,950.00** as outlined in the bidding documents. In addition, we would like to request that a 20% contingency in the amount of **$17,990.00** be allowed for value added changes to the project during construction. The total amount made available for the project would be **$107,940.00**.

Joshua C. Ferguson, P.E.
Assistant City Engineer – Engineering Services

Cc: Kirby Jones
Carl Craigo
Regina Stephenson

RESOLUTION NO. _____

RESOLUTION AWARDING A CONTRACT FOR THE PEGGY-SUE DRAINAGE IMPROVEMENTS TO DUFRANE CONSTRUCTION LLC FOR A COST OF $89,950.00; APPROVING $17,990.00 FOR CONTINGENCIES; AND TRANSFERRING AND APPROPRIATING FUNDS

WHEREAS, the City Manager approved plans and specifications and authorized the advertisement for competitive sealed bids for the Peggy-Sue Drainage Improvements; and

WHEREAS, the bids were opened on September 18, 2024, with the lowest responsible and responsive bid being submitted by Dufrane Construction LLC as shown on the tabulation attached hereto as Exhibit A, which is incorporated herein for all purposes; and

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

WHEREAS, the City Council finds it to be in the public interest to award a contract to Dufrane Construction LLC for the Peggy-Sue Drainage Improvements; and

WHEREAS, the City Council finds it to be in the public interest to approve $17,990.00 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 Dufrane Construction LLC for the Peggy-Sue Drainage Improvement for a cost of $89,950.00. 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 $17,990.00 for contingencies is hereby approved.

SECTION THREE. That funding shall be available in the Utilities Fund FY25 Operating Budget and shall be transferred and appropriated to a project for this purpose.

SECTION FOUR. That the City Comptroller is hereby authorized and directed to pay Onyx General Contractors, LLC, pursuant to the terms of said contract 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., 2024, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

_____
Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Regina Stephenson, General Services Director

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

S:\Resolutions\Purchase\2024\Contracts\Award Contract - Peggy-Sue Drainage Improvements.wpd

25000013 D23-02 Peggy Sue Drainage Improvement
Bid Opening: September 18, 2024

					Boler Equipment Service, Inc.		DUFRANE CONSTRUCTION		Danny's Asphalt Paving Inc.		Larry Baxter Construction LLC		ONYX CONTRACTORS OPERATIONS, LP.		Reece Albert, Inc.		Permian Paving	
				Total Cost	$298,488.00		$89,950.00		$444,555.80		$92,432.00		$192,410.71		$154,619.50		$367,317.50	
#	Items	Quantity Required	Unit	Pay Note	Unit Price	Total Cost	Unit Price	Total Cost	Unit Price	Total Cost	Unit Price	Total Cost	Unit Price	Total Cost	Unit Price	Total Cost	Unit Price	Total Cost
#1-1	Mobilization, furnished, installed, complete and in place.	2	MO	M1	$7,106.50	$14,213.00	$7,950.50	$15,901.00	$68,640.00	$137,280.00	$2,500.00	$5,000.00	$13,000.00	$26,000.00	$9,150.00	$18,300.00	$50,000.00	$100,000.00
#1-2	Erosion/Sediment Control, furnished, installed, complete and in place.	2	MO	M2	$8,000.00	$16,000.00	$3,500.00	$7,000.00	$15,015.00	$30,030.00	$3,500.00	$7,000.00	$10,000.00	$20,000.00	$10,540.00	$21,080.00	$2,000.00	$4,000.00
#1-3	Traffic Control, furnished, installed, complete and in place.	2	MO	M3	$1,000.00	$2,000.00	$1,375.00	$2,750.00	$5,005.00	$10,010.00	$600.00	$1,200.00	$3,500.00	$7,000.00	$4,015.00	$8,030.00	$5,000.00	$10,000.00
#1-4	Job Site Safety, furnished, installed, complete and in place.	2	MO	M4	$3,000.00	$6,000.00	$1,100.00	$2,200.00	$12,155.00	$24,310.00	$500.00	$1,000.00	$10,000.00	$20,000.00	$2,670.00	$5,340.00	$2,500.00	$5,000.00
#2-1	Preparation of Right-of-Way, furnished, installed, complete and in place.	0.5	ACRE	D1	$50,000.00	$25,000.00	$7,300.00	$3,650.00	$63,360.00	$31,680.00	$5,000.00	$2,500.00	$48,000.00	$24,000.00	$15,230.00	$7,615.00	$43,560.00	$21,780.00
#2-2	Unclassified Roadway Excavation (Depth ≤ 12"), complete and in place.	2,433	SY	D2	$48.00	$116,784.00	$1.00	$2,433.00	$26.34	$64,085.22	$2.00	$4,866.00	$9.87	$24,013.71	$8.25	$20,072.25	$25.00	$60,825.00
#3-1	Subgrade Preparation (Depth ≤ 6"), furnished, installed, complete and in place.	2,433	SY	G1	$27.00	$65,691.00	$2.00	$4,866.00	$15.26	$37,127.58	$2.00	$4,866.00	$9.00	$21,897.00	$3.25	$7,907.25	$12.50	$30,412.50
#3-2	Unclassified Embankment (Density Controlled), furnished, installed, complete and in place.	1,100	CY	G2	$48.00	$52,800.00	$46.50	$51,150.00	$100.03	$110,033.00	$60.00	$66,000.00	$45.00	$49,500.00	$60.25	$66,275.00	$123.00	$135,300.00

Bid Summary

120 Bid Requests were issued
7 Bids are listed above
0 NO BIDs were received
113 Bidders did not respond

PROJECT MANUAL

Project Name: Peggy-Sue Drainage Improvements
Project Number: D23-02

MAYOR

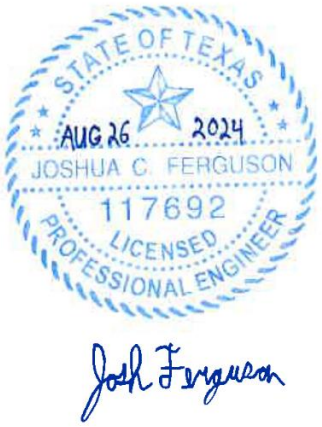
Lori Blong

COUNCIL MEMBERS

District 1	Scott Dufford	District 3	Jack Ladd
District 2	John Norman	District 4	Amy Stretcher Burkes
At-Large	Robin Poole	At Large	Eric Davidson

UTILITIES DIRECTOR

Carl Craigo, P.E.



Prepared by City of Midland, Texas
Engineering Services Division

August 2024

CONTENTS

PROCUREMENT AND CONTRACT DOCUMENTS

Cover Page.....001

Contents.....002

A Message for Our Vendors.....003

Bid Notice.....005

Instructions & Information For Bidders.....008

Notice to Bidders.....012

Affidavit of Eligibility.....014

Proposal.....015

Bid Items.....017

Pay Notes.....018

Bid Bond.....020

Contract.....023

Performance Bond.....029

Payment Bond.....031

Certificate of Payment.....033

General Conditions And Provisions.....035

Conflict of Interest Reporting Requirements.....059

Conflict of Interest Questionnaire – Form CIQ.....060

Special Provisions.....062

SPECIFICATIONS

City of Midland Standard Specifications.....070

A Message for Our Vendors

The City of Midland, Texas has developed a strategic plan with long-term objectives, new mission and vision statements, and a course of action to carry out goals established by and for our community. This includes strategic priorities that will address our economy, infrastructure, quality of life, standards for a safe and secure city, plus much more that's detailed below. We hope you join us on this exciting journey and to be part of the energy toward a successful and prosperous Midland!

Vision Statement

The City of Midland will be the premier and safest city in West Texas by providing world-class municipal services through operational excellence and a culture of innovation.

Mission Statement

Deliver exceptional services and promote a high quality of life and place for ALL our citizens.

Guiding Principles: I-FORCE

Integrity
Financial Stewardship
Outstanding Service
Respect
Collaboration
Excellence

City Council Key Focus Areas

Communication • Customer Service
Economic Development
Fiscal Responsibility & Accountability
High-Performing City Team • Legislation
Quality of Place • Technology Improvements

Core Values

Commitment: Duty to the public good.
Engagement: Foster partnerships and collaboration.
Excellence: Practice continuous improvement.
Innovation: Embrace creativity and cutting-edge solutions.
Integrity: Operate with transparency and accountability.
Inclusivity: Ensure all voices are heard and valued.

Strategic Goals

1. **Strong Economy with More Quality Jobs**
   - 1.1 Increase the Midland Sales Tax Base: Develop strategies to expand the tax base by attracting businesses and supporting local commerce.
   - 1.2 Enhance Visitor Revenue Opportunities: Boost tourism through marketing and infrastructure improvements.
   - 1.3 Continue Downtown and West Midland Redevelopment: Promote revitalization efforts for a vibrant downtown.
   - 1.4 Nurture Development Districts: Establish key action plans honed to enhance Development Districts.
   - 1.5 Grow the Core Business of Air Transportation: Develop and transform the Midland airport system.
   - 1.6 Diversify Midland's Economy: Support initiatives that diversify the local economy and enhance resilience.
   - 1.7 Expand Opportunities and Programming for General and Small Business: Foster the growth, retention, and expansion of local small businesses as well as business in general.
   - 1.8 Improve Speed to Market for Citizens, Builders, Developers, and Contractors: Reduce wait times for permit review/approval and inspection process of permitted work.
   - 1.9 Establish the Community as a Premier Destination for Retail and Entertainment: Offer unique and compelling experiences that draw visitors, ultimately driving economic growth and community vibrancy, while increasing tourism and business development.

2. Set the Standard for a safe and secure City

2.1 Enhance public safety programs.
2.2 Improve Pedestrian and Motorist Safety: Invest in traffic management and infrastructure.
2.3 Implement Effective Code Enforcement Strategies: Address nuisances to improve overall health and safety.
2.4 Revitalize Neighborhoods: Utilize best practices to support the redevelopment of neighborhoods.
2.5 Enhance Animal Services: Ensure the welfare of pets and wildlife in the city.
2.6 Grow and Retain Public Safety Resources: Expand law enforcement presence as well as fire reduction and prevention programs while reducing attrition.

3. Quality of Life and Place

3.1 Enhance Community Engagement: Champion innovative recreational, educational, and cultural programs that enrich residents' lives in partnership with the business community.
3.2 Foster Relationships with Foundations and Outside Businesses: Collaborate to create world-class facilities and amenities.
3.3 Create an Attractive and Inclusive Living Environment: Develop and enhance live, work, and play opportunities for our citizens.
3.4 Establish Beautification Programs: Implement initiatives to make the community clean and bright.
3.5 Nurture and Promote a Healthy Community: Increase healthy community living and education opportunities for citizens of all ages.
3.6 Build the Best Parks System in Our Region: Offer diverse, accessible, and enjoyable green spaces, tournament-ready ball fields, safe playgrounds, and unique recreational opportunities that enhance the quality of life/quality of place for our community.

4. Transparent and Consistent Communication

4.1 Set a Climate of Respect, Collaboration, and Team Spirit: Cultivate a culture of openness and respect.
4.2 Enhance Communication Efficiency and Effectiveness: Leverage and expand the use of technology to facilitate the exchange of information.
4.3 Elevate Internal Communication and Employee Engagement: Strengthen information flow and collaboration among city staff.
4.4 Advance Two-Way Communication of Key Messages: Engage effectively with external stakeholders; foster community engagement.
4.5 Strengthen Messaging Opportunities Through Various Media Outlets: Communicate the city's achievements and initiatives.

5. Provide Sound Governance and Fiscal Management

5.1 Recruit and Retain a Skilled and Diverse Workforce: Invest in talent and diversity; grow our local pipeline of skilled employees.
5.2 Enhance Citizen Experience: Improve employee working conditions to better serve citizens.
5.3 Hone Public Servant Proficiency: Cultivate a culture of professional growth, skilled mastery, and information exchange.
5.4 Implement Cutting-Edge Practices: Harness automation and Artificial Intelligence technology for efficient resource utilization.
5.5 Promote a Well-Balanced Customer Service Philosophy: Consistently deliver excellent service to residents.
5.6 Deliver Services Timely and Efficiently: Prioritize continuous improvement.
5.7 Ensure Continued Financial Stability and Accountability: Maintain financial transparency.
5.8 Deliver Effective and Efficient Processes: Maximize value in procurement.
5.9 Ensure Reliability and Safety: Maintain existing assets and develop new city asset opportunities, including parks and other facilities, with a standard of excellence.
5.10 Create a Work Environment that Supports Bleeding-Edge Practices: Encourage bleeding-edge practice that then cultivates an environment where employees can learn from their experiences and improve processes; thus, becoming a learning organization.

6. Strengthen and Sustain Our Infrastructure

6.1 Provide Reliable and Sustainable Utilities: Guarantee water supply and distribution systems security and longevity.
6.2 Enhance Infrastructure for Economic Growth: Improve competitiveness through infrastructure investments that includes collaboration with neighboring jurisdictions and exemplary peer agencies.
6.3 Streamline and Consolidate City Facilities: Create synergy for improved services.
6.4Standardize Infrastructure Processes Across the City: Ensure consistency, timeliness, and accountability in infrastructure development.
6.5 Implement a Funding Stream for Infrastructure: Establish reliable funding for continual improvements.
6.6 Strategically Track and Monitor City Growth: Develop proactive responses to growth patterns and trends.
6.7 Develop and Implement Comprehensive Road Planning and Maintenance Initiatives: Ensure safe and maintained roads for existing and new developing areas and main thoroughfares.

BID NOTICE

ATTENTION: All bidders who choose to mail bid packets must address them to one of the addresses below:

USPS Mailing Address:		***Physical Address for mail carriers other than USPS:***
City of Midland, Texas		**City of Midland, Texas**
Attn: City Secretary's Office	**OR**	**Attn: City Secretary's Office**
P O Box 1152		**300 North Loraine St, Suite 330**
Midland, TX 79702		**Midland, TX 79701**

If bid packets are delivered in person then bidders must drop the bid packets off at the first-floor front desk of City Hall before the bid opening deadline.

Sealed proposals, addressed to the Mayor and City Council of the City of Midland, Texas, for the furnishing of materials and labor together with other miscellaneous and appurtenant work will be received at the office of the City Secretary, City Hall, Midland, Texas, until 2:00 p.m. on the 18th day of September, 2024, and publicly opened and read aloud at that time.

Delivery of Submittals

Bid packets must be received in the City Secretary's Office no later than September 18, 2024 at 2:00 p.m. Bidders are responsible for the means of timely delivering the bid packet. Delays due to any instrumentality used to transmit the bid packet (e.g., delay occasioned by a bidder, City's internal mailing system, etc.) are the sole responsibility of the bidder. **Late bid packets will not be accepted under any circumstances.**

ATTENTION: The public bid opening will be in the City Council Meeting Chambers.

The Proposed Work provides for the furnishing of materials and labor for Peggy-Sue Drainage Improvements together with other miscellaneous and appurtenant work.

ATTENTION: A NON-MANDATORY PRE-BID MEETING will be held at 3:00 p.m. on Wednesday, September 11th, 2024 in the basement conference room of City Hall, 300 N. Loraine Street, Midland, Texas.

ATTENTION: All questions submitted before or after the Non-Mandatory Pre-Bid Meeting must be submitted via email to the following email address:

kjones@midlandtexas.gov

The deadline for submitting additional questions after the Non-Mandatory Pre-Bid Meeting is Noon on Friday, September 13, 2024. Questions submitted before the Noon deadline will be included in the Addendum that will go out that same day along with all discussion items, questions, answers, and any new information resulting from the Non-Mandatory Pre-Bid Meeting. Questions submitted after the Noon deadline will not receive any additional information and will instead only be directed to the information already provided.

Bids will be received on a unit price basis.

No Bid may be withdrawn within a period of 60 days after the date fixed for opening Bids.

"FAX" or telephone bids or modifications will not be accepted.

Bid Envelopes shall be plainly marked "Proposal for City of Midland".

ATTENTION: Information for bidders, proposal forms, specifications, and plans may be obtained by emailing purchasing@midlandtexas.gov.

A bid bond or proposal guaranty is to accompany the bid, thereby guaranteeing the good faith of the bidder and that the bidder will enter into the written contract. The guaranty is to amount to five percent (5%) of the total bid and must be in the form of cash or certified check, issued by a bank satisfactory to the City of Midland, or bid bond. If in the form of cash or certified check, it is expressly understood and agreed that the City of Midland is given the right to retain such as liquidated damages if such bidder withdraws its bid anytime after such bid is opened and before official rejection of such bid, or if successful in securing the awarded thereof, such bidder fails to enter into the contract and furnish satisfactory performance and payment bonds. If a bid bond is submitted, it shall be executed on forms contained in these contract documents by a corporate surety authorized to do business in the State of Texas and acceptable to the City of Midland.

WAIVER OF ATTORNEY FEES

BY SUBMITTING A 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 OWNER, 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 BIDDER SPECIFICALLY AGREES THAT IF THE BIDDER 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 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 CONTRACT. THE BIDDER FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE OWNER AND THE BIDDER. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

WAIVER

BIDDER'S 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).

City of Midland

Marcia Bentley-German
City Secretary

Form Revised August 2024

INSTRUCTION AND INFORMATION FOR BIDDERS

1. LOCATION AND EXTENT OF WORK

The work and construction contemplated to be accomplished under this Contract is located in the City of Midland, Texas, and consists of municipal public works projects as set forth in the proposal.

The location and details for the construction and related work are shown upon a set of drawings dated August 21, 2024 and February 20, 2024 and numbered from C-01 (01) through C-11 (11) inclusive. These drawings and plans, together with the specifications, form a part of the Contract. Where figures are shown on the drawings, they shall take precedence over scaled distances and dimensions.

2. TIME AND PLACE OF RECEIVING BIDS

All bids shall be sealed, addressed to the Mayor and City Council of the City of Midland, Texas, and will be received by the City Secretary in her office at City Hall, 300 N. Loraine Street, Midland, Texas, mailing address is P.O. Box 1152, Midland, Texas 79702, until time stated on the Advertisement for Bids.

3. PREPARATION OF BID FORM

Bids shall be submitted only on the forms provided therefore in the Contract Documents, and must not be submitted in letter form or in any other form. They shall be filled out in ink in both script and figures. The Proposal form provided in the Contract Documents sets forth in detail the various items and approximate quantities thereof contained in the Project. Bids submitted in any other form will be considered irregular and will be returned to the Bidder without receiving consideration by the Owner.

All bids must be submitted in sealed envelopes bearing on the outside the name of the Bidder, his address, and the name of the Project for which the bid is submitted. It is the sole responsibility of the Bidder to see that his bid is received in proper time. Any bid received after the scheduled closing time for receipt of bids will be returned to the Bidder unopened.

The bid must be signed in the name of the Bidder and must bear the signature in longhand of the persons duly authorized to sign the bid.

Changes in or additions to the bid form, recapitulations of the work bid upon, alternative proposals, or any other modification of the bid form which is not specifically called for in the Contract Documents may result in the Owner's rejection of the bid as not being responsive to the invitation. No oral or telephonic modification of any bid submitted will be considered and a telegraphic modification may be considered only if the postmark evidences that a confirmation of the telegram duly signed by the Bidder was placed in the mail prior to the opening of bids.

The bid submitted must not contain any erasures, interlineations or other corrections unless each such correction is suitably authenticated by affixing in the margin immediately opposite the correction the surnames of the person or persons signing the bid.

4. EXAMINATION OF SITE, DRAWINGS, ETC

Each Bidder is requested to visit the site of the proposed work and fully acquaint himself with the conditions relating to the construction and labor so that he may fully understand the facilities, difficulties and restrictions attending the execution of the work under the Contract. Bidders shall thoroughly examine and be familiar with the Plans and the Specifications. The failure or omission of any Bidder to receive or examine any form, instrument, addendum or other document or to visit the site and acquaint himself with conditions there existing shall in no way relieve any Bidder from obligations with respect to his bid or to the Contract. The submission of a bid shall be taken as prima-facie evidence of compliance with this section.

5. WITHDRAWAL OF BIDS

Any Bidder may withdraw his bid, either personally, by written request, or by telegraphic request confirmed in the manner specified above, at any time prior to the scheduled closing time for receipt of bids.

6. AGREEMENT AND BONDS

The successful Bidder will be required to furnish a Performance Bond, and a Payment Bond, 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, and 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.

7. INTERPRETATION OF PLANS AND DOCUMENTS

If any person contemplating submitting a bid for the proposed Contract is in doubt as to the true meaning of any part of the Plans, Specifications, or other Contract Documents or finds discrepancies in, or omissions from the Plans or Specifications, he may submit to the Owner written request for an interpretation or correction thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation or correction of the Contract Documents will be made only by Addendum duly issued and a copy of such addendum will be mailed or delivered to each person receiving a set of such Contract Documents. The Owner will not be responsible for any other explanations or interpretations of the Contract Documents. No oral interpretations of any provision in the Contract Documents will be made to any Bidder.

8. BIDDERS INTERESTED IN MORE THAN ONE BID

No person, firm or corporation shall be allowed to make, or file more than one bid for the same work unless alternate bids are specifically called for. A person, firm or corporation that has submitted a sub-proposal to a Bidder, or that has quoted prices of materials to a Bidder is not thereby disqualified from submitting a sub-proposal or quoting prices to other Bidders or making a prime proposal.

9. AWARD OF CONTRACT

The Owner reserves the right to reject any or all bids submitted and not make an award. The Owner also reserves the privilege of accepting any item as a separate contract or the combination of items of a contract. The Owner and Bidder agree that, if the Contract is awarded, that it will be awarded to either the lowest responsible bidder/proposer, or to the bidder/proposer 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. Further, the Owner reserves all rights granted by Section 271.027 of the Texas Local Government Code. The Owner reserves the right to award the bid to the lowest responsible bidder.

10. OPENING OF BIDS

Bidders are invited to be present at the opening of the Proposals. All Proposals shall be made and received with the understanding that the Bidder accepts the terms and conditions contained in the Contract Documents.

11. COMPARISON OF BIDS

All bids will be compared on the basis of the Proposal.

12. BID GUARANTY

A Certified Check, Bank Money Order, issued by a bank satisfactory to the Owner, or a Bidder's Bond on the form provided and approved by the City Attorney, in the amount of five percent (5%) of the largest possible lump sum bid submitted, payable without recourse to the Owner, must accompany the Bidder's Proposal, as a guaranty that the Bidder will enter into a Contract and execute the required Performance 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 Proposals shall remain in effect for a period of thirty (30) days after date of bid opening.

13. CONTRACT DOCUMENTS

The complete Contract Documents may include the following: (1) Notice to Bidders, (2) Instructions and Information for Bidders, (3) Proposal, (4) Experience Record, (5) Bid Bond, (6) Contract Agreement, (7) Performance Bond, (8) Payment Bond, (9) Insurance Certificate, (10) General Conditions, (11) Special Conditions, (12) Detailed Specifications all of which are bound together, and/or (13) Certificate of Payment. The Contract Documents shall also include Drawings or Detailed Plans for the proposed work. A complete set of the Contract Documents and the detailed plans are on file in the Office of the City Secretary.

14. TIME ELEMENT

The work to be done under this Contract shall be commenced within fifteen (15) days from the date of the notice from the City to the Contractor to commence work. The Contractor shall commence performance of the Contract on the date stated in the City's notice to the Contractor to proceed and shall complete the performance of the Contract without delay.

15. PAYMENTS

Payments to the Contractor will be based upon the prices stated in the proposal and upon basis of the work performed as determined by the Engineer. The Engineer's determination shall be considered as final unless changes are authorized by the City in writing which shall affect the work. Upon issuance of the Certificate of Completion, the Engineer shall proceed to take final measurements and prepare a final statement of the value of all work performed and materials furnished under the terms of the agreement and shall certify same to the Owner who shall pay to the Contractor on or after the 30th day, and before the 35th day, after the date of the

Certificate of Completion, the balance due the Contractor under the terms of this agreement, provided he has fully performed his contractual obligations under the terms of this Contract, and said payment shall become due in any event upon said performance by the Contractor. Notwithstanding any provision of these Contract documents to the contrary, it is expressly understood and agreed by the parties hereto that neither the Certificate of Acceptance, nor the final or any other payment hereunder, nor any partial or total occupancy or possession of the project by the Owner, shall relieve the Contractor of his responsibility for completion of the entire project in a good workmanlike manner and in full compliance with the plans and specifications and the fulfillment of any warranties which may be required in the Contract documents.

Revised August 2024

NOTICE TO BIDDERS

IF THIS PURCHASE REQUIRES A CONTRACT, THE ATTACHED **CONTRACT AND INSURANCE REQUIREMENTS ARE NON-NEGOTIABLE**. MODIFICATIONS BY BIDDER/CONTRACTOR OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE BID. NON-RESPONSIVE BIDS WILL BE REJECTED. BIDDER/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.

IF THE SELECTED BIDDER/CONTRACTOR 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/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.

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.

CITY OF MIDLAND

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;

(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: Dufrane Construction, LLC.

Local Address (must be within the City limits): 400 East Broadway, Andrews, TX 79714

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: NA
4. If you collect sales tax for ANY class of customer, provide the following Reseller information:

   Reseller Permit Number: 1464258640 9

   Company Name and Address (as it appears on permit):

   Dufane Construction, LLC.
   PO Box 1177
   Andrews, TX 79714

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: Dusty McInturff Date: 9/18/24

Printed Name and Title: Dusty McInturff Project Manager

PROPOSAL

Project Name: Peggy-Sue Drainage Improvements
Project Number: D23-02

TO: Honorable Mayor and City Council
City of Midland
Midland, Texas

Gentlemen: The undersigned bidder, having examined the drawings, specifications, and contract documents, the location of the proposed work, and being fully advised as to the extent and character of the work, proposes to furnish all material, equipment, and to perform all labor and work necessary for the completion of the construction of the work described by and in accordance with the attached drawings, specifications, and contract, for the following prices, to wit:

(See Bid Items sheets for Proposal's item breakdowns, descriptions, quantities, units, unit prices, total amounts, and Pay Notes references.)

For the sum of EIGHTY-NINE THOUSAND NINE HUDRED FIFTY dollars
and ZERO cents total.

The undersigned bidder hereby declares that he has visited the site of the work and has carefully examined the contract documents pertaining to the work covered by the above bid. The selected contractor will receive written notice to proceed.

Bidders agree to substantially complete all work within 60 Days calendar days after reciept of notice to proceed.

PUBLIC INFORMATION

To the extent that Bidder is submitting a bid for a contract described by Section 552.371 of the Texas Government Code, Bidder 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 this bid, and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

Enclosed herewith in this proposal is a cashier's check, cash or bid bond on a form approved by the City Attorney, for FOUR THOUSAND NINE HUNDRED NINETY-SEVEN dollars
and FIFTY cents total. ($ 4,997.50)
which it is agreed shall be collected and retained by the owner as liquidated damages in the event this proposal is accepted by the Owner within thirty days (30) after the date advertised for the reception of bids and the undersigned fails to execute the contract and required bonds with the owner, under the conditions thereof, within (15) days after the date said proposal is accepted; otherwise said check or bond shall be returned to the undersigned on demand.

DUFRANE CONSTRUCTION LLC

Name of Contractor

Submitted By | Dusty McInturff Project Manager

Print Name and Title

PO BOX 1177

Mailing Address

ANDREWS | TX | 79714

City | State | Zip

BID ITEMS

(See Proposal sheet for additional information.)

Project Name: Peggy-Sue Drainage Improvements
Project Number: D23-02

Miscellaneous Items

Item No.	Description	Quantity	Unit	Pay Note	Unit Price	Total Amount
1)	Mobilization, furnished, installed, complete and in place.	2	MO	M1	$ 7,950.50	$ 15,901.00
2)	Erosion/Sediment Control, furnished, installed, complete and in place.	2	MO	M2	$ 3,500.00	$ 7,000.00
3)	Traffic Control, furnished, installed, complete and in place.	2	MO	M3	$ 1,375.00	$ 2,750.00
4)	Job Site Safety, furnished, installed, complete and in place.	2	MO	M4	$ 1,100.00	$ 2,200.00
Total Miscellaneous Items 1 - 4						$ 27,851.00

Demolition Items

Item No.	Description	Quantity	Unit	Pay Note	Unit Price	Total Amount
1)	Preparation of Right-of-Way, furnished, installed, complete and in place.	0.50	ACRE	D1	$ 7,300.00	$ 3,650.00
2)	Unclassified Roadway Excavation (Depth ≤ 12"), complete and in place.	2433	SY	D2	$ 1.00	$ 2,433.00
Total Demolition Items 1 - 2						$ 6,083.00

Grading Items

Item No.	Description	Quantity	Unit	Pay Note	Unit Price	Total Amount
1)	Subgrade Preparation (Depth ≤ 6"), furnished, installed, complete and in place.	2433	SY	G1	$ 2.00	$ 4,866.00
2)	Unclassified Embankment (Density Controlled), furnished, installed, complete and in place.	1100	CY	G2	$ 46.50	$ 51,150.00
Total Paving Items 1 - 2						$ $56,016.00

Price For:	
1. Miscellaneous Items	$ 27,851.00
2. Demolition Items	$ 6,083.00
3. Grading Items	$ 56,016.00
Total Price	$ 89,950.00

PAY NOTES

D23-02

PEGGY-SUE DRAINAGE IMPROVEMENTS

Bid Item		Pay Quantity Note
Bid Items		
1	Mobilization	M1
2	Erosion/Sediment Control	M2
3	Traffic Control	M3
4	Job Site Safety	M4
Demolition Items		
1	Preparation of Project Site	D1
2	Unclassified Excavation (Depth ≤ 12")	D2
Grading Items		
1	Subgrade Preparation (Depth ≤ 6")	G1
2	Unclassified Embankment (Density Controlled)	G2

PAY QUANTITY NOTES

M1 Includes the necessary equipment, labor, materials, and incidentals for all Mobilization to the job site complete and in place. Measurement and payment to be made per month.

M2 Includes the necessary equipment, labor, materials, and incidentals to implement the Erosion Control Plan per the construction drawings and City of Midland standards and specifications. Measurement and payment to be made per month.

M3 Includes the necessary equipment, labor, materials, and incidentals to implement the Traffic Control per the approved Traffic Control Plan. Any required traffic control devices are to meet the City of Midland Traffic Division Standards. Measurement and payment to be made per month.

M4 Includes the necessary equipment, labor, materials, and incidentals to implement Job Site Safety and to provide a safe work environment for the project work area (including all personal protection equipment, trench safety, etc.) per the construction drawings and in compliance with all applicable Federal, State, and Local requirements or regulations including those of OSHA and the City of Midland. JOB SITE SAFETY IS THE RESPONSABILITY OF THE CONTRACTOR. Measurement and payment to be made per month.

D1 Includes the necessary equipment, labor, materials, and incidentals for Preparation of Project Site per the construction drawings and City of Midland standards and specifications including removal and disposal of all obstructions from the project construction area and easements where removal of such obstructions is not indicated in the consturction drawings, all scraping and preservation of top soil, and including all clearing, grubbing, and appurtenances. Measurement and payment to be made per acre measured along the ground surface.

D2 Includes the necessary equipment, labor, materials, and incidentals for Unclassified Excavation per the construction drawings and City of Midland standards and specifications including all existing pavement and sub-structure removal, unclassified excavation, material removal, and appurtenances. Measurment and payment to be per square yard of material removed measured along the ground surface.

G1 Includes the necessary equipment, labor, materials, and incidentals for Subgrade Preparation per the construction drawings and City of Midland standards and specifications, including all proof-rollling, sub-grade reworking, scarifying, compaction, and appurtenances. Measurement and payment to be made per square yard measured along the ground surface.

G2 Includes the necessary equipment, labor, materials, and incidentals for placement of Unclassified Embankment per the construction drawings and City of Midland standards and specifications, including all sprinkling, rolling, correction of soft spots, grading, sloping, compaction, and appurtenances. Measurement and payment to be made per each cubic yard placed.

BID BOND

THE STATE OF TEXAS §

COUNTY OF MIDLAND § SURETY NO _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____ (Hereinafter called the Principal), as Principal, 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 submitted a Bid or Proposal to enter into a certain written contract for the construction of Peggy-Sue Drainage Improvements.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully, enter into such written Contract, then this obligation shall be void; otherwise to remain in full force and effect.

IT IS EXPRESSLY UNDERSTOOD AND AGREE that if said Principal should withdraw its Bid anytime after such Bid is opened and before official rejection to such Bid or, if successful in securing the award thereof, said Principal should fail to enter into the Contract and furnish satisfactory Performance Bond and Payment Bond, the Obligee, in either of such events, shall be entitled and is hereby given the right to collect the full amount of this Bid Bond as liquidated damage.

PROVIDED, further that if any legal action be filed upon this Bond venue shall lie in Midland County, Texas.

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

National Bank of Andrews
P.O. Box 629 · 1501 North Main
Andrews, TX 79714
432-523-6800

"Andrews is MY Town"

88-1171/1123

028820

DATE 09/17/2024

$ 4,497.50

PAY TO THE ORDER OF CITY OF MIDLAND

$4,497.50 DOLLARS

DOLLAR FOUR COMMA FOUR NINE SEVEN PERIOD FIVE ZERO

NOTICE TO CUSTOMER: The purchase of an indemnity bond will be required before this check will be replaced or refunded in the event it is lost, misplaced, or stolen.

CASHIER'S CHECK

MEMO BID SECURITY FOR PROJECT
REMITTER DUFRANE CONSTRUCTION LLC

AUTHORIZED SIGNATURE

⑈028820⑈ ⑆112311713⑆ 006009⑈

PACKET

10.28

October 22, 2024

CONTRACT

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

THIS CONTRACT, made and entered into this 23rd day of October, 20 24, by and between the City of Midland of the County of Midland and State of Texas, acting through its Mayor thereunto duly authorized so to do, Party of the First Part, hereinafter termed OWNER, and Dufrane Construction, LLC of the City Andrews, County of Andrews, State of TX, Party of the Second Part, herein-after termed CONTRACTOR.

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Party of the first Part (OWNER), and under the conditions expressed in the bond bearing even date herewith, the said Party of the Second Part (CONTRACTOR), hereby agrees with the said Party of the First Part (OWNER) to commence and complete the construction of certain improvements described as follows: Peggy-Sue Drainage Improvements together with appurtenances and incidentals.

Conditions of the Contract and at his (or their) own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendent, labor, insurance and other accessories and services necessary to complete the said construction in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to the Contractors, General and Special Conditions of Agreement, Plans and other drawings and printed or written explanatory matter thereof, and the Specifications and addenda therefore as prepared by Engineering and Transportation Department of the City of Midland, Texas, herein entitled the ENGINEER, together with the CONTRACTOR'S written Proposal, the General Conditions of the Contract, and the Performance and Payment Bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Contract.

The CONTRACTOR hereby agrees to commence work within fifteen (15) calendar days after the written notice to do so and to substantially complete the same within 60 calendar days after receipt of notice to proceed, subject to such extensions of time as are provided by the General and Special Conditions.

The OWNER agrees to pay the CONTRACTOR in current funds the price or prices shown in the proposal, which forms a part of this Contract, such payments to be subject to the General and Special Conditions of the Contract.

The SUM TOTAL of this Contract shall be: $89,950.00.

INSURANCE

Contractor 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 Contractor 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 insurance shall name the City as an additional insured and waive subrogation in favor of the City.

The Workers' Compensation coverage provided by Contractor shall inure to the benefit of employees injured during the course and scope of their employment by Contractor 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 Contractor's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

Contractor 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, Contractor 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 Contractor 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 Contractor 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 Contractor.

WAIVER OF ATTORNEY FEES

WAIVER OF ATTORNEY FEES: BY EXECUTING THIS CONTRACT, CONTRACTOR AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE OWNER, 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 CONTRACTOR SPECIFICALLY AGREES THAT IF THE CONTRACTOR 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 AMEDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE CONTRACTOR AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CONTRACTOR MIGHT OTHERWISE BE ENTITLED.

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

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

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.

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.

COMPLIANCE – Contractor agrees that it shall comply with Texas Government Code Section 2252.908, *et seq.*, as amended. Contractor agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended.

VERIFICATION

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

- that Contractor does not boycott Israel and will not boycott Israel during the term of this Contract;
- that Contractor does not boycott energy companies and will not boycott energy companies during the term of this Contract; and
- that Contractor 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 Contractor shall be deemed to have not made such verification.

RECORDS RETENTION AND PRODUCTION OF INFORMATION

To the extent that this Contract is a contract described by Section 552.371 of the Texas Government Code, Contractor shall (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the City of Midland for the duration of the contract, (2) promptly provide to the City of Midland any contracting information related to the Contract that is in the custody or possession of Contractor on request of the City of Midland, and (3) on completion of the Contract, either (i) provide at no cost to the City of Midland all contracting information related to the Contract that is in the custody or possession of Contractor, or (ii) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the City of Midland.

PUBLIC INFORMATION

To the extent that this Contract is a contract described by Section 552.371 of the Texas Government Code, Contractor 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 the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

IN WITNESS WHEREOF, the parties to these presents have executed this Agreement in the year and day first above written.

Parties of the First Part (Owner)

By: _____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED ONLY AS TO FORM:

By: _____
John Ohnemiller, City Attorney

By: _____
Party of the Second Part (CONTRACTOR)

By: _____
Title

THE STATE OF _____ §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this _____ day of _____, 20__ personally appeared _____, an officer of Dufrane Construction, LLC, 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 an 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 _____ day of _____, 20_____

_____
Notary Public

Form Revised August 2024

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 ___Peggy-Sue Drainage Improvements_____ , 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

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 Peggy-Sue Drainage Improvements, 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

CERTIFICATE OF PAYMENT

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

_____Peggy-Sue Drainage Improvements_____

The undersigned states that all debts, bills, and expenses that were incurred by the undersigned, his agents, or subcontractors employed by him, for labor, wages, materials and other purposes furnished for the above project have been paid and satisfied in full.

The undersigned, as general contractor for the above described project agrees to indemnify, hold harmless and defend the City, its officers, agents, and employees, from and against all claims and suits for damages, expenses, including court costs and attorney fees, arising out of or resulting from the undersigned contractor, his agents or subcontractors employed by him for expenses, warranties for items furnished, or labor performed and for any party that has supplied materials in connection with the repair or construction of the above referenced premises.

The undersigned contractor agrees to waive any and all claims it may have against the City, associated with, resulting from or arising out of the work performed at the above premises.

Further, the undersigned states that all labor performed by the undersigned, his agents, and subcontractors employed by him, has been completed in the usual and customary workmanlike manner and all work performed is accompanied with the usual and appropriate warranties for such work or repair, absent any disclaimer previously approved by the City of Midland.

I, the undersigned, release and relinquish unto the City of Midland, and their assigns the above described lien upon the above referenced property and hereby certify that all debts, bills, and expenses incurred by the undersigned, his agents, or subcontractors employed by him in connection with work done at the above

premises have been fully paid, in exchange for payment in full to be made by the City of Midland for the performance on the above described premises.

WITNESS MY HAND on this _____ day of _____, 20_____.

_____
Signature

_____
Typed or Printed Name

_____
Title

_____
Name of Company

SUBSCRIBED AND SWORN to before me on the _____ day of _____, 20_____.

_____
Notary Public, State of Texas

_____
Typed or printed name

_____
My Commission expires:

Form Revised August 2024

GENERAL CONDITIONS AND PROVISIONS

1. DEFINITIONS

The following terms as used in this contract shall be defined and interpreted as follows:

(a) “Contract” or “This Contract” or “Agreement”: The particular Contract executed by the Contractor and the Owner of which these general conditions are integral parts.

(b) “Contractor”: The person, firm or corporation to whom this Contract is awarded by the Owner and who is a party thereto.

(c) “Owner”, “City”, or pronouns instead: The entity that is a party to this Contract, contracting under the official name of the City of Midland, Texas or the City Council of the City of Midland.

(d) The words "as directed", "as required", "as permitted", "acceptable to", "satisfactory", and the words of like import, shall mean that the direction, requirement or permission of the Engineer is intended.

(e) “Engineer”: The word “Engineer” used in these specifications or in this Contract means the duly authorized representative or agent of the Owner supervising the performance of the Contract and representing the Owner in his Contractual relations and negotiations with the Contractor during the period of construction. The Engineer will be represented by assistants and inspectors authorized to act for him. On all questions concerning the acceptability of material or equipment, the classifications of material, the execution of the work, conflicting interest of Contractors performing related work and the determination of costs, the decision of the Engineer shall be final, but shall not relieve the Contractor of his responsibility for completion of the entire work in a good and workmanlike manner and in full compliance with the plans and specifications.

Inspectors are required to see that all the provisions of the Contract specifications are faithfully adhered to. Any inspector may, if authorized by the Engineer, stop the work entirely if there is not sufficient quantity of suitable and approved material on the ground to carry it on properly, or for any other good and sufficient cause. Any work done in the absence of an inspector may be ordered opened up for thorough examination, and must be rebuilt or replaced at the Contractors sole expense if found to be deficient or not in accordance with the plans and specifications. But no approval by an inspector shall be construed as an acceptance of defective or improper work or material, which must be rebuilt or properly replaced whenever discovered. Inspectors have not the power to give orders or directions under any possible circumstances, except as herein defined and provided, and on authority of the Engineer

(f) "Subcontractor": Any person, firm or corporation other than an employee of the contractor, supplying, for and under agreement either with the Contractor or any subcontractor of the Contractor, labor or material, or both, at the site of the project in connection with this Contract.

(g) "Project": The structure or improvement to be constructed in whole or in part through the performance of this Contract.

(h) "Work on the Project": Such work as is performed or ordinarily would be performed at the site of the project.

(i) "Surety": Any firm or corporation executing a Surety Bond or Bonds payable to the Owner securing the performance of the Contract either in whole or in part.

(j) Whenever certain articles are specifically mentioned, by brand name or name of the manufacturer, such materials shall be taken as standard and guide for quality, operation, capacity, etc. The term "or equal" shall mean that articles of equal characteristics as required, but of different brand or manufacturer, may be substituted and accepted, subject in all instances to the approval of the Engineer.

(k) "Special Provisions", "Special Conditions", "Project Specific Specification" or "Job Specific Specifications" are included as amendment of and/or additions to the General Conditions and/or Standard Specifications for the particular project in which they are included and will take precedence over the General Conditions and Standard Specifications only in so far as the amendments and/or additions. All other provisions in the General Conditions and/or Standard Specifications will not be affected.

(l) "Drawings" "Contract Drawings", "Plans" "Detail Drawings" "Detail Sheets" or "Plans and Details" refers to the set of drawings which show the details for the construction and related work anticipated on this project and upon which bids are being solicited.

2. CONFLICT OF PROVISIONS

Unless it is specifically provided otherwise, any provision in any other part of this Contract which may be in conflict or inconsistent with any provision in the General Conditions and Provisions shall be void to the extent only of such conflict or inconsistency.

3. DUTIES AND RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall have charge of and shall be responsible for the entire work under this Contract until its completion and acceptance by the city. A competent superintendent, foreman or other representative, invested with sufficient authority to conduct the work properly, shall be maintained on the work at all times.

It is expressly agreed and understood that no decision of the Engineer or any certificate issued nor payment made to the Contractor nor partial or entire use or occupancy of the work by the Owner, shall be an acceptance of any work or materials not in accordance with this Contract, nor constitute a waiver of the Contractor's responsibility to perform the entire work in a good and workmanlike manner and in accordance with the plans and specifications.

4. TIME ELEMENT

The work shall be commenced and finished within the time set out in the Form of Contract.

The time of completion of this Contract is an essential element and consideration. Since, therefore, time is of the essence thereof, and in the event of delay in the completion of the entire work required hereunder beyond the period prescribed, or beyond the period for which time may be extended by authority of the Owner for good cause shown, the Owner shall be paid damages for such delay. Inasmuch as the amount of such damages is difficult to ascertain, it is hereby stipulated and agreed that such damages shall be liquidated and the Owner shall be paid damages at the rate as set forth in the Special Provisions, said damages to be paid to the Owner for each and every day that the Contractor be in default in completing the entire work required under this Contract. The Owner shall have the right to deduct such amounts from any monies due, or which may become due, under

this Contract. In the event that no amount for such damages is shown in the Special Provisions of these specifications, it is agreed that the amount of damages shall be Five Hundred dollars ($500.00) per day.

If during the progress of the work weather conditions, or other circumstances beyond the control of the Contractor should prevail to the extent that the work cannot be prosecuted and completed within the time specified in the Contract, the Contractor shall file with the Engineer within one week of the occurrence of such delay a request for a credit on the time of completion. Unless the Contractor files such request, the liquidated damages specified above will be enforced.

5. PAYMENT TO CONTRACTOR

ESTIMATED QUANTITIES:

This Contract, including the specifications, plans and estimate, is intended to show clearly all work to be done and material to be furnished hereunder. Where the estimated quantities are shown for the various classes of work to be done and material to be furnished under this Contract, they are approximate and are to be used only as a basis for estimating the probable cost of the work and for comparing the proposals offered for the work. It is understood and agreed that the actual amount of work to be done and material to be furnished under this Contract may differ somewhat from these estimates, and that where the basis for payment under this Contract is the unit price method, payment shall be for the actual amount of such work done and the material furnished.

Where payment is based on the unit price method, the Contractor agrees that he will make no claim for damages, anticipated profits or otherwise on account of any differences which may be found between the quantities of work actually done, the material actually furnished under this Contract and the estimated quantities contemplated and contained in the proposal provided, however, that in case the actual quantity of any major item should become as much as twenty percent (20%) more than, or twenty percent (20%) less than the estimated or contemplated quantity for such items, then either party of this agreement, upon demand, shall be entitled to a revised consideration upon the portion of the work above or below twenty percent (20%) of the estimated quantity.

A "Major Item" shall be construed to be any individual item incurred in the proposal that has a total cost equal to or greater than five percent (5%) of the total Contract cost, computed on the basis of the proposal quantities and the Contract unit price.

Any revised consideration is to be determined by agreement between the parties, otherwise by the terms of this Contract, as provided under "Extra Work".

PAYMENT; RETAINAGE:

On or before the 1st day of each month the Contractor shall prepare an itemized statement showing the total value of the work completed by the Contractor up to and including the 25th day of the preceding month; said statement shall also include the value of all sound materials delivered on the site of the work that are to be fabricated into the work. NO ESTIMATE WILL BE MADE ON UNCOMPLETED PORTIONS OF THE WORK.

After all work is completed by Contractor, 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 and all subsequent Change Orders, the City may thereafter issue payment to Contractor in the amount of the contract and all Change Orders. The City shall be the final judge of when the

work is completed by Contractor. The City, in its sole discretion, shall determine if the work under the contract and under any Change Orders has been done to the City's requirements.

The City may make periodic payments to Contractor; 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 Contractor 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 end of 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.

FINAL COMPLETION AND ACCEPTANCE:

Within ten (10) days after the Contractor has given the Engineer written notice that the work has been completed, or substantially completed, the Engineer and the Owner shall inspect the work and within said time, if the work be found to be completed or substantially completed in accordance with the Contract documents, the Engineer shall issue to the Owner and the Contractor his Certificate of Completion.

FINAL PAYMENT:

Upon the issuance of the Certificate of Completion, the Engineer shall proceed to make final measurements and prepare final statement of the value of all work performed and materials furnished under the terms of the Contract and shall certify same to the Owner, who shall pay to the Contractor the balance due the Contractor under the terms of this Contract, provided he has fully performed his obligations under the terms of this Contract. Notwithstanding any provision of these Contract Documents to the contrary, it is expressly understood and agreed by the parties hereto that neither the certificate of acceptance, nor the final or any other payment hereunder, nor any partial or total occupancy or possession of the project by the Owner, shall relieve the Contractor of his responsibility for completion of the entire project in a good and workmanlike manner and a full compliance with the plans and specifications and the fulfillment of any warranties which may be required in the Contract Documents.

6. OWNER'S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION THEREOF

In addition to the amount which the Owner may otherwise retain under the Contract, the Owner may withhold a sufficient amount or amounts of any payment or payment otherwise due to the Contractor, as in this judgment may be necessary to cover:

(a)Payments which may be past due and payable for just claims against the Contractor or any subcontractor for labor or materials furnished for the performance of this Contract.

(b)For defective work not remedied.

(c) For failure of the Contractor to make proper payments to his subcontractors.

7. CERTIFICATE OF PAYMENT

Contractor shall, prior to issuance of final payment pursuant to the terms herein stated, provide proof satisfactory to the owner that all debts, bills and expenses incurred by the Contractor, his agents, employees or subcontractors employed by him, for labor, wages, materials and other purposes, in the furtherance of this

project, have been paid and satisfied in full. Satisfactory proof shall consist of an executed Certificate of Payment.

8. EXTRA, ADDITIONAL OR OMITTED WORK PAYMENT

The Owner, upon proper action by its governing body, may require changes in this Contract, or additions to, or deductions from the work to be performed or the materials to be furnished pursuant to this Contract. No employee, agent or representative of the Owner, with the exception of the governing body authorized to award this Contract, has any power to approve any change in this Contract and it is the responsibility of the Contractor before proceeding with any change to satisfy himself that the change has been properly authorized on behalf of the Owner. No charge for any extra work or other change in the Contract will be allowed unless the extra work or change has been authorized in writing by the Owner, or its duly authorized representative, and the price therefore is stated in such written authority.

Adjustments, if any, in the amounts to be paid the Contractor where such adjustments are made by reason of additions to or deductions from the quantities of units or items bid upon in the proposal schedules, shall be paid for in accordance with the provisions of the Specifications, at the unit and/or lump sum prices bid in such proposal schedules.

Adjustments, if any, in the amounts to be paid the Contractor where such adjustments are made by reason of additions of items not appearing in the proposal schedules, or addition of work of such a nature that unit and/or lumps sum prices contained in the proposal schedules cannot reasonably or equitably be applied to provide proper payment therefore, the payment to the Contractor for such work shall be determined by one or more of the following methods:

(a) By an acceptable lump sum proposal from the Contractor.

(b) By unit prices contained in the Contractor's proposal and incorporated in the Contract or fixed by subsequent agreement between the Owner and the Contractor.

(c) By a cost method pursuant to which the Contractor shall be paid the costs of the change or addition. He shall be required to keep and present in such form as the Owner may direct, a correct account of the cost of the change or addition, together with all vouchers therefore. The cost may include an allowance for overhead and profit not to exceed fifteen percent (15%) of the net cost.

In computing the cost, there shall be considered reasonable and proper net expenditures for labor, materials, power tools and equipment, pro rata charges for foremen, deductions for social security, old age and unemployment benefits and workmen's compensation insurance and surety bond premium. In computing cost of machinery and equipment involved in additional work, the amount to be paid shall be not more than one hundred percent (100%) of the latest schedule of "Equipment Ownership Expense" adopted by Associated General Contractors of America. No overhead and profit shall be allowed on the deductions for Social Security, old age and unemployment benefits. All other expenditures shall be treated as overhead costs.

No extra work shall be performed or change made unless in pursuance of a written order from the Owner stating that the extra work or change is authorized and no claim for an addition to the Contract sum shall be valid unless so ordered; provided, however, that nothing in this Article shall excuse the Contractor from proceeding with the prosecution of the work so changed.

The Contractor shall, when required by the Owner, furnish an itemized breakdown of the quantities and prices used in computing the value of any change, addition or deduction that might be ordered.

If the Contractor should claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation obligated or may obligate the Owner to pay additional compensation to the Contract, or constitutes a waiver of any provision in the Contract, he shall notify the Owner in writing of such claim within ten (10) days from the date he has actual or constructive notice of the factual basis supporting the claim. The Contractor's failure to notify the Owner within such ten (10) days period shall be deemed a waiver and relinquishment of any such claim against the Owner. The procedure for consideration of such claims shall be as stated in this Article.

9. ASSIGNMENT OF CONTRACT

The Contractor shall not assign this Contract or any part thereof, nor any monies due or to become due thereunder without the prior written consent of the Owner. No assignment of this Contract shall be valid unless it shall contain a provision that the funds to be paid to the assignee under the assignment are subject to a prior lien for services rendered or material supplied for performance of the work called for under this Contract in favor of all persons, firms, or corporations rendering such services or supplying such materials.

10. SUBCONTRACTORS

Specialty subcontractors may be utilized for the performance of such parts of the work under this Contract as, under normal practices, are performed by Specialty subcontractors, unless the Owner determines that the Contractor has heretofore customarily performed such specialty work with his own organization and is equipped to do so, or unless the Owner determines that performance of the specialty work by Specialty subcontractors will result in increased costs or inordinate delays.

The Contractor shall not subcontract any work to be performed or any materials to be furnished in the performance of this Contract without the prior written consent of the Owner. If the Contractor shall subcontract any part of this Contract, the Contractor shall be as fully responsible to the Owner for the acts and omissions of his subcontractor and of the persons either directly or indirectly employed by the subcontractor as he is for the acts and omissions of persons directly employed by himself. Nothing contained in this Contract shall create any Contractual relations between any subcontractor and the Owner. The Contractor shall ensure that the sub contractor has the insurance coverage required by this contract.

The Owner's consent to or approval of any subcontract under this Contract shall not in any way relieve the Contractor of his obligations under this Contract and no such consent or approval shall be deemed to waive any provisions of this Contract.

11. SUSPENSION OF WORK

Pending settlement of disputes on any point of controversy, the Engineer may suspend action on all or any part of the work. The Contractor shall not be entitled to any claim for loss or damage by reason of such, nor shall he be entitled to extension of time, although such extension of time may be granted by the Engineer if he deems it in the interest of the work.

12. RIGHT OF OWNER TO TERMINATE CONTRACT

If, in the opinion of the Engineer, the Contractor shall be improperly performing the work under this Contract, or shall neglect or refuse to take out or rebuild such work as shall have been rejected by the Engineer as being defective or unsuitable, or if, any time, the Engineer shall be of the opinion that the work is unnecessarily delayed and will not be finished within the prescribed time, or if the Contractor shall abandon the work, or shall neglect or refuse to comply with the instructions of the Engineer relative thereto, or shall fail in any manner to comply with the Specifications or Stipulations herein contained, the Engineer shall notify the Contractor to that effect in writing, and if the Contractor shall not within five (5) days thereafter take such measures as will, in the judgment of the Engineer, insure the satisfactory performance or construction of the work, the City may annul and cancel the Contract, in which event it shall notify the Contractor to discontinue all work under this Contract, and the Contractor shall immediately respect such notice and stop work and cease to have any rights to the possession of the ground and shall forfeit his Contract. Such annulment shall not entitle the Contractor to any claim for damages on account thereof, nor shall it affect the right of the City of Midland to recover damages on account of such failure. The City Council may thereupon advertise and re-let a new Contract for the uncompleted work without further ordinance, in the same manner as was followed in the letting of this Contract, and any excess of cost arising there from over and above what would have resulted from the prices set forth in this Contract will be charged against the Contractor and his surety or sureties hereto, who shall be liable therefore.

13. RIGHT OF CONTRACTOR TO TERMINATE CONTRACT

If the work should be stopped under an order of any court or other public authority for a period of three (3) months, through no act or fault of the Contractor or of anyone employed by him, or if the City should fail to make payment to the Contractor within thirty (30) days after such payment is due, as set out in the Contract, then the Contractor may, upon seven (7) days written notice to the City and the Engineer, stop work or terminate his Contract and recover from the City payment for all work executed and for any loss sustained upon any plant or materials and reasonable profit and damages.

14. INCIDENTAL WORK

Any and all minor details 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 and included with the work for which the prices are named in the Contract Documents. The Contractor will not be entitled to any extra or additional compensation therefore, unless specifically stated otherwise.

15. PERMITS – COMPLIANCE WITH LAW

The Contractor shall, at his expense, obtain all permits and licenses necessary for the performance of this Contract, and give all necessary notices, pay all fees required by law, and comply with all laws, ordinances, rules and regulations governing the Contractor's performance of the Contract.

Portions of this contract qualify for exemption pursuant to the provisions of the Texas Limited Sales, Excise and Use Tax Act. The Contractor shall obtain a sales tax exemption certificate from the City. All labor performed on the project and all materials incorporated into the project qualify for such tax exemption. However, equipment and parts for equipment purchased to be used on the project, but are not incorporated into the project; do not qualify for said tax exemption. Contractor shall issue a resale certificate in lieu of paying such sales tax for all

materials incorporated into the project. Further Contractor shall separate the charges for materials incorporated into the project from the charges for labor.

16. INSPECTION BY OWNER

The Owner and its representatives shall at all times have access to all parts of the work and to the shops wherein the work is in preparation for the purpose of inspection, and the Contractor shall at all times maintain proper facilities and provide safe access for such inspection.

The Owner shall have the right to reject materials and workmanship which are defective, or to require their correction. Rejected workmanship shall be satisfactorily corrected and rejected materials shall be removed from the premises without charge to the Owner. If the Contractor does not correct such rejected work within a reasonable time, fixed by written notice, the Owner may correct same and charge the expense to the Contractor. No inspector shall have the power to waive the obligation resting upon the Contractor to furnish good material or do work as herein prescribed, and any failure or omission of any inspector or the Engineer to condemn any defective material or work shall not release the Contractor from the obligation to at once tear out, remove and properly rebuild the same at any time upon discovery of the defect and upon receipt of notice of the Engineer to do so.

Should it be considered necessary or advisable by the Owner at any time before final acceptance of the entire work to make an examination of work already completed by removing or tearing out any portion thereof, the Contractor shall on request promptly furnish all necessary facilities, labor and materials. If such work is found to be defective in any respect due to the fault of the Contractor or his subcontractor, he shall defray all the expenses of such examinations and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, the additional cost of labor and materials necessarily involved in such examination and replacement, plus fifteen percent (15%) for overhead and profit, shall be allowed the Contractor.

Where the Specifications require work to be specifically tested or approved, it shall not be tested or covered up without timely notice to the Owner of its readiness for inspection and without the approval or consent thereto by the Owner. Should any such work be covered up without such notice, approval or consent, it must, if required by the Owner, be uncovered for examination at the Contractor's expense.

17. PATENTS

The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including all costs and legal expenses, for or on account of, any patented or unpatented invention, process, article or appliance, manufactured for or used in the performance of the Contract, including its use by the Owner, unless otherwise specifically stipulated in the Contract.

18. MUTUAL RESPONSIBILITY OF CONTRACTORS

If, through acts of neglect on the part of the Contractor, any other Contractor or any subcontractor shall suffer loss or damage on the work, the Contractor agrees to settle with such other Contractor or subcontractor by agreement or arbitration, if such other Contractor or subcontractor will so settle. If such other Contractor or subcontractor shall assert any claim against the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor, who shall indemnify and save harmless the Owner against any such claim.

The Contractor must ascertain to his own satisfaction the scope of the project and the nature of any other Contracts that have been or may be awarded by the Owner in the prosecution of the project to the end that the Contractor may perform this Contract in the light of such other Contract, if any.

Nothing herein contained shall be interpreted as granting the Contractor exclusive occupancy of the site of the project. The Contractor shall not cause any unnecessary hindrance or delay to any other Contractor working on the project. If the performance of any Contract for the project is likely to be interfered with by the simultaneous execution of some other Contract or Contracts, the Owner shall decide which Contractor shall cease work temporarily and which shall continue, or whether the work under the Contracts can be coordinated so that the Contractors may proceed simultaneously. The Owner shall not be responsible for any damages suffered or extra costs incurred by the Contractor, resulting directly or indirectly from the award or performance or attempted performance of any other Contract or Contracts on the project, or caused by any decision or omission of the Owner respective to the order of precedence in the performance of Contracts.

19. NOTICE AND SERVICE THEREOF

Any notice from one party to another under the Contract shall be in writing and shall be dated and signed by the party giving such notice or by duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in the following manner; namely, if the notice is given to the Owner, (a) by personal delivery thereof to the individual duly authorized to direct and supervise the project of the Owner, or (b) by depositing the same in the United States Mail, enclosed in a sealed envelope, addressed to the City of Midland, 300 North Loraine Street, Midland, Texas, 79701, postage prepaid and certified; or if the notice is given to the contractor (a) by personal delivery thereof to the project superintendent or other person authorized to act for the contractor, or (b) by depositing the same in the United States Mail, enclosed in a sealed envelope, addressed to the Contractor at his regular place of business or at such other address as may have been established for the conduct of the work under this Contract, postage prepaid and certified; or (c) if the notice is given to the Surety or any other person by personal delivery to such Surety or other person, or by depositing the same in the United States Mail, enclosed in a sealed envelope addressed to such Surety or other person, at the address of such surety or other person last communicated by him to the party giving the notice, postage prepaid and certified.

20. QUALITY OF MATERIALS AND WORKMANSHIP

It is the intention of this Contract to have only first class materials and the best workmanship throughout, and the methods and appliances adopted by the Contractor must be such as will secure a satisfactory quality of work and will enable him to complete the work in the time agreed upon. If at any time such methods and appliances appear inadequate, the Engineer may order the Contractor to improve their character or increase their efficiency, and the Contractor must conform to such order; but the failure of the Engineer to order such improvement of methods or increase of efficiency will not relieve the Contractor from his obligations to perform good work or finish it in the time agreed upon. The Contractor shall submit samples or specimens of any and all materials proposed to be used in the work when required to do so by the Engineer. All materials must be of specified quality and fully equal to approved samples. All work must be done and completed in a thorough and workmanlike manner. All materials furnished and all work done must be satisfactory to the Engineer and will be subject to rigid inspection, and if not in accordance with the Specifications in the opinion of the Engineer, shall be made to conform thereto.

It is understood that except as otherwise specifically stated in the Contract, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence of temporary

construction of every nature, and all other services and facilities required for the completion of the Contract within the specified time.

21. SPECIAL METHODS

The Engineer may consent to special methods for carrying out the work in difficult cases, but the Contractor will not be relieved of responsibility for the result. The Contractor shall be responsible for the result of all work performed by him whether directed by the Engineer or not.

22. REMOVAL OR REPLACEMENT OF WORK DONE WITHOUT LINES OR GRADES

Any work done without lines or grades given by the Engineer or under his direction or without the supervision of an inspector, may be ordered removed and replaced by the Engineer at the Contractor's expense.

23. COVERING WORK

No work shall be covered until it has been examined and approved by the Engineer.

24. UNFAVORABLE WEATHER

During unfavorable weather and other adverse conditions, only such portions of the work may be done which will not be damaged thereby, unless by special means or precautions approved by the Engineer.

25. ALL WORK SUBJECT TO FINAL INSPECTION

Failure to neglect on the part of the Engineer or his inspectors to condemn or reject bad or inferior work or materials shall not be construed to imply his acceptance of such work or materials if it becomes evident at any time prior to the final acceptance of the work and the release of the Contractor.

26. PUBLIC CONVENIENCE

When materials for construction are brought on the work site they shall be neatly piled so as to cause as little obstruction to travel as possible, and so that they may be conveniently inspected.

No material or other obstruction shall be placed within five (5) feet of fire hydrants, which must at all times be readily accessible to the fire department, nor shall any material be piled within two (2) feet of any trees.

The Contractor shall be responsible for all damages to persons or property that occur as a result of his fault or negligence in connection with the prosecution of the Contract and shall be responsible for the proper care and protection of all materials delivered and work performed until completion, and final acceptance by the Owner.

The Contractor shall provide such heat, covering and enclosures as are necessary to protect all work and materials against damage by weather conditions.

The Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavement, utilities, adjoining property, and structures, and avoid damage thereto, and he shall at his own expense completely repair any damage thereto caused by his operations.

If required by the Engineer, the Contractor shall shore up, brace, underpin, and protect as may be necessary, all foundations, and other parts of all existing structures adjacent and adjoining the site of the Project, which are in any way affected by the excavations or other operations connected with the completion of the work under this Contract. Whenever any notice is required to be given by the Owner or the Contractor to any adjoining or adjacent landowner or other party before commencement of any work under this Contract, such notice shall be given by the Contractor. The Contractor shall indemnify the Owner and save it harmless from any damages on account of settlement or the loss of lateral support of adjoining property and from all loss or expense and all damages for which the Owner may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.

During the progress of the work the convenience of the public and of the residents along streets must be provided as far as practicable. Convenient access to driveways, houses and buildings along streets must be maintained whenever possible.

Temporary approaches and crossings of streets and sidewalks must be provided and kept in good condition whenever practicable.

The Contractor shall provide and maintain such fences, barriers, "Street Closed" signs, red lights and watchmen as may be necessary to prevent avoidable accidents to residents and to the public.

The Contractor alone shall be held responsible for all injuries to persons, and for all damages to property of the City or others, caused by or resulting from the negligence of himself, his employees or agents during the progress of or connected with the prosecution of the work, whether within the limits of the work or elsewhere. He must restore all injured public or private property to a condition as good as it was when he entered upon the work, purchasing new materials to replace all that which is injured or destroyed during the course of the work.

In an emergency affecting the safety of life or property, including adjoining property, the Contractor, without special instructions or authorization from the Owner is authorized to act at his discretion to prevent such threatened loss or injury and he shall so act.

27. TRAFFIC CONTROL

It is the policy of the City of Midland to keep at least two travel lanes open to traffic at all times and where possible to have three travel lanes between 7:30 a.m. and 9:00 a.m. and 4 p.m. and 6 p.m. (Two (2) lanes in the direction of peak travel).

At least 48 hours before beginning work the contractor shall present a traffic control and/or barricade plan prepared as per the approved Barricading Standards to the Traffic Engineering Division for review and approval. When approved and barricades are in place, they shall be inspected by the Traffic Engineering Division prior to beginning work.

Traffic control signs, such as stop signs, yield signs, etc., are placed in various intersections for the safety and protection of the traveling public. The contractor shall not move, alter or damage said signs for any reason. If said signs must be removed for construction purposes, contractor shall notify the City of Midland, Traffic Division Operations Superintendent at least 48 hours (not including weekends) before construction activities are scheduled to begin. All construction barricading, warning signs, and other construction traffic control devices shall be in place and shall be in accordance with the Texas Manual on Uniform Traffic Control Devices and approved Barricading Standards included in plans before traffic signs can be removed. The contractor shall notify the Traffic Division Operations Superintendent at least 72 hours (not including weekends) before

scheduled removal of construction barricades, warning signs, and traffic control devices. But in all cases the contractor shall not remove said barricades, warning signs, and traffic control devices until the City of Midland's Traffic Department has replaced stop signs, yield signs, etc., in their proper location. The Contractor shall notify Traffic Engineering Division at least 24 hours in advance of any Traffic Signal modification due to construction (i.e. eliminating left turn phases). Notice shall also be given to the Traffic Engineering Division at least 24 hours prior to removing barricades at signalized intersections.

28. PROTECTION OF NEW WORK

All new work shall be carefully protected by the Contractor, and any work injured from any cause before the completion of the whole project must be rebuilt by the Contractor at his own expense.

29. MONUMENTS OR STAKES

The Contractor must carefully protect from disturbance or injury all monuments, stakes and bench marks, of City County, State or Federal Government and shall not excavate nearer than five (5) feet to any of them without the permission of the Engineer, or until they have been removed, witnessed or otherwise disposed of by the Engineer.

30. USE OF COMPLETED PORTIONS

The City shall have the right to take possession of and use any completed or partially completed portions of the work notwithstanding the time for completing the entire work on such portions may not have expired; but such taking possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents. If such prior use increases the cost of, or delays the work, the Contractor shall be entitled to such extra compensation or extension of time, or both as the Engineer may determine.

The Owner, in taking possession of completed portions, shall agree to accept the decision of the Engineer on matters relating to responsibility for damages that may occur to any portions of the work during the period of possession preceding acceptance and final payment.

31. USE OF PREMISES

The Contractor shall confine his apparatus, storage of materials and construction operations to such limits as may be directed by the Owner, and shall not unreasonably encumber the premises with his materials.

The Contractor shall enforce any instructions of the Owner regarding advertising, fires, danger signals, barricades and smoking, and shall require all persons employed on the work to comply with all building, post or institutional regulations while on the premises.

32. SAFETY RESTRICTIONS

The following procedures will be followed regarding the subject item on this contract:

A warning sign painted yellow with black letters that are legible at twelve feet shall be placed inside and outside vehicles such as cranes, cranes, derricks, power shovels, drilling rigs, pile drivers, hoisting equipment or similar apparatus. The warning sign shall read as follows:

"WARNING - UNLAWFUL TO OPERATE THIS EQUIPMENT WITHIN SIX FEET OF HIGH VOLTAGE LINES."

Equipment that may be operated within ten feet of high voltage lines shall have an insulating cage type of guard about the boom or arm, except back hoes or dippers, and insulator links on the lift hook connections.

When necessary to work within six feet of high voltage electric lines, notification shall be given to the power company who will erect temporary mechanical barriers, de – energize the line, or raise or lower the line. The notifying department

The Contractor is required to make arrangements with the Power Company for the temporary relocation or raising of high voltage lines at the Contractor's sole cost and expense.

No person shall work within six feet of high voltage line without precautions having been taken and protection provided as outlined in Paragraph (3) above.

33. INSURANCE REQUIREMENTS AND WORKERS COMPENSATION

INSURANCE REQUIREMENTS

Contractor 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 Contractor 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 Contractor shall inure to the benefit of employees injured during the course and scope of their employment by Contractor 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 Contractor's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

Contractor 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, Contractor 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 Contractor 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 Contractor 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 Contractor.

34. INDEMNIFICATION

INDEMNITY: THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE OWNER AND ALL OF THE OWNER'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, 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 THE CONTRACTOR, 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 CONTRACTOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE OWNER OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE OWNER AND ALL OF THE OWNER'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 THE OWNER, THE OWNER'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 THE CONTRACTOR OR THE CONTRACTOR'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 CONTRACTOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE OWNER OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

THE CONTRACTOR AGREES THAT HE WILL INDEMNIFY AND SAVE THE OWNER 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, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN OWNER SO DESIRES, THE CONTRACTOR SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. THE CONTRACTOR, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS THE OWNER 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 THE CONTRACTOR 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 THE OWNER OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES.

35. RELEASE

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

36. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Contractor shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the Owner; that Contractor 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 respondent superior shall not apply as between Owner and Contractor, its officers, agents, employees, contractors and subcontractors; and

that nothing herein shall be construed as creating a partnership or joint enterprise between Owner and Contractor. No person performing any of the work and services described hereunder by Contractor shall be considered an officer, agent, servant or employee of the Owner. 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. Contractor 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 Owner does not have the power to direct the order in which the work is done. The Owner shall not have the right to control the means, methods or details of the Contractor's work. Contractor shall assume exclusive responsibility for the work. Contractor is entirely free to do the work in its own way.

37. QUALIFICATIONS FOR EMPLOYMENT

Preference shall be given to qualified local residents in the employment of laborers and mechanics for work on the Project under this Contract. No person under the age of sixteen (16) years shall be employed on the project under this Contract. No person whose age or physical condition is such as to make his employment dangerous to his health or safety or to the health or safety of others shall be employed on the Project under this Contract: Provided, that this shall not operate against the employment of physically handicapped persons, otherwise employable, where such persons may be safely assigned to work which they can ably perform. No person currently serving sentence in a penal or correctional institution and no inmate of an institution for mentally defective shall be employed on the project under this contract.

38. PAYROLLS OF CONTRACTOR AND SUBCONTRACTORS

The Contractor and each of his subcontractors shall prepare payrolls for the workers on the Project. Not later than the seventh (7th) day following the payment of wages, the Contractor shall transmit to the Owner, if requested, a certified legible copy and two confirmed copies of such payroll.

Such copies of payrolls shall be accompanied by substantial proof that all bills for services rendered and materials supplied have been duly paid and by such other data as the Owner may require.

39. POSTING WAGE RATES

The Contractor shall post at appropriate conspicuous points at the site of the Project a schedule showing the wage rates for the various classes of laborers and mechanics to be engaged in work on the Project under this Contract and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.

40. PAYMENT OF EMPLOYEES

The Contractor shall post at appropriate conspicuous points at the site of the Project a schedule showing the wage rates for the various classes of laborers and mechanics to be engaged in work on the Project under this Contract and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.

41. WAGE UNDERPAYMENT AND ADJUSTMENTS

The Contractor agrees that, in case of underpayment of wages to any worker on the project under this Contract by the Contractor or any subcontractor, the Owner shall withhold from the Contractor out of payments due, an amount sufficient to pay such worker the difference between the wages required to be paid under this Contract and the wages actually paid such worker for the total number of hours worked and that the Owner may disburse such amount so withheld by it for and on account of the Contractor to the employee to whom such amount is due. The Contractor further agrees that the amounts to be withheld pursuant to this Article may be in addition to other amounts that may be retained by the Owner pursuant to other provisions of this Contract.

42. COMPUTATION OF WAGES ON 8 – HOUR DAY

The wages of each laborer and mechanic engaged in work on the project under this Contract shall be computed on a basis of eight (8) hours per day, eight (8) hours continuous employment except for lunch periods, constituting a day's work.

Legal holiday work shall be paid for at the regular governing per diem wage rates.

Work in excess of 40 hours per week shall be paid for at 1 ½ times the basic rate of pay.

43. OVERTIME WORK AND WORK ON SUNDAYS AND LEGAL HOLIDAYS

The Contractor will not be permitted to work on Sundays or legal holidays except in an emergency and then only upon written permission of the Engineer.

Any work necessary to be performed after regular working hours and when permitted on Sundays or legal holidays, shall be performed without additional expense to the Owner.

No work on any Contract item will be permitted before daylight or later than one hour after sundown.

44. CONTRACT SECURITY

The Contractor shall furnish a performance bond and payment bond in an amount equal to one hundred percent (l00%) of the amount of the Contract as security for the faithful performance of the Contract, including the payment of all persons performing labor on the project and furnishing of materials in connection with this Contract. All Bonds must be executed in five (5) original counterparts by a corporate surety authorized to do business in the State of Texas. Bonds executed by individuals or any other than recognized and authorized corporate surety companies will not be acceptable.

45. DELAYS

The Contractor shall receive no compensation for delays or hindrances to the work, except when, in the judgment of the Engineer, direct or unavoidable extra cost to the Contractor is caused by such hindrances or delays. When such extra compensation is claimed, a written statement thereof shall be presented by the Contractor, as provided in Paragraph 18 hereof. Such claim, if found correct, will be approved, and the decision of the Engineer whether extra cost has been incurred and the amount thereof, shall be final. If delays are caused by specific orders to stop work, given by the Engineer, or by the performance of extra work, or by unforeseen causes beyond the control of the Contractor, or by the failure of the Owner to provide materials or necessary instructions for carrying on the work, or to provide the necessary right-of-way or site for installation,

then delay will entitle the Contractor to an equivalent extension of time. Application for extension of time must be approved by the Owner and, shall not release the Sureties from their obligations, which shall remain in full force until the discharge of the Contract.

LATE COMPLETION; LIQUIDATED DAMAGES:

It is hereby understood and mutually agreed, by and between Contractor and the City, that the date of beginning and the time for completion as specified in the contract of the work to be done hereunder are ESSENTIAL CONDITIONS of this contract; and it is further mutually understood and agreed that the work embraced in this contract shall be commenced on a date to be specified in the "Notice to Proceed." Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between Contractor and the City, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

In the event Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the City, then Contractor and Contractor's surety, if any, shall be liable for and does hereby agree, as a part consideration for the awarding of this contract, to pay to the City $500.00, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that Contractor shall be in default after the time stipulated in the contract for completing the work. Further, the City shall have the right to cancel this contract for such delay. In the event the City cancels this contract pursuant to the terms of this section, the City shall pay to Contractor only those monies deemed appropriate by the City, in its sole discretion, to compensate Contractor for any work actually performed, less any liquidated damages Contractor owes the City.

The said amount is fixed and agreed upon by and between Contractor and the City because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the City would in such event sustain, and said amount is agreed to be the amount of damages which the City would sustain and said amount shall be retained from time to time by the City from current periodical estimates.

It is further agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided, that Contractor shall not be charged with liquidated damages or any excess cost when the City determines, in its sole discretion, that Contractor is without fault and Contractor's reasons for the time extension are acceptable to the City. Provided, further, that Contractor shall not be charged with liquidated damages of any excess cost when the delay in completion of the work is due:

a. To any preference, priority or allocation order duly issued by the Government;

b. To unforeseeable cause beyond the control and without the fault or negligence of Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the City, acts of another contractor in the performance of a contract with the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; and

c. To any delays of subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article.

Provided, further, that Contractor shall, within ten (10) calendar days from the beginning of such delay, unless the City shall, in its sole discretion grant a further period of time prior to the date of final settlement of the contract, notify the City, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify Contractor within a reasonable time of its decision in the matter.

CONTRACTOR AGREES THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES MAY BE RECOVERED BY THE CITY FROM RETAINAGE HELD BY THE CITY. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, CONTRACTOR 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 ARISING FROM THE CITY WITHHOLDING PAYMENT FROM CONTRACTOR AS LIQUIDATED DAMAGES FOR CONTRACTOR'S FAILURE TO COMPLETE THE WORK WITHIN THE TIME SPECIFIED HEREIN, 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.

CONTRACTOR SHALL RECEIVE NO FINANCIAL COMPENSATION FOR DELAY OR HINDRANCE TO THE WORK. IN NO EVENT SHALL THE CITY BE LIABLE TO CONTRACTOR OR ANY SUBCONTRACTOR OR SUPPLIER, ANY OTHER PERSON OR ANY SURETY FOR OR ANY EMPLOYEE OR AGENT OF ANY OF THEM, FOR ANY DAMAGES ARISING OUT OF OR ASSOCIATED WITH ANY DELAY OR HINDRANCE TO THE WORK, REGARDLESS OF THE SOURCE OF THE DELAY OR HINDRANCE, INCLUDING EVENTS OF FORCE MAJEURE, AND EVEN IF SUCH DELAY OR HINDRANCE RESULTS FROM, ARISES OUT OF OR IS DUE, IN WHOLE OR IN PART, TO THE NEGLIGENCE OF THE CITY. CONTRACTOR'S SOLE REMEDY IN ANY SUCH CASE SHALL BE AN EXTENSION OF TIME.

46. ERRORS AND OMISSIONS

The Contractor will not be permitted to take advantage of any error or omission in these specifications. Suitable instructions will be given by the Engineer when such error or omission is discovered.

47. SPECIFICATIONS AND DRAWINGS

The Contractor shall keep on the work a copy of the Specifications and Drawings, and shall at all times give the Engineer access thereto. Any drawings or plans listed in the detailed specifications shall be regarded as part thereof and of the Contract. Anything mentioned in these specifications and not mentioned or shown in the drawings, or shown in the drawings and not mentioned in these specifications, shall be done as though shown or mentioned in both. The Engineer will furnish from time to time, such detailed drawings, plans, profiles and information as he may consider necessary for the Contractor's guidance.

In the event of any discrepancy between the plans and these specifications, the decisions of the Engineer will be decisive thereon. The written dimensions on the plans are to be taken as correct, but the Contractor is required to check carefully all dimensions before beginning work thereon. Should any errors or omissions be discovered, the Engineer's attention shall be called to the same, and the proper corrections made. All notes on the plans shall be carefully observed by the Contractor and are a part of the Contract.

48. CONSTRUCTION STAKING

The Engineer will furnish a complete set of plans and profiles and set control stakes at fifty foot (50') intervals along the entire length of the project and at such control points he deems necessary for proper execution of the work. The Contractor will thereafter be required to lay out the work accurately and furnish at his own expense, all lines, levels, and dimensions necessary to the proper and correct execution of the entire work and be responsible for any errors resulting from his own work.

The Contractor shall give the Engineer at least 36 hours notice in writing before requiring stakes to be set on any new portion of the work, and he shall state clearly in such notice the exact locality or localities where such stakes are needed for immediate use.

The Contractor must satisfy himself, before commencing work, as to the meaning or correctness of all stakes or marks, and no claim will be entertained by the Owner for or on account of any alleged inaccuracies, or for the alterations subsequently rendered necessary on account of such alleged inaccuracies unless the Contractor notifies the Engineer thereof in writing before commencing to work thereon.

The Contractor will at all times conduct the work in such a manner as to prevent damage to construction stakes set by the Engineer. When construction stakes are damaged to such extent that they must be reset, as a result of carelessness or negligence on the part of the Contractor or his workmen, the costs thereof shall be kept by the Engineer and shall be deducted from the moneys due or to become due the Contractor under the terms of his contract.

Benchmark and survey stakes shall be preserved by the Contractor, and in case of their destruction or removal by him or his employees, they will be replaced by the Engineer at the Contractor's expense.

49. SANITATION

The Contractor shall provide suitable drinking water receptacles or containers equipped with dust-tight covers and spigots or faucets. A supply of sanitary paper drinking cups shall be kept on hand for general use near the drinking water containers. The use of common drinking cups or tin cups will not be permitted.

The Contractor shall furnish "Porta-Johns" or other approved sanitary facilities for use by all workers on the Project. Such facilities shall be placed and kept in close proximity of the site where work is being performed. Such facilities shall be properly serviced and maintained.

The Engineer may establish such other sanitary rules and regulations as may seem necessary and desirable to the safe prosecution of the work, such rules and regulations to apply to all forces employed under this Contract, and if, the Contractor fails to observe and enforce these rules, the Engineer may enforce them at the expense of the Contractor.

50. WATER FOR CONSTRUCTION

The Contractor may obtain all water necessary for construction purposes from the Municipal Waterworks System at the regular customer service rate, but the Contractor must make all necessary arrangements with the Director of Utilities for necessary connections and meters. The Contractor must make his own provisions and provide such equipment as is necessary for conveying water from point of service to point of use. No extra compensation will be allowed and the Contractor shall anticipate the expense connected herewith and absorb said expense in the prices bid for the various bid items.

51. SEQUENCE AND SPEED OF WORK

The Engineer shall direct the order and sequence of the work. If at any time before the commencement or during the progress of the work, the materials and appliances used appear to the Engineer as insufficient and improper for securing the quality of work required or the required rate of progress, he may order the Contractor to increase their efficiency or to improve their character and the Contractor shall conform to such order. The

failure of the Engineer to demand any increase of such efficiency or improvement shall not release the Contractor from his obligations to secure the quality of work or the rate of progress specified.

52. INSPECTION AND TESTING OF MATERIAL

The sampling and testing of materials used or proposed to be used in the construction of this project will be made by the Engineer, his designated representative or certified testing laboratory personnel in accordance with methods prescribed by the American Society of Testing Materials and/or the American Association of State Highway Officials, with subsequent approved revisions made prior to the date of the Proposal. The selection of the method of test shall be designated by the Engineer. The Contractor shall bear the cost of all tests required before a material or a method is approved for use on the job, unless the Owner specifically agrees to bear the cost of these tests.

All tests required by the Owner after materials and/or methods have been approved and after they have been incorporated or used in the job will be paid for by the Owner, except if the Owner's tests reveal non-conformance with the specifications, subsequent tests on that part of the work required to determine if the replaced or reworked material meets the specifications, will be paid for by the Contractor. The City will pay only one time for any required testing.

The following is a summary of test required for the approval of materials or methods:

Material	**Test**
Subgrade	Maximum density, optimum moisture
Caliche Base:	Maximum density, optimum moisture, hardness, gradation, liquid limit, plasticity index, Texas Triaxial Classification
Aggregates for hot-mix:	Gradation, unit weight, abrasion, soundness, liquid limit, plasticity index, density
Asphalt, emulsions and tars:	Certified plant test and certificates of compliance with each shipment
Hot- Mix asphaltic concrete:	Design mix, swell test, stripping test
Portland cement concrete pavement:	Design mix with test cylinders

Any materials shipped by the Contractor from the factory prior to having satisfactorily passed such testing and inspection by the Owner’s representative or prior to the receipt of notice from said representative that such testing and inspection will not be required, shall not be incorporated in the work.

The Owner may, at its discretion, approve materials and/or methods for use on this project without testing when they are from sources previously tested and approved for City of Midland projects.

53. CONSTRUCTION SCHEDULE

It shall be the responsibility of the Contractor to furnish the Construction Engineer prior to construction a schedule out – lining the anticipated time each phase of construction will begin and be completed, including sufficient time being allowed for clean – up.

54. PROFILES AND ELEVATIONS

Profiles and elevations of the ground are shown on the plans hereto attached. These profiles and elevations are believed to be reasonably correct, but are not guaranteed to be absolutely so, and are represented only as an approximation. Elevations are referred to datum given by the Engineer.

55. CLEANUP

During the progress of the work, the Contractor shall maintain the work area in a reasonably clean and safe condition. Dirt, debris, excess excavation and other objectionable materials shall be removed from the site and disposed of on a daily basis.

After completion of all the work contemplated to be done in accordance with the detailed plans and these specifications, the premises and area along the entire line of the work shall be thoroughly cleaned up and all remaining structural materials, excess or surplus excavation and debris of any nature shall be removed and disposed of in a satisfactory manner and as directed by the Engineer. The site of all work shall appear neat and finished. All portions of the project when completed shall be ready for use or occupancy.

No compensation or payment shall be made for any cleanup work. The price for such cleanup work shall be absorbed in the items covered in the proposal.

56. GUARANTEE

The contractor shall and hereby does guarantee: (1) all work performed by him directly and all work performed by his subcontractors; (2) that all material specified; and (3) that any defect due to improper workmanship or material discovered and made known to him within one year (1) f the date of final acceptance of the improvements shall be repaired, replaced, corrected or otherwise made good by him without additional expense to the Owner. The Contractor shall, in case of work performed by his subcontractors and where guarantees are required, secure guarantees from said subcontractors and deliver copies of same to the Engineer upon completion of the work.

57. WAIVER OF ATTORNEY FEES:

BY EXECUTING THIS CONTRACT, CONTRACTOR AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE OWNER, 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 CONTRACTOR SPECIFICALLY AGREES THAT IF THE CONTRACTOR 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 CONTRACTOR AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CONTRACTOR MIGHT OTHERWISE BE ENTITLED.

CONTRACTOR AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. THE CONTRACTOR ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE CONTRACT. THE CONTRACTOR FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN

THE OWNER AND THE CONTRACTOR. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

58. 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 that would direct application of the laws of another jurisdiction.

59. 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.

60. 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.

61. 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, Contractor or his legal representative, shall give the City Manager or any other reasonable official of the 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 and twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Contractor will settle, the physical and mailing addresses of Contractor at the time and date the claim was presented and the physical and mailing addresses of Contractor for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Contractor 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 City from any liability whatsoever. The City is under no obligation to provide notice to Contractor that Contractor'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, Contractor's failure to comply with the requirements herein shall perpetually bar Contractor'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. Contractor agrees that the requirements of this entire Agreement are reasonable.

62. ASSIGNMENT

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

63. 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 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.

64. PROMPT PAY ACT

The owner and contractor agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

65. OTHER FEDERAL REQUIREMENTS

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.

Updated August 2024

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

NO CONFLICT OF INTEREST

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.

SPECIAL PROVISIONS

ATTENTION: All Bidders are directed to pay special attention to the NOTICE TO BIDDERS section of the bid packet. Bidders have sole responsibility for complying with the current bid process requirements. Bidders also have sole responsibility for verifying that any bid submitted is completed correctly and includes all of the required documentation, including addendums.

1. SCOPE OF WORK:

Included in this Project will be the **_Peggy-Sue Drainage Improvements_** to be performed as outlined in the Plans and Specifications, which are necessary to satisfactorily complete the work.

The project will include the removal and placement of existing and proposed earthwork and appurtenances including all necessary mobilization, clearing and grubbing, excavation, embankment, backfill, grading, compaction, form work, as well as coordination with City of Midland staff and organizations such as OSHA, franchise utilities, etc. as needed, One Call (Texas 811) notifications for pending work, notifications to adjacent property owners as directed by City of Midland Staff, and all other work to be performed as outlined in the Construction Drawings and Specifications, to satisfactorily complete the work.

The Owner reserves the right to abandon, without obligation to the Contractor, any part of the project, or the entire project, at any time before the Contractor begins any construction work authorized by the Owner.

Standard Specifications for Construction of the City of Midland will govern all construction, except as modified by these Special Provisions.

2. ORDER OF PRECEDENCE:

The Special Provisions take precedence over the General Conditions in this bid packet anywhere these two sections are not in agreement.

The Special Provisions take precedence over the City of Midland Specifications in this bid packet anywhere these two sections are not in agreement.

The Contractor is to bid the quantities in the Proposal section of the bid packet even if there is a discrepancy between the Proposal quantities and those noted or measured in the construction drawing set.

In the Proposal the long-hand dollar amount written in the Description column for each bid item will take precedence over the numerical dollar amount listed in the Unit Price column if there is a discrepancy between the two.

In the construction drawing set any written or noted dimension takes precedence over dimensions measured based on the drawing scale unless otherwise directed by the Engineer.

Any changes or revisions made as part of an Addendum for this project take precedence over the original bid packet and construction drawing set where the documents are in conflict.

3. EXAMINATION OF SITE:

Prospective bidders are to make a careful examination of the entire site of the project and are to make such explorations as may be necessary to determine the subsoil and/or water conditions to be encountered; improvements and obstructions which may be encountered; methods of providing ingress-egress to private as well as public property; methods of handling traffic during construction and maintenance of the entire project as well as any section thereof, protection of all existing structures both above and below ground; and how the plans fit the proposed project and especially if any discrepancies exist.

4. PAYMENT:

Payment and retainage (five percent, 5%) shall be per the General Conditions.

Payment will be made for material installed, not for material delivery.

5. SAFETY REQUIREMENTS:

It is the responsibility of the Contractor to follow and comply at all times with Occupational Safety and Health Administration (OSHA) and all other applicable safety regulations and requirements throughout the course of the project's work. The City of Midland reserves the right to require additional safety measures on the project site at any time if they are needed in the opinion of the Engineer for the safety of the work crews or public.

6. SAFETY RESTRICTIONS – WORK NEAR HIGH VOLTAGE LINES:

The following procedure will be followed regarding the subject item on this contract:

1) A warning sign painted yellow with black letters that are legible at twelve feet shall be placed inside and outside vehicles such as cranes, derricks, power shovels, drilling rigs, pile drivers, hoisting equipment or similar apparatus. The warning sign shall read as follows:

   "**WARNING – UNLAWFUL TO OPERATE THIS EQUIPMENT WITHIN SIX FEET OF HIGH VOLTAGE LINES"**

2) Equipment that may be operated within ten feet of high voltage lines shall have an insulation cage-type of guard about the boom or arm, except back hoes or dippers, and insulator links on the lift hook connections.

3) When necessary to work within six feet of high voltage electric lines, notification shall be given to the power company of who will erect temporary mechanical barriers, de-energize the line, or raise or lower the line. The notifying department shall maintain an accurate log of all such calls to the Power Company, and shall record action taken in each case.

4) The Contractor is required to make arrangements with the Power Company for the temporary relocation or raising of high voltage lines at the Contractor's sole cost and expense.

5) No person shall work within six feet of a high voltage line without protection having been taken as outlined in Paragraph (3).

7. TRAFFIC CONTROL:

All proposed traffic control shall be approved by the City where applicable. All traffic control plans must be submitted to and approved by the Construction Manager no less than two (2) business days prior to starting the construction work. Traffic control for each phase of work must be approved prior to starting that work.

Generic traffic control plans or typical details may be submitted for shoulder work on any class of roadway, or for work on local or collector streets that does not require the closure of any travel lanes (i.e., all lanes are open to traffic on striped roadways, or adequate width remains available for two-way traffic on unstriped roadways). Once a generic traffic control plan or typical detail for a certain type of setup has been approved one time, the Contractor shall only be responsible for notifying the Construction Manager of the location, type of setup, and dates on which they intend to utilize the pre-approved traffic control for the duration of the contract. No additional plan submittals will be required in these cases, except that the City reserves the right to suspend this exception at its discretion. For any work not fitting the above exception, or in the event that the exception is suspended by the City, a site-specific traffic control plan will be required for each work location and time period.

1. All temporary traffic control shall be in general conformance with the *Texas Manual on Uniform Traffic Control Devices* (TMUTCD) (latest edition as adopted by the Texas Department of Transportation), except as specifically directed by the City Engineer or City Traffic Engineer.
2. All temporary traffic control shall be designed, installed, and maintained by competent and qualified personnel with adequate experience in traffic control.
3. All temporary traffic control involving multiple lane closures or traffic shifts, full closures of collector or arterial streets, traffic control extending through a railroad crossing, or any setup reasonably determined by the City to be “complex”, shall be implemented only by a contractor with specific experience and expertise in the field of traffic control (i.e., a qualified “barricade company”).
4. A Traffic Control Plan (TCP) shall be submitted to the Engineering Services Department, Construction Manager, in advance of any work in the right-of-way that impacts traffic. No work shall occur until an approved TCP has been returned to the Contractor.
5. A copy of the approved TCP shall be kept in the possession of the person responsible for supervising the traffic control at all times while working in the right-of-way. The approved TCP shall be presented to City staff or law enforcement upon demand at any time.
6. Depending on site conditions and the nature of the work, temporary traffic control may be approved by the City for either of the following:
    a. All Times – All traffic control, including closures, may remain in place 24 hours per day until expiration of the approved TCP.
    b. Off-Peak Only – Lane or road closures are NOT permitted from 6:00-9:00 AM and 4:00-7:00 PM on weekdays (Monday through Friday). Other traffic control not related to lane or road closures may remain in place 24 hours per day until expiration of the approved TCP.
7. The contractor setting the temporary traffic control shall be responsible for the maintenance and upkeep of all signs, barricades, and other devices, at all times.
    a. All temporary traffic control setups shall be maintained at least one time per day, including weekends and holidays.
    b. More frequent maintenance shall be performed as needed, with particular emphasis to following up after severe weather events or during times of high winds.
    c. Maintenance shall include:

i. Verifying and correcting the location and orientation of all signs, barricades, and other devices;
ii. Keeping signs and reflective areas of barricades and other devices clean and free of dirt buildup so as to maintain appropriate visibility and legibility; and
iii. Ensuring the proper location, orientation, and operation of arrow boards or message boards, if present.

8. Arrow boards shall be required for lane closures under the following conditions:
    a. On roadways with a posted speed limit of 55 MPH or greater, for closures lasting more than one (1) hour;
    b. On roadways with a posted speed limit of 45 MPH or greater, for closures lasting more than four (4) hours;
    c. On any roadway if lanes will remain open to traffic travelling in the same direction on both sides of a closed lane during any overnight hours (from 7:00 PM to 6:00 AM); and

At other times as shown on the approved TCP, or as otherwise directed by the City.

8. DETOURS:

The Contractor is to prosecute his work in such a manner as to create a minimum of interruption to traffic and pedestrian facilities and to the flow of vehicular and pedestrian traffic within the project area.

9. PROPERTY AND RIGHT-OF-WAY ACCESS:

Access to adjacent properties must be maintained at all times unless otherwise directed by the Engineer. If the contractor will not be working in an area for a period of one week or more, special care is to be taken to address any unsafe conditions such as excavated areas or obstructions outside the worked area that could be tripping hazards, etc. Contractor must notify affected properties no less than two (2) business days prior to any planned access interruptions.

Contractor must coordinate with the City of Midland regarding any planned access interruptions for public Right-of-Way, or to restore any public infrastructure damaged during construction activities.

No equipment or construction materials are to be stored on the existing Peggy-Sue storage embankments and side-slopes, and no construction vehicles are to drive on or over the existing Peggy-Sue storage embankments and side-slopes. Any damage, destabilization, or degradation of the existing Peggy-Sue storage embankments and side-slopes due to construction activity must be immediately addressed by the Contractor at their sole expense to return the infrastructure to a condition equal to or better than its original condition.

10. PROPERTY AND RIGHT-OF-WAY SERVICE:

Service to adjacent properties must be maintained at all times unless otherwise directed by the Engineer. Such services include water, wastewater, fiber, cable, electric, and gas. Contractor must notify affected properties no less than two (2) business days prior to any planned service interruption.

Contractor must coordinate with the City of Midland regarding any planned service interruptions for public water or wastewater, or to restore any public infrastructure damaged during construction activities.

Contractor must coordinate with private service providers for any necessary service interruptions to their infrastructure or to restore service to their infrastructure in the event that a private service is disrupted, damaged, etc. during construction.

11. CONSTRUCTION SCHEDULE:

It is the responsibility of the Contractor to furnish the Construction Engineer, prior to construction, with a schedule outlining the anticipated time each phase of construction will begin and be completed, including sufficient time being allowed for clean-up.

12. CONSTRUCTION STAKING:

It is the responsibility of the Contractor to provide the project construction staking at fifty-foot (50') intervals along the entire length of the project as well as at such control points as the Contractor deems necessary for proper execution of the work. Construction staking is to include grading and cuts as well as horizontal alignments and construction control points. Cut sheets are to be provided to the Engineer by the Contractor for review and approval.

13. SURVEY:

The Contractor is to provide GPS survey shots for all meters replaced to the City of Midland with each completed invoice submittal. Survey data is to be shot in Texas Central Zone with 1983 NAD at 1.0' accuracy or better. Survey data is to be provided in Excel csv. file format with all rounding functions turned off.

14. CONSTRUCTION MATERIALS:

The Contractor is to only provide new materials for permanent installation in any and all parts of this project, and all such materials must comply with the General Conditions, the Bid Packet Specifications, and all applicable City of Midland Standards and Specifications.

For this project, the Standard Specification is hereby amended to read:

> Qualifications of Material Sources – Contractor is only to use pavement mixtures that have a proven record of acceptance by the City of Midland, or another Texas municipality, or have a proven record of meeting similar standards for state highway projects.

Concrete is only to be placed when the ambient temperature is between 40 degrees and 95 degrees Fahrenheit and the ambient temperature in the shade is higher than 40 degrees Fahrenheit or is 40 degrees Fahrenheit and rising.

All concrete pavement joints are to be sealed with Texas Department of Transportation (TxDOT) DMS-6310 SL-2 sealant, an American Society for Testing and Materials (ASTM) D 1190 Hot-Applied Single Component Joint Sealant, or a City of Midland approved equal. This will not apply to curb or sidewalk joints.

No construction materials are to be placed or installed during rain events unless they are necessary to resolve an emergency situation or to facilitate the project site erosion control measures.

15. EROSION CONTROL:

Erosion control is the responsibility of the Contractor and erosion control measures are to be implemented so as to prevent sediment erosion from wind, rain, and other elements from the project site. Should the Owner feel that supplementary erosion control measures are required in addition to those implemented by the Contractor then the Contractor will include additional erosion control measures within reason to the Owner's satisfaction and/or TCEQ requirements.

Reasonable erosion control measures include but are not limited to: construction entrance(s), concrete washout(s), perimeter silt fence or fiber wattle, rock rip-rap dams for concentrated runoff control, gutter and inlet protection measures such as sand bags, and stabilization of the construction area surfaces when construction work is not actively occurring by means of vegetative cover or seeded erosion control blankets.

Supplemental erosion control measures are ancillary to the project and not paid as a separate item, unless otherwise noted in the Proposal or Pay Notes.

Site cleanup work is to be done for this project as soon as possible as per the General Conditions and will be ancillary to the project and not paid as a separate item, unless otherwise noted in the Proposal or Pay Notes. Site cleanup is to take place throughout the project's construction as needed to maintain a clean and professional looking work area. No more than three calendar days are to elapse after completion of construction before the final roadway and right-of-way cleanup has been completed to the satisfaction of the Engineer.

16. WASTE MATERIAL:

Excess material from excavation and other construction or demolition activity will become the property of the Contractor. Excess excavation will be disposed of at locations secured by the Contractor and if necessary, approved by the Engineer. No material is to be placed on private property or City property without the approval of the Engineer and the property owner. Removal of excess material, excavation, and waste material are ancillary to the project and not paid as a separate item, unless otherwise noted in the Proposal or Pay Notes.

Excess concrete material must be washed out in a concrete washout within the project's job site area, or else any and all other concrete material washout must occur away from the job site area in the Contractor's or concrete Supplier's own operation yards or properties. Under no circumstances are concrete trucks allowed to washout in any job site excavations, channels, public right-of-way, or on private property.

Existing fire hydrants and existing water meters indicated for removal as part of the project are to be returned to the City of Midland by the Contractor and remain City property. These are ancillary to the project and will not be paid as separate items.

17. TESTING:

It is the Contractor's responsibility to perform all required testing for any and all materials and workmanship performed or installed as part of the project's work. The cost of all such testing is to be borne solely by the Contractor unless required by the Engineer for work or materials that had previously been tested and approved and had not experienced any change in condition since that time as a result of the Contractor's work or actions; or unless additional testing outside of the project scope is performed at the request of the Engineer.

Required testing includes:

Confirmation Surveys – The Contractor is to provide GPS survey grade shots to the City of Midland for Confirmation Surveys throughout the construction of this project. Survey shots must be taken along the

centerline alignment of the proposed berm beginning at Station 0+25.00 and proceeding east at 150' intervals to the end of the proposed berm. The first set of survey shots must be taken of the finished sub-grade surface before the first lift of berm embankment material is placed, and then an additional set of survey shots must be taken after each 6" lift of berm embankment material is placed. Survey grade point data is to be shot in Texas Central Zone with North American Datum 1983 at 0.5' accuracy or better, and with North American Vertical Datum 1988 at 1.0-inch accuracy or better. Each set of survey data is to be provided by the Contractor to the City in Excel csv. file format with all rounding functions turned off.

18. COMPLIANCE:

The said Contractor further agrees to comply with all applicable provisions of the laws and building and construction codes of the City of Midland and the State of Texas, and with any regulations for the protection of workers which may be promulgated by the Government, and will protect such work with all necessary lights, barriers, safeguards, and warnings as provided for in said specifications and the Ordinance regulations.

Contractor is to comply with all accepted industry standards for means, methods, and details of work to be performed, as well as with any specific requirements of the City of Midland.

Contractor is to comply with any specific order of construction as directed by the City of Midland, but is otherwise free to conduct the work in the order which the Contractor sees fit.

Contractor agrees to comply with any specific direction or requirement of the City of Midland for the construction of this project, but is otherwise free to perform the work in its own way.

19. PERSONNEL:

It is the Contractor's responsibility to have a supervising representative of the Contractor on the construction site any time that construction work is taking place. The Contractor's representative must be on the Contractor's direct payroll. Sub-contractors or paid consultants will not satisfy this requirement.

It is also the Contractor's responsibility to provide the City with a reliable contact for issue escalation coordination. Such contacts would include the Contractor's site foreman, the Contractor's construction project manager, etc.

20. INTENT OF THE PROPOSAL:

The intent of the proposal is to determine the lowest responsible bidder based on the total of the quantities and unit prices. Once the lowest responsible bidder is selected, the project will be awarded based on the terms and requirements of the contract outlined in the bid packet and construction drawings.

21. CONTRACT DEADLINE:

The deadline for substantial completion of this project is _60_ calendar days total starting from the Notice to Proceed date.

Extensions of the project deadline may be requested by the Contractor for documented excepting conditions such as weather days, delays due to conflicts with existing franchise lines, etc. which are reasonably beyond the Contractor's control. Any and all deadline extensions must be submitted by the Contractor in writing to Engineer for review, and the approval or denial of the request rests solely with the Engineer.

Unless specifically granted in writing by the Engineer, there will be no suspension of project time between phases of construction.

22. WARRANTY PERIOD:

There is a one (1) year calendar warranty period on this project for all work performed or materials installed effective immediately upon acceptance of the improvements by the Owner. The warranty period will be based on the acceptance date of the project as a whole, and not any individual phases of the project.

23. BID PACKET COMPLETION ITEMS OF NOTE:

Bidders must be willing to sign the Contract as is if a bid is submitted. Revisions, alterations, deletions, additions, or any other changes of any kind by the bidder to the bid packet or other bid documents (such as the construction drawing set, addendums, etc.) will result in the bid submittal being deemed 'Non-Responsive' and the bid will not be accepted.

Bidders are reminded to make sure that the Conflict of Interest forms are completed if applicable before submitting a bid.

All bid items in the Proposal section must be completed for a bid submittal to be considered complete. Any bid item left blank, only partially completed, or that the bidder indicates they chose to not provide a bid for will be considered incomplete, and the entire bid submittal will also be deemed incomplete, the bid submittal will be deemed 'Non-Responsive', and the bid will not be accepted. Bidders bear sole responsibility for making sure that the Proposal is complete and in accordance with the instructions provided to bidders in the bid packet.

All acknowledgement forms for all addendums that are issued during the bid process for this project must be filled out and be included with any bid submittal for that bid submittal to be considered complete. Any bid submittal lacking these completed addendum acknowledgement forms will be deemed 'Non-Responsive' and the bid will not be accepted. Bidders bear sole responsibility for making sure that they have obtained all addendums issued prior to submitting their bid.

City of Midland Specifications

PREPARATION OF RIGHT OF WAY

1. GENERAL

Includes the preparation of right-of-way for construction by clearing, grubbing, removing and disposing of all obstructions and objectionable material from the right-of-way and designated easements, which is not specifically provided for on the plans.

Obstructions and objectionable material refer to all objects or material that do not meet the quality of standards for the courses of pavement to be constructed or which protrude into the excavation for slopes.

Measurement and Payment - Measurement and payment will be at the units and prices for the applicable bid item in the proposal.

When no specific bid items are included in the bid proposal for work specified under this section this work shall be considered as incidental to other items of work and the cost shall be included in the bid for these items. No separate payment will be made.

2. CONSTRUCTION METHODS

Removal - Obstructions and objectionable material to be removed by blading, plowing, bulldozing, or other methods approved in writing by the Engineer. The use of explosives will not be permitted. Solid objects must be removed to a depth of at least one (1) foot below the finished slope or subgrade elevation. Hollow objects must be removed entirely.

Disposal - Material to be removed from the right-of-way becomes the property of the Contractor. If disposal areas are available, they will be indicated on the plans.

Preservation of Trees and Shrubs - Trees and shrubs to be preserved in the right of way are shown on the plans and must be protected from injury during construction.

Removal of Concrete - Cut concrete at the right-of-way line straight and vertical by sawing or other approved methods prior to the removal of concrete in the right-of-way.

EXCAVATION, EMBANKMENT AND PREPARATION OF SUBGRADE.....1
1. GENERAL 2
2. CONSTRUCTION METHODS.....2

EXCAVATION, EMBANKMENT AND PREPARATION OF SUBGRADE

1. GENERAL

Includes the excavation, embankment and preparation of subgrade determined by the lines, grades and sections shown on the plans and in accordance with the provisions of the specifications.

Excavation - Includes excavation to planned grade, disposal of the material, removal of unsuitable subgrade material and borrow material when required in the construction. All excavation to be classified as common.

Embankment - Consists of excavated or borrow materials placed and compacted in horizontal layers in accordance with the specifications.

Subgrade - The upper eight inches (8") of embankment or the upper eight inches (8") below the roadway excavation finished grade. The subgrade shall extend from six inches (6") back of curb to six inches (6") back of curb where curb and gutter is to be constructed.

Measurement and Payment - Measurement and payment to be at the units and prices for the applicable bid items in the proposal.

2. CONSTRUCTION METHODS

Excavation - Made at the location and to the lines and grades shown on the plans in areas previously prepared in accordance with provisions of Section 2A. Dispose of excess material not required in the embankment and material that is unsuitable for subgrade. Excavation tolerance to be plus or minus 1/10 foot from the plan grade.

The area between the curb and property line shall be excavated or filled, whichever is necessary, to curb height at back of curb and finished to a straight even surface to the property line. The minimum elevation at the property line shall be the elevation of the top of the curb. The maximum elevation at the property line shall be equal to a rise of 1/4 inch per foot from the back of the curb to the property line.

During the excavation of this project, it will be required that all parkways be excavated and shaped at the same time the roadway is excavated. Excess excavation will be disposed of at locations approved by the Engineer.

Embankment shall be constructed at the locations and to the lines and grades shown on the plans in areas previously prepared in accordance with Section 2A of these specifications. Top eight inches (8") of natural ground to be compacted

to embankment density requirements. Embankment shall be constructed from suitable material obtained from the excavation or borrow free of roots, rocks in excess of three inches (3"), debris and other objectionable material. Excavation deficiencies shall be supplemented from a borrow source approved by the Engineer. Embankment shall be constructed in uniform horizontal layers not to exceed eight inches (8") of loose depth and compact with suitable equipment to a minimum of ninety percent (90%) AASHTO T180. The materials shall be processed by aeration or watering to bring the material to the approximate optimum moisture. Dry layers will not be permitted. Soft spots that develop in the embankment shall be removed and replaced with suitable material. No payment will be made for removal of soft spots. Tolerance for embankment grading shall be one-half foot (1/2) plus or minus the plan grade.

Preparation of Subgrade - Eight inches (8") of the upper portion of the embankment or excavation shall be shaped and compacted to a minimum density of 95 percent (95%) AASHTO T180 and finished within a tolerance of one-half inch (1/2") in ten feet (10'). The finished subgrade shall be protected and maintained in a satisfactory condition until covered by succeeding construction.

Compaction Tests - Field density tests will be made by the Owner or by a laboratory selected by the Owner. The Contractor shall notify the Engineer when compaction has been achieved. The Contractor shall allow 24 hours for scheduling of test. Prior to the taking of subgrade density test, the entire subgrade will be tested by proof-rolling using a pneumatic roller weighing not less than 50,000 lbs. gross with tire pressure being not less than 110 psi. Any soft spots, pumping, or other evidence of weakness shall be remedied before density tests are made. Proof rolling shall be in the presence of the Engineer or his duly authorized representative.

The City will pay the cost of initial density tests made on the subgrade. If the subgrade fails to meet the density requirements on the first test, the contractor will be required to have subsequent density tests made by the commercial lab selected by owner. The cost of all subsequent density tests will be born by the contractor.

08/07

CONCRETE CURB AND GUTTER, SIDEWALKS AND DRIVEWAYS,

VALLEY GUTTERS, CENTER DRAINS AND RIP RAP

1. GENERAL

Includes the construction of concrete curb and gutter, sidewalks, driveways, valley gutters, center drains and rip rap in accordance with lines, grades and the sections shown on the plans and constructed in full compliance with provisions of the specifications.

A proven performance record by the Texas Highway Department shall be supplied by material producers for all materials supplied by them.

2. MATERIALS

Concrete - All concrete other than rip rap shall be Class "A" concrete in accordance with Texas Highway Department specifications Item No. 421. Concrete for rip rap shall be the class as shown on the plans and detail drawings. When no concrete class is shown the plans concrete for rip rap shall be Class "B" concrete.

Concrete batch designs shall be furnished for each project and shall include all classes of concrete proposed for use on the project.

Reinforcing Steel - Reinforcing steel shall be deformed bars or wire mesh fabric conforming to the requirements of "Texas State Department of Highways and Public Transportation 1982 Standard Specifications for Construction of Highways, Streets and Bridges" Item No. 440 and shall be of the sizes and grades as shown on the plans.

The contractor, at his option, may use fiber reinforcing in lieu of the wire mesh for all concrete slab on grade. When fiber reinforcing is used, it shall be "Fiber Mesh" or "Caprolan RC" or approved equal. The material and rate of application shall be approved by the Engineer prior to its use.

Expansion Joints - Bituminous pre-molded joint filler shall be composed of top grade fiber, treated by special impregnation system with water repellent bituminous materials. It shall be a non-extruding type, resilient, expanding on release of compression, preventing open joint crevices. The pre-molded joint filler shall be of such character, that it will not be deformed by handling during hot weather, nor shall it become brittle in cold weather. It shall be free from visible external defects such as holes, ragged or untrue edges, breaks, cracks or tears. It may be covered on both sides with paper to facilitate handling.

The joint filler shall be accurately cut to the dimensions and shapes required. It shall be of the thickness required by the plans, or as specified elsewhere.

3. CONSTRUCTION METHODS

GENERAL

No concrete shall be placed when, in the Engineers opinion, weather or other conditions would be detrimental to the structure placed. No concrete shall be placed on grade when the ground temperature is 35° F or lower. Concrete may be placed when the ground temperature is rising from 35° F. Concrete placed in cold weather shall be protected from freezing for 72 hours after being placed.

CURB AND GUTTER

EXCAVATION AND SUBGRADE - Excavation for curb, gutter, and combined curb and gutter shall be done with the subgrade excavation for the street. Street subgrade shall extend from six inches (6") back of curb to (6") back of curb and shall be compacted for a full width to a minimum of 95% AASHTO T180-61. Where subgrade is more than three inches (3") below bottom of curb, fill shall be compacted caliche base constructed from six inches (6") back of curb to six inches (6") back of curb as specified for base course.

Whenever subgrade or base is dry or dusty, it shall be thoroughly moistened, not made muddy, before the concrete is placed.

Forms - Forms shall be of steel, of a type to be approved by the Engineer, except that curves may be formed with wood sections built up or laminated, upon prior approval by the Engineer.

The forms shall be attached securely to stakes, shall be set true to line and grade, and braced sufficiently to remain true during the placing and tamping of the concrete. Forms shall be thoroughly cleaned and oiled before each use.

Curves - All changes in direction of the curbs shall be by means of true circular curves of the radii as shown on the plans.

Expansion Joints - Expansion joints shall be placed between curb and gutter sections at the tangent points of all curves, at each side of the inlet boxes, drives, alleyways, and at intervals of not more than forty feet (40') in straight runs. The expansion material shall be pre-molded three-fourths inch (3/4") in thickness, and shall conform to the requirements of expansion material as specified herein. It shall be cut to the full size and shape or the cross section of the curb and gutter, less one-half inch (1/2") from the finished surface thereof. The edges of sections against the joint shall be finished with an edging tool and the joint raked clean of concrete.

Finishing - There shall be provided on the job a metal screed or mule designed to give proper shape to the curb and gutter. It shall be bent to the exact shape of the finished curb and gutter and the forward edge turned up slightly to prevent disturbing the mortar. It shall be designed to ride on the forms and when properly manipulated shall leave the curb and gutter in its proper shaped condition. An "S" trowel shall be used to finish the surface and minor imperfections shall be corrected with a mason's trowel. Care shall be taken to finish

the gutter flow line to a true, uniform grade. All edges shall be finished with an edging tool, and joints marked with a jointer. Joint marks shall coincide with actual joints and shall be straight and true.

Curing - The completed curb and gutter, shall be cured in accordance with the requirements of the item "Membrane Curing", Texas Highway Department Item 531.

DRIVEWAYS AND ALLEY RETURNS

Driveways and alley returns shall be constructed of Class "A" concrete to the lines and grades as shown on the plans and detail sheets. All driveways and alley returns shall be reinforced as shown on the detail drawings.

Excavation and Subgrade - Excavation shall be accomplished in the same manner as for streets and curbs. The subgrade for all driveways and alley returns shall be compacted to 95% modified proctor density for 8 inches depth.

Driveways for single family residences and property used for two family residential purposes (duplexes) may be placed on the compacted subgrade. All other driveways shall be considered as commercial driveways and shall be constructed on 6 inches compacted flexible base.

Flexible Base - Commercial driveways and alley returns shall be constructed on 6 inches of flexible base conforming to Section 2-C- Flexible Base, Caliche.

Forms - Forms shall be constructed of steel or, when approved by the engineer, wood conforming to the requirements for curb and gutter forms.

Expansion Joints - Expansion joints shall be placed at the ends of abutting curb and gutter at the end of radii for all driveways and alley returns. In addition, expansion joints shall be placed at the ends of abutting sidewalk sections and at any point where the driveway or alley return abuts another concrete structure. Expansion joint material shall be pre-molded three fourths inch (3/4") in thickness, cut to the shape and dimensions required and shall extend the full depth of the concrete.

Finishing - Shaping and finishing of driveways and alley returns shall be accomplished by using a screed to shape the driveway or alley return to the lines and grade required. Finishing shall be accomplished by use of wooden floats and stiff bristled brushes or brooms. The last finish shall be by brushing or brooming in
A direction transverse to the direction of traffic.

During the entire finishing process care shall be taken to maintain the true gutter invert in line with the street curb and gutter.

Curing - Finished driveways and alley returns shall be cured in accordance with the requirements "membrane curing" "Texas Department of Highways and Public Transportation, 1982 Standard Specifications for Highways, Streets and Bridges", Item Number 531.

CONCRETE VALLEY GUTTERS, CENTER DRAINS AND DRAINWAYS

Concrete slab type street drainage structures with or without curbs, shall be constructed of Class "A" concrete to the lines and grades as shown on the plans and detail sheets or as may be established in the field by the engineer.

Subgrade excavation preparation and compaction and flexible base shall be the same as specified for street construction. All drainage structures within the roadway shall be constructed on a flexible caliche base so that the thickness of the concrete slab plus base is equal to the thickness of the hot mix asphaltic concrete surface plus base.

Forms - Forms shall be as specified for curb and gutter.

Reinforcing - All slab type drainage structures shall be reinforced as shown on the plans and detail drawings. Care shall be taken to maintain all reinforcing in good condition and at its proper location within the slab.

Expansion Joints - Expansion joint material shall be as specified for curb and gutter and for driveways and alley returns.

Expansion joints for valley gutter shall be placed at the ends of radii and at the juncture between the fillet and the cross valley as shown on the detail sheet.

For center drains, expansion joints shall be placed at the ends of widened or transition sections and at each end of a section containing a manhole or other structure and at intervals of sixty feet (60') measured along the center line of the drain.

Additional expansion joints shall be placed where drainage slabs abut backs of curbs, sidewalks and at contact points with other concrete structures.

Contraction Joints - Contraction joints shall be spaced at 15' intervals along the center line of center drains. These contraction joints shall be saw cut 3/8" wide minimum and 1/4 the depth of the slab using an approved concrete saw.

Saw cut contraction joints shall be made after the concrete has set sufficiently to prevent excessive raveling during sawing and shall be completed before the concrete is 48 hours old.

Finishing - Finishing shall be the same as for alley returns and driveways with the last finishing operation for structures subject to vehicular traffic being by broom or stiff brush in a direction transverse to the direction of traffic.

Curing - Curing shall be the same as for curb and gutter and driveways and alley returns.

SIDEWALKS

Sidewalks shall be constructed of Class A" concrete to the lines and grades as shown on the plans and detail drawings or as may be established in the field by the engineer. Sidewalks shall be constructed parallel to the back of the curb and on a grade parallel to

the top of curb grade. The minimum thickness for any sidewalk is 4 inches. The minimum width of any sidewalk is 4 feet.

Excavation and Subgrade - Excavation for sidewalk shall be made with street excavation where applicable. Care shall be exercised in excavating for sidewalks. Any over excavation or any fill required for sidewalk must be brought to grade in lifts not to exceed two inches (2") and thoroughly tamped. Subgrade for sidewalks shall be compacted to at least the density of the adjacent soil or to 85% modified proctor whichever is greater.

When a sidewalk is to be constructed on an embankment the fill must extend at least 3 feet beyond the edge of the sidewalk.

If the subgrade is dry or dusty it must be thoroughly moistened but not made muddy before concrete is placed.

Forms - Forms for sidewalks may be either steel or wood. Forms must be in good shape and true to line and grade. If nominal 2" x 4" lumber is used the subgrade must be finished one half inch (1/2") below the bottom of the form to provide the required 4 inch thickness.

Expansion Joints - Expansion joint material shall be pre-molded conforming to these specifications and shall be one half inch (1/2") thick. The expansion joint shall extend the full depth of the sidewalk.

Expansion joints shall be placed at points where the sidewalk contacts the back of curb, at all junctures between sidewalks all directions, and at all points where the sidewalk abuts a driveway, alley return or other concrete structure including fence foundations.

Transverse expansion joints shall be constructed in the sidewalk at intervals not exceeding twenty eight feet (28') as measured along the centerline of the walk except for sidewalks that are constructed wider than four feet (4') in which case expansion joints may be placed at intervals that are multiples of the width but not exceeding thirty feet (30').

Contraction Joints - Contraction joints consisting of trowel cuts one and one half inches (1-1/2") deep shall be spaced at four foot (4') intervals along the sidewalk. Contraction joints shall be edged using an edging tool with a 1/4 inch or 3/8 inch radius.

For sidewalks wider than four feet (4') contraction joints may be placed at intervals equal to the width of the walk up to but not exceeding ten feet (10').

Finishing - Sidewalks shall be "struck off" with a screed to provide an even surface and float finished using a wooden float.

The final finish on the sidewalk shall be accomplished by brooming or brushing using a stiff bristled brush or broom with the final strokes being in the transverse direction.

Curing - Curing shall be as specified for curb and gutter and driveways and alley returns.

CONCRETE RIP RAP

Concrete rip rap shall be constructed of concrete of the class and to the line and grades as shown on the plans.

Excavation and Subgrade - Care shall be taken not to over excavate for rip rap. The subgrade for rip rap shall be compacted to at least the density of the adjacent undisturbed soil or 85% modified proctor whichever is higher.

Forms - Forms, where required, may be either steel or wood. Forms must be in good condition and true to line and grade.

Expansion Joints - Expansion joints, where required, will meet the requirements of expansion joints materials as specified herein and will be placed as shown on the plans or directed by the engineer.

Finishing - Finishing shall be by screed and wooden float to produce true uniform surface.

Curing - Curing shall be as specified for other concrete herein.

Slope Paving - Slope paving may be required behind the curb or behind sidewalks where street paving requires deeper cuts in developed areas. Slope paving shall be constructed of Class "A" concrete and shall be constructed to the lines and grades as shown on the plans or as established in the field. Slope pavement shall be four inches (4") thick and shall be constructed in accord with the specifications for sidewalks.

When no slope grade is given on the plans the slope gradient shall be l:l.

Unless listed separately on the bid proposal, slope pavement shall be measured and paid for as sidewalk.

4. BACKFILL AND CLEANUP

GENERAL

Backfill and clean up are an integral part of the various items covered by this specification and must be completed for each item before that item will be considered for payment.

CONCRETE STRUCTURES WITHIN THE PAVED AREA OF STREETS

Backfill and clean up for concrete structures within the paved areas of streets, alleys, etc. shall receive special attention to assure the integrity of the street pavement.

Structures constructed in previously paved areas shall have sufficient surface removed along with base and subgrade where necessary to set full face forms for the concrete. As soon as the forms are removed all loose material shall be removed from the form trench and the trench filled to the base level with Portland cement stabilized backfill material

consisting of two (2) sacks Portland cement to one (l) cubic yard of caliche base material or one (l) cubic yard "blow sand". When the cement stabilized backfill has cured the pavement edge shall be saw cut to provide true and straight lines and the pavement restored to its original or revised grade using Hot mix asphaltic concrete conforming to the requirements of Section 2-F of these specifications.

For structures constructed on previously prepared subgrade or base course, clean up and backfill shall be considered complete when the subgrade or base course has been made ready to receive the next course.

When a structure is constructed on a finished base course and it is necessary to remove base material to set forms, backfill and cleanup shall be as described for previously paved areas and shall be considered complete when the base course is made ready to receive the surface course or courses.

BACKFILL BEHIND CURBS AND ALONG SIDEWALKS

Backfill behind curbs and along sidewalks that is to be grassed shall be made using good top soil. Top soil shall be free of caliche, rocks, clods, lumps, debris and other objectionable material. This backfill shall be compacted to at least the density of undisturbed adjacent soil but not less than 85% modified proctor.

Backfill behind curbs and along sidewalks that is to receive paving shall be constructed to conform to the base and subgrade of the adjacent paving and shall be compacted to 95% modified proctor. Or the contractor may elect to backfill to the top of the base with two (2) sack cement stabilized backfill.

In undeveloped areas and in areas where no sidewalks exist the contractor shall slope from the back of the curb to a maximum height of 1/4 inch per foot rise from the top of the curb to the property line on a straight line grade. The minimum elevation at the property lines shall be top of curb elevation.

In deeper cut areas slope paving may be required. When slope paving is required it shall be constructed to the lines and grades shown on the plans. Backfill and shaping beyond the slope paving shall be in accord with the applicable portions of this specification.

CONCRETE CURB AND GUTTER, SIDEWALKS AND DRIVEWAYS.....1

VALLEY GUTTERS, CENTER DRAINS AND RIP RAP 1

1. GENERAL.....1
2. MATERIALS 1
3. CONSTRUCTION METHODS.....2

GENERAL.....2
CURB AND GUTTER.....2
DRIVEWAYS AND ALLEY RETURNS 3
CONCRETE VALLEY GUTTERS, CENTER DRAINS AND DRAINWAYS.....4
SIDEWALKS 4
CONCRETE RIP RAP 6

4. BACKFILL AND CLEANUP.....6

GENERAL.....6
CONCRETE STRUCTURES WITHIN THE PAVED AREA OF STREETS 6
BACKFILL BEHIND CURBS AND ALONG SIDEWALKS.....7

Updated 3/06

CONCRETE STRUCTURES

1. GENERAL

This specification covers concrete structures including but not limited to junction boxes, culverts, head walls, cast in place manholes, valve vaults, meter vaults and retaining walls.

2. MATERIALS

CONCRETE

Concrete for cast in place manholes, junction boxes, storm sewer inlet boxes, valve vaults and direct traffic culvert and bridge decks shall be a modified class "C" concrete using a minimum of 6 sacks cement per cubic yard with a maximum water content of 5 gallons per sack of cement and producing a concrete with 4000 psi 28 day compressive strength.

Concrete for other structures shall be class "A" as specified in "Texas State Department of Highways and Public Transportation 1982 Standard Specifications for Construction of Highways, Streets and Bridges" item number 421. Concrete for riprap shall be class "B".

Reinforcing steel shall conform to the requirements of item number 440 or "Texas State Department of Highways and Public Transportation 1982 Standard Specifications for Construction of Highways, Streets and Bridges" and shall be of the sizes and grades as shown on the plans.

3. CONSTRUCTION

Construction of concrete structures shall be in accordance with the provisions of item 420 "Texas State Department of Highways and Public Transportation 1982 Standard Specifications for Construction of Highways, Streets and Bridges".

8/07

FLEXIBLE BASE, CALICHE.....1
1. GENERAL 2
2. MATERIALS 2
3. CONSTRUCTION 3
4. TESTING.....3

FLEXIBLE BASE, CALICHE

1. GENERAL

This item consists of the construction of a caliche flexible base course to the lines, grades and thickness shown on the plans and in accordance with the provisions of the specifications.

Qualification of Material Source - There will be no designated material sources, but the source proposed by the Contractor must be approved by the Engineer. The contractor shall furnish evidence of capability to crush and screen the material with suitable equipment.

Measurement and Payment - Measurement and payment to be at the units and price for the applicable bid item in the proposal.

2. MATERIALS

Material from the approved source shall meet the following requirements when tested in accordance with the referenced testing standards:

Gradation - Tested by ASTM C 136-67 to meet the following gradation limits:

Sieve Size	Percent Passing
1-3/4"	100.0
7/8"	65-90
3/8"	50-70
No. 4	30-60
No. 40	15-35

Liquid Limit and Plasticity Index **-** Tested by ASTM D423-66 and D 424-59.

Liquid Limit - 30.0 Maximum
Plasticity Index - 10.0 Maximum
Triaxial Classification - Tested by Texas Highway Department Method TEX 117-E, Part II - minimum class 3.0.

Source Quality Control - The contractor shall exercise caution in the operation of the material source to prevent the inclusion of inferior materials.

3. CONSTRUCTION

A. The subgrade shall be finished true to the lines and grades as shown on the plans or as established by the Engineer and finished within specified tolerances and properly maintained to prevent drying and/or loosening of the surface.

No base material may be dumped on any subgrade until it has been tested and approved by the Engineer.

B. Flexible caliche base material shall be placed in uniform courses and processed to provide a uniformly mixed base course of the proper moisture content for compaction. The processing and compaction procedure used shall provide a uniform base course compacted to ninety-five percent (95%) modified proctor density (YACHT T180) minimum. The minimum thickness of any one compacted course shall be three inches (3"). The maximum thickness of any one compacted course shall be eight inches (8").

Any soft or segregated spots that appear in the base shall be removed, replaced or reprocessed and recompacted prior to final finishing of the base. The finished base shall conform to the lines and grades as shown on the plans or established by the Engineer. Finished tolerances shall not exceed one half inch (1/2") in ten feet (10').

The finished base shall be primed as soon after finishing as practical and shall be protected until the hot mix asphaltic concrete surface is applied. In no case will prime be applied until the finished base has been approved by the Engineer.

4. TESTING

A. All test for approval of the source shall be performed by a commercial lab selected by the owner and shall be paid for by the contractor.

B. Gradation and soil constants tests (ASTM C-136, D423 and D424) and THD Triaxial Test (THD TEX117-E Part II) will be performed for source approval. Should the appearance, workability or other visual checks indicate a possible change in the material being furnished, the Engineer may require the contractor to retest the material for source approval.

C. Field quality control test will consist of the finish tolerance test and density test.

The finish tolerance test will be performed by the contractor at his expense using a 10' rolling straight edge. This test shall be performed at the direction of the Engineer or his representative. When required, the test shall consist of checking one path in each lane with the rolling straight edge.

Density test will be made by the City or a commercial laboratory chosen by the City using Troxler 3411-B nuclear density gauges or approved equal at the minimum rate of one test for each 1000 square yards of base. In no case shall less than three tests be run on any one area processed as a unit. The City will bear the cost of the first test or set of tests only. If the base fails the first test the contractor, at his own expense, will be required to have all subsequent tests performed by the commercial laboratory chosen by the city.

8/07

BITUMINOUS PRIME

1. GENERAL

This item consists of the application of a bituminous prime coat to the finished caliche base in accordance with the provisions of the Specifications.

Qualification of Material Source - Material shall be supplied by a producer with a proven performance record of acceptance by the Texas Highway Department.

Measurement and Payment - Measurement and payment will be at the units and price for the applicable bid item in the proposal.

2. MATERIALS

Cut-back asphalt grade MC-30, Texas Highway Department Item 300.

Source Quality Control - Certificates of compliance to be furnished by the producer to the Engineer.

3. CONSTRUCTION METHODS

Condition of Base - The surface of the base shall be tightly compacted to the line and grade shown on the plans and within the tolerances of the specifications. The surface shall be clean and the base shall contain sufficient moisture to assure the proper penetration of the prime.

The prime shall be applied with an approved distributor to the surface of the base at a rate of between 0.15 and 0.40 gallon per square yard. The application rate shall be varied to meet field conditions and to obtain uniform coverage, and adequate penetration. Properly applied prime coat should penetrate from 3/8" to 1/2" into the base and should cure in approximately 72 hours with ambient temperatures at or near 70 degrees F. The prime shall be applied at a temperature within the range of temperatures recommended in Item 300 of Texas Highway Department Standard Specifications. The temperature shall be varied within this range to provide a viscosity that will assure even spreading and penetration of the base. Air Temperatures at the time of application shall be above 50'F.

BITUMINOUS TACK

1. GENERAL

This item consists of the application of a bituminous tack coat to the primed base or existing asphaltic concrete or Portland cement concrete pavement in accordance with the provisions of the specification.

Qualification of Material Source - Material shall be supplied by producer with a proven performance record of acceptance by the Texas Highway Department.

Measurement and Payment - Measurement and payment will be at the units and price for the applicable bid item in the proposal.

2. MATERIALS

Cut-back asphalt grade RC-250, Texas Highway Department Item 300.

3. CONSTRUCTION METHODS

Conditions of Surface - Prior to application of tack to the base course the prime must be completely penetrated into the base and the surface cleaned of foreign objects.

The tack shall be applied with an approved distributor at a rate of between 0.05 and 0.10 gallons per square yard. The temperature of application shall be within the range recommended by the Texas Highway Department in Item 300. The surface temperature to which tack is being applied shall be above 50 degrees F. at the time of application.

When the asphaltic concrete surface is being placed on primed caliche base, use of the tack coat may be waived by the Engineer if the contractor can show that adequate adhesion of the surface being placed to the base course is achieved without it.

Tack coat shall be placed on all asphaltic concrete or portland cement concrete surfaces on which an additional course of asphaltic concrete surfacing is to be placed. The tack coat shall be rolled with a pneumatic roller to assure even distribution over the entire surface and to achieve proper penetration into and adhesion to the surface being overlayed.

HOT MIX ASPHALTIC CONCRETE

I. GENERAL

Includes the construction of the hot mix asphaltic concrete surface in accordance with lines, grades and the sections shown on the plans and with the provisions of the specifications.

Qualification of Material Sources - Producers of oil asphaltic concrete mixture to have a proven record of acceptance by the Texas Highway Department.

Measurement and Payment - Measurement and payment to be at the units and price for the applicable bid item in the proposal.

2. MATERIALS

Oil Asphalt - Oil asphalt grade AC-l0 or AC-20, Texas Highway Department Item 300. When no asphalt grade is shown on the plans, and unless directed otherwise by the Engineer, asphalt for this project shall be grade AC-10.

Coarse Aggregate - Crushed stone or crushed gravel with a minimum of 75 percent of the aggregates having two or more crushed faces. Additional requirements:

(a) Los Angeles Abrasion: ASTM C l3l, Wear not to exceed 40.

(b) Decantation: Maximum 2.0 percent by weight

Fine Aggregates - Natural sand and screenings crushed from the same or similar material meeting the requirements of the course aggregates. Additional requirements.

(a) Plasticity Index: Maximum of 6.

(b) Sand Equivalents: Minimum of 50 for each individual fine aggregate.

Paving Mixtures - The paving mixture(s) shall be as shown on the plans and details. If no mixtures are shown on the plans surface or wearing courses up to l-3/4 inches thick shall be Type D, base courses up to 2 inches thick shall be Type C and base courses over 2 inches thick shall be Type B or Type A.

(a) Gradation: The master gradations for the paving mixtures are:

TYPE "A" (Coarse Graded Base Course):	Percent Aggregate by weight or volume
Passing 2" sieve	100
Passing l-3/4" sieve	95 to 100
Passing l-3/4" sieve, retained on 7/8" sieve	16 to 42
Passing 7/8" sieve, retained on 3/8" sieve	16 to 42
Passing 3/8" sieve, retained on No. 4 sieve	10 to 26
Passing No. 4 sieve, retained on No. l0 sieve	5 to 21
Total retained on No. l0 sieve	68 to 84
Passing No. l0 sieve, retained on No. 40 sieve	5 to 21
Passing No. 40 sieve, retained on No. 80 sieve	3 to 16
Passing No. 80 sieve, retained on No. 200 sieve	2 to 16
Passing No. 200 sieve	1 to 8

The asphaltic material shall form from 3.5 to 7 percent of the mixture by weight.

TYPE "B" (Fine graded Base or Leveling-up course)	Percent Aggregate by Weight or Volume
Passing l" sieve	100
Passing 78" sieve	95 to 100
Passing 7/8" sieve, retained on 3/8" sieve	21 to 53
Passing 3/8" sieve, retained on No. 4 sieve	11 to 42
Passing No. 4 sieve, retained on No. l0 sieve	5 to 26
Total retained on No. l0 sieve	58 to 74
Passing No. l0 sieve, retained on No. 40 sieve	6 to 32
Passing No. 40 sieve, retained on No. 80 sieve	4 to 21
Passing No. 80 sieve, retained on No. 200 sieve	3 to 21
Passing No. 200 sieve	1 to 8

The asphaltic material shall form from 3.5 to 7 percent of the mixture by weight.

Type "C" (Coarse Graded Surface Course):	Percent Aggregate by Weight or Volume
Passing 7/8" sieve	100
Passing 5/8" sieve	95 to 100
Passing 5/8" sieve, retained on 3/8" sieve	16 to 42
Passing No. 4 sieve, retained on No. l0 sieve	11 to 37
Total retained on No. l0 sieve	54 to 74
Passing No. l0 sieve, retained on No. 40 sieve	6 to 32
Passing No. 40 sieve, retained on No. 80 sieve	4 to 27
Passing No. 80 sieve, retained on No. 200 Sieve	3 to 27
Passing No. 200 sieve	1 to 8

The asphaltic material shall form from 3.5 to 7 percent of the mixture by weight.

TYPE "D" (Fine Graded Surface Course):	Percent Aggregate by Weight or Volume
Passing l/2" sieve	100
Passing 3/8" sieve	85 to 100
Passing 3/8" sieve, retained on 4" sieve	21 to 53
Passing No. 4 sieve, retained on No. l0 sieve	54 to 74
Total retained on No. l0 sieve	54 to 74
Passing No. l0 sieve, retained on No. 40 sieve	6 to 32
Passing No. 40 sieve, retained on No. 80 sieve	4 to 27
Passing No. 80 sieve, retained on No. 200 sieve	3 to 27
Passing No. 200 sieve	1 to 8

The asphaltic material shall form from 4 to 8 percent of the mixture by weight.

TYPE "F" (Fine Graded Surface Course):	Percent Aggregate by Weight or Volume
Passing 3/8" sieve	100
Passing No. 4 sieve	95 to 100
Passing No. 4 sieve, retained on No. l0 sieve	58 to 73
Passing No. l0 sieve, retained on No. 40 sieve	6 to 26
Passing No. 40 sieve, retained on No. 80 sieve	3 to 13
Passing No. 80 sieve, retained on No. 200 sieve	2 to 11
Passing No. 200 sieve	1 to 8

The asphaltic material shall form from 3.5 to 6.5 percent of the mixture by weight.

(b) Tolerances: Deviations from job mix formula limited to:

(l) Sizes larger than the l0 sieve- Plus or Minus 4 percent.

(2) No. l0 sieve and smaller - Plus or Minus 3 percent.

(3) The deviation from the job mix formula shall be further limited in that the total deviation from the job mix formula between any two adjacent aggregate grades shall not exceed the allowable deviation for either one.

(4) Asphalt - Plus or Minus 0.3 percent.

(c) Density - The mixture shall be designed to produce an acceptable mixture within tolerance, at or near optimum density. The mixture molded in the laboratory should have the following percent of maximum theoretical density:

Minimum	Maximum	Optimum
96	98	97

(d) Stability: Minimum of 35 Hveem

Source Quality Control - Paving mixture and plant tests to be performed by laboratory selected and paid by the Owner, except as noted.

Job Mix Formula - The contractor shall submit a job mix formula, prepared by laboratory chosen by the owner, at least l0 days in advance of laying operations to allow time for review by the engineer. Substitution of one or more materials will require a new job mix formula and must be approved by the engineer.

The design of job mix formula whether for original submittal or revisions shall be paid for by the contractor.

Plant Tests - Check of raw material uniformity, quality and flow, hot bin gradations, temperature of mixture, mixture tests for density, stability and percent asphalt and other necessary tests to be performed bythe laboratory selected by the owner for each day's production.

Oil Asphalt - Producer to furnish certificates of compliance to the Engineer.

3. CONSTRUCTION METHODS

A. GENERAL

Condition of Base - The surface of the base shall be tight and free of debris. The prime coat shall be uniformly distributed, well penetrated and completely cured prior to application of the tack coat. If the mixture will adhere to the surface of the base without the application of a tack coat, the tack coat can be eliminated. If the surface of the base is one half (l/2") inch or more lower than the proposed bottom of the asphaltic concrete it shall be corrected by placing and compacting a level up course of the asphaltic concrete before the mat is placed on it.

Stockpiling, Storage, Batching and Mixing - Shall meet the requirements of Item 340, "Texas Highway Department l982 Standard Specifications for Road and Bridge Construction.

Weather Limitations - Shall be the requirements of Item 340,"Texas Highway Department l982 Standard Specifications for Road and Bridge Construction." With the added provision that no asphaltic concrete shall be placed when the surface on which the mat is to be placed is below 50 degrees F.

Thickness - Shall be as shown on plans. Unless shown otherwise on the plans, the maximum compacted thickness of any one course of asphaltic concrete shall be two and one-half (2-l/2) times the maximum aggregate size of the mixture being placed. The minimum shall be one (l) inch or one and one fourth (1-1/4) times the maximum particle size which ever is greater.

B. PLACING

Placing of Asphaltic Concrete shall be accomplished using an approved self propelled spreading and finishing machine with a heated vibrating screed capable of producing a surface that will meet the requirements of the typical cross section and the surface test, and when the mixture is dumped directly into the finishing machine shall have adequate power to propel the delivery vehicles in a satisfactory manner. The finishing machine shall be equipped with a flexible spring and/or hydraulic type hitch sufficient in design and capacity to maintain contact between the rear wheels of the hauling equipment and the pusher rollers of the finishing machine while the mixture is being unloaded.

The use of any vehicle which requires dumping directly into the finishing machine and which the finishing machine cannot push or propel in such a manner as to obtain the desired lines and grades without resorting to hand finishing will not be allowed. Vehicles dumping directly or indirectly into the finishing machine shall be so designed and equipped that unloading into the finishing machine can be mechanically and/or automatically operated in such a manner that overloading the finishing machine being used cannot occur and the required lines and grades shall be obtained without resorting to hand finishing.

Automatic screed controls will be required and shall meet the requirements item, 528 "automatic screed controls for asphaltic concrete spreading and finishing machines "Texas Department of Highways and Public Transportation 1982 Specifications for Construction of Highways, Streets and Bridges".

The screed shall be ski controlled using a ski of not less than l8' in length. Curb shoe control will not be allowed.

The spreading and finishing machine shall be maintained in good working order and operated by competent trained personnel.

The Engineer may require the contractor to place a test strip to prove the capability of the machine and the competency of the operating personnel to produce a satisfactory finished surface.

In dips and on curved surfaces where the ski control cannot be used, the surface will be controlled using a l0' straight edge.

Fillet areas, turn outs and other areas not accessible to the spreading machine may be hand laid provided a satisfactory surface is produced.

C. COMPACTION AND FINISHING

Compaction Requirements - The asphaltic concrete surface shall be compacted so that the compacted mixture will contain not more than seven percent (7%) nor less than three percent (3%) air voids.

The surface of the pavement, after compaction, shall be smooth and true to the established line, grade and cross section, and when tested with a l0 foot rolling straightedge, except as provided herein, the maximum deviation shall not exceed l/8 inch in l0 feet, and any surface not meeting this requirement shall be corrected as directed by the engineer.

Raking and Leveling - Minor leveling may be accomplished using asphalt rakes prior to compacting the surface. The surface shall be leveled by loosening the surface of the asphaltic concrete using an asphalt rake then adding or removing material and smoothing the surface. Any large aggregate worked to the surface in this process shall be removed before compaction. The large aggregate shall not be spread over the new asphaltic concrete surface.

Edges and joints with compacted asphalt or concrete gutters shall be carefully squared and excess material removed before compaction. Care shall be taken to see that NO excess material laps over onto the surface of existing asphaltic concrete paving or concrete gutters. Large aggregate worked to the surface in this process shall be removed. It shall not be spread over the new asphaltic concrete surface.

Rolling - In general rolling shall conform to the requirements of item 340 of the Texas Department of Highways and Transportation 1982 Specifications for Construction of Highways, Streets an Bridges except as modified herein.

It shall be the responsibility of the contractor to have rolling equipment available on the job to properly compact the paving mixture in place as required without delay to the lay down operation. Rollers provided shall meet the qualifications for their type as follows:

PNEUMATIC TIRE ROLLERS: The rollers shall be acceptable medium pneumatic tire rollers conforming to the requirements of the item, "Rolling (pneumatic tire)", Type B, unless otherwise specified on plans.

TWO AXLE TANDEM ROLLER: This roller shall be an acceptable power driven tandem roller weighing not less than 8 tons.

THREE WHEEL ROLLER: This roller shall be an acceptable power driven three wheel roller weighing not less than l0 tons.

THREE AXLE TANDEM ROLLER: This roller shall be an acceptable power driven three axle roller weighing not less than l0 tons.

Vibrating rollers will not be used without prior written approval of the engineer. Written approval will be granted only upon demonstration by the contractor that the roller and operator can produce a satisfactory surface within the tolerances of these specifications. Only the operator or operators thus approved will be allowed to operate the vibrating roller on this project.

Areas not accessible to standard rollers shall be compacted using trench rollers, impact tampers, hand tamps or other approved means that will produce the density and surface required.

JOINTS- Shall be carefully rolled to provide compaction of the asphalt against the existing surface or face of the concrete gutter. Joints between concrete gutters and Hot Mix Asphaltic Concrete shall be placed so that the HMAC will be approximately l/2 inch higher than the concrete when compaction is completed. At transverse joints such as valley gutters and fillet areas where finishing asphalt paving 1/2 inch above the edge of concrete will adversely affect ride quality the asphalt shall be finished 1/4 inch above the edge of the concrete.

Transverse joints shall be rolled in the transverse direction with the first pass extending approximately six (6") inches onto the new asphalt each additional pass shall extend approximately twelve (12") inches further onto the new asphalt until the full width of the roller is on the new asphalt. Longitudinal rolling may begin then.

All transverse joints shall be checked with a l0" straight edge while the material is

still hot enough to roll. Any corrections shall be made by loosening the material using an asphalt rake and adding or removing material and recompacting the surface. The surface shall be rechecked and when the joint is acceptable the asphalt spreading machine may proceed with the pass.

Final or finish rolling shall be accomplished using a two axle tandem roller to remove roller marks. This rolling shall be accomplished after the surface has cooled sufficient to minimize further marking but before it is too cool to respond to rolling.

STRAIGHTEDGES AND TEMPLATES - The contractor shall provide acceptable l0 foot straightedge for surface testing. Satisfactory templates shall be provided as required by the Engineer.

4. FIELD QUALITY CONTROL

Test Lots - Field Quality Control Tests shall be made by lot with a lot being the amount of contiguous surface laid in one day. No lot shall exceed l0,000 S.Y. If a days laying exceeds l0,000 S.Y., that days laying shall be divided into two approximately equal lots. The same lot divisions shall be used for all Quality Control Tests. Each separate block or combination of contingeous (blocks) of paving shall be considered as a separate lot even though they may be placed in a single day and do not comprise l0,000 S.Y. of surface.

Surface Tests - Surface tolerance tests will be performed in both longitudinal and transverse directions. The test for longitudinal surface tolerance will be performed with a ten-foot rolling straightedge furnished by the contractor, and calibrated and used in accordance with the manufacturer's recommendation or other approved method.

The maximum allowable deviation in surface shall be 1/8 inch in 10 feet. Tests for longitudinal surface tolerance will be performed by the contractor, accompanied by the engineer within 24 hours of the completion of a lot. One path in each lane for the length of the entire lot will be tested. The location of the test path (Distance from centerline or pavement edge) will be determined by the engineer through the use of random numbers. Any deviations in the surface finish of a roadway wearing course which exceeds l/4 inch must be corrected. After corrections have been made, the entire lot must meet the l/8 inch surface tolerance.

Thin course "scab on" patching will NOT be permitted. Corrections may be made by planning, milling and patching or by removing and replacing affected surface area.

When milling and patching is used to correct surface defects the minimum depth of removal shall be l".

For milling and patching or surface removal the area removed or milled shall be sufficiently large to avoid the appearance of patching.

When planning is used to correct defects the thickness of the remaining paving shall meet the thickness requirements as shown on the plans.

Surface tolerance test will be performed on the last or wearing course only.

Asphaltic concrete pavement constructed under these specifications that does not meet the surface tolerance requirements and is allowed to remain in place will be paid for at a reduced rate determined by multiplying the price bid for the wearing surface course by a surface tolerance quality factor. This rate shall apply to the entire lot.

Lower courses will not be affected by this quality factor but will be paid for at the price bid or such price as it may be affected by other quality factors.

The surface tolerance quality factor will be determined according to the following schedule:

Linear % of pavement exceeding 1/8 inch surface tolerance	Surface tolerance quality factor
0.0 to 1.0	1.0
1.1 to 1.5	0.9
1.6 to 2.5	0.8
over 2.5	0.5

Roadway surface requirements will not be applied for paved drives, aprons, turnouts, and other irregular sections, however, asphaltic concrete shall be placed in such a manner as to provide a neat and uniform appearance and shall be compacted by methods satisfactory to the engineer.

The contractor may request permission to reconstruct a portion of the pavement when, in his opinion, the surface tolerance quality factor can be improved. Upon approval of the engineer, the contractor shall take sufficient tests to isolate the portion or portions of pavement to be pre- constructed and remove and reconstruct the pavement. All costs in connection with this reconstruction are to be born by the contractor. The minimum width of this reconstruction shall be l/2 the street width unless approved otherwise in writing by the engineer. The portions reconstructed shall be re-tested and the surface tolerance quality factor recomputed using the new information along with the test from the area within the portion of the lot not reconstructed.

When other quality factor reductions are provided for on the plans or in the specifications the effect shall be cumulative ie: QFl x QF2 x QF3 x ....x QFn x unit price.

No payment will be made for pavement with a combined quality factor of less than 0.5.

Thickness Test - Thickness test will be made by the engineer on each course of asphaltic concrete laid. Test specimens shall be made by a commercial laboratory selected by the owner. Test specimens shall be cores having a minimum nominal diameter of 6". These cores shall be made in the presence of the inspector at locations designated by the inspector using an approved power operated coring machine.

For thickness and compaction test, each lot shall be divided into approximately equal sublots corresponding in width to each pass of the lay down machine and containing up to but not exceeding 2,000 square yards each. If a lot contains less than 2,000 square yards the engineer may, at his option, divide the lot into two equal sublots, or, if the contractor has a record of satisfactory workmanship, the engineer may waive tests on said lots.

The engineer will locate one test spot for each l,000 S.Y. and/or fraction thereof in each sub-lot using random numbers. If a spot thus located falls within one foot of a longitudinal joint or lip of gutter or within two feet of an unsupported edge or within l5 feet of the beginning or ending edge of a pass, the engineer will relocate the spot using random numbers. The commercial laboratory chosen by the owner will remove the test specimen from each designated spot, mark the specimen and the adjacent pavement for future reference and perform the required tests. Test specimens shall be removed with special caliper type tongs having circular jaws of the diameter of the specimen being removed. These jaws shall grip at least 1/2 of the circumference of the specimen. Screw drivers or other type of prying instruments shall not be used to remove the specimens.

The thickness of a specimen shall be determined by averaging four (4) measurements made at ninety degree (90) intervals around the specimen. Any thickness less than design thickness shall be considered as deficient.

For hot mix asphaltic concrete pavement less than 2 inches thick the maximum allowable deficiency in any one test specimen is l/8 inch provided that no more than twenty five percent (25%) of the specimens tested show a deficiency. For pavement in excess of 2 inches in thickness the maximum allowable deficiency in any one specimen shall be l/8 inch plus l/l6 inch for each additional inch of thickness provided that no more than twenty five percent (25%) of the test specimens show a deficiency.

When a test specimen has a greater deficiency and less than (25%) of the test specimens show a deficiency the contractor shall, at his own expense, determine the extent of the deficiency and correct it by removing and replacing the surface. The minimum width for such correction will be the full width of the pass or passes of the lay down machine in which the deficiency occurs.

The minimum length of such correction shall be three times the width removed. When more than (25%) of the test specimens show a deficiency the surface may at

the engineers option be declared uniformly deficient and the contractor shall correct the deficiency by removing and reconstructing the surface or by constructing an overlay of not less than l inch thickness over the deficient area. The construction of an overlay will require milling at lip lines and dips.

The corrected surface shall meet all the requirements of these specifications.

Asphaltic concrete pavement constructed under these specifications that is less than design thickness, if allowed to remain in place, will be paid for at a reduced rate determined by multiplying the unit price bid in the bid proposal by a thickness quality factor. This rate shall apply to the entire lot in which the deficiency is found.

The thickness quality factor for hot mix asphaltic concrete pavement less than 2 inches in thickness shall be:

Thickness Deficiency	Quality Factor
Maximum l/8" for any one specimen with no more than 25% of the specimens showing a deficiency.	l.0
Pavement not meeting the 25% limitation with an average specimen deficiency up to l/8 inch.	0.75
Average specimen deficiency of l/8 inch to l/4 inch	.55
Average deficiency of more than l/4 inch	0.0

The thickness quality factor for hot mix asphaltic concrete more than 2 inches thick will be l.0 if the maximum deficiency for any one specimen is l/8 inch plus l/l6 inch for each additional inch of thickness over 2 inches and not more than twenty five percent (25%) of the test specimens in the lot are deficient. For thickness test that fall outside this area either by single specimen thickness deficiency or more than twenty five percent (25%) of the specimens showing deficiency the thickness quality factor shall be computed as follows:

$$\text{Thickness Quality Factor} = \frac{1}{\left(\frac{1}{\text{Thickness Ratio}}\right)^2}$$

The thickness ratio for a lot is the average specimen thickness for that lot, with no allowance for thickness in excess of design, divided by the design thickness. For determining the average specimen thickness, those specimens in excess of design thickness shall be considered at design thickness.

The minimum thickness quality factor for which payment will be allowed is .55. Any pavement with a thickness quality factor below .55 will be considered as having a thickness quality factor of 0. This shall apply only if the contractor requests, in writing, to have this paving remain in place and this request is approved in writing by the engineer.

When the deficient area is in a lower course of a multi-course paving structure the contractor may reduce or correct the deficiency by increasing the thickness of the subsequent course or courses as follows:

When subsequent course is	Maximum increase in course thickness
Type B	1/2"
Type C	3/8"
Type D	1/4"

When corrected in this manner the thickness quality factor shall be determined using the combined thickness of the corrected courses and shall apply to all unit prices applicable to this lot.

The contractor may request permission to reconstruct a portion of the pavement when, in his opinion, the thickness quality factor can be improved. Upon approval of the engineer, the contractor shall take sufficient tests to isolate the portion or portions of pavement to be reconstructed and remove and reconstruct the pavement. All cost in connection with this reconstruction are to be born by the contractor. The minimum width of this reconstruction shall be l/2 the street width unless approved otherwise in writing by the engineer. The portions reconstructed shall be retested and the thickness quality factor recomputed using the new information along with the test from the area within the portion of the lot not reconstructed.

When other quality factor reductions are provided for on the plans or in the specifications the effect shall be cumulative ie: QFl x QF2 x QF3 x....x QFn x unit price.

No payment will be made for pavement with a combined quality factor of less than 0.5.

Compaction Test: Compaction test will be made by the commercial laboratory chosen by the owner on the core samples removed from the paving for thickness testing.

The percent air voids will be calculated using maximum theoretical specific gravity of the mixture.

The contractor may attempt to correct deficiencies in compaction by additional pneumatic rolling upon written permission of the engineer. Requests for permission to conduct additional rolling shall be submitted, in writing, to the engineer no later than three days following notification of the deficiency by the commercial laboratory and the additional rolling shall be completed within ten (l0) days following said notification weather permitting.

In no case shall the additional rolling be delayed beyond thirty (30) days from the date the surface was laid. All cost for additional rolling and additional coring and testing of the re-rolled surface shall be born by the contractor.

Asphaltic concrete pavement not meeting this specification and that is allowed to remain in place shall be paid for at a reduced rate determined by multiplying the price bid in the bid proposal by a compaction quality factor determined according to the following schedule:

Percent air voids (average of all specimens for the lot)	Compaction Quality factor	
less than 3	0	
3.0 to 8.0	1.0	
8.1 to 9.0	0.9	
9.1 to 10.0	0.7	
10.1 to 11.0	0.5	and the engineer may require a chip seal to be applied at the contractor's expense
More than 11		0 and the engineer may require a chip seal to be applied at the contractor's expense.

NOTE: HMAC surfacing with between 11% and 15% air voids may, upon written request by the Contractor, be reviewed by the Engineer to determine if it may be left in place. The Engineer's review will consider the type of street and expected traffic conditions among other factors and a written determination will be issued. If the surface is allowed to remain in place, a chip seal will be required at the Contractor's expense. The quality factor for this paving will remain at 0.

The reduced rate shall apply to the entire lot.

The effect of compaction quality factors shall be cumulative and shall be applied as described for surface quality factors and thickness quality factors.

Cost for Field Quality Control - The surface tolerance test shall be made by the contractor at his expense.

The initial thickness and compaction test will be made at no cost to the contractor except for the cost of materials and labor to repair the holes left when cores are removed.

The cost of all thickness test to isolate a deficient area and the cost of retesting the corrected area shall be born by the contractor.

The cost of all retesting of compaction after additional rolling to correct compaction deficiencies shall be born by the contractor.

Areas reconstructed to remedy deficiencies shall meet all the requirements of these specifications and shall be tested in the same manner as original construction. The cost of all tests on reconstructed areas shall be born by the contractor.

5. ADDITIVES

Anti-stripping: An approved liquid anti-stripping agent shall be added to the asphalt used in the hot mix asphaltic concrete. The rate of application shall be in accordance with the manufacturer's recommendation. The minimum anti-stripping agent added shall be one-half (l/2) of l%.

The anti-stripping agent used shall have a proven record when used with similar aggregate and shall be approved by the engineer in writing prior to the date set for reception of bids.

P.V.C. PIPE CASINGS

1. SCOPE

   This item consists of furnishing and installing PVC pipe for casing for future water and electric lines at locations shown on the plans or as directed by the Engineer.

2. MATERIAL

   Pipe shall be ASTM D 1785 schedule 40 PVC pipe or ASTM D 2241 PVC SDR 32.5 pressure pipe. The ASTM designation and schedule or SDR shall be clearly marked on the outside of the pipe.

3. CONSTRUCTION

   Pipe shall be laid in straight alignment and grade in trenches as narrow as the diameter of the pipe can be laid. Pipe shall be placed after the sub grade is prepared but before base material is placed. Bedding under the pipe shall be a minimum of 2 inches in thickness and shall be carefully graded and leveled before pipe is placed. Joints shall be water tight. They may be solvent cement welded using approved materials, or may be made using a gasketed collars or push on gasketed bell and spigot. When collars are used care shall be exercised to assure that the collar is centered over the joint. All joints shall be made in accord with the manufacturer's recommendations. After pipe has been joined and inspected the pipe shall be encased in bedding/encasement material to a thickness of 3 inches above the pipe. Care shall be exercised to be sure the encasement material is worked in under the haunches of the pipe and compacted along the side of the pipe to assure adequate lateral support. The balance of the trench shall be back filled using cement stabilized backfill consisting of 2 sacks of Portland cement to 1 cubic yard of blow sand or crushed caliche mixed with sufficient water to form a stiff place able mixture that can be consolidated in the trench by rodding or vibrating. The back fill shall be "struck off" at the finished sub grade level using square point shovels or suitable screeds. The ends of the pipe shall be tightly plugged to prevent the entrance of water debris or other foreign material. These plugs shall be PVC or rubber stoppers designed to endure until the water lines and/ or electric lines are places.

4. MEASUREMENT AND PAYMENT

   Casing pipe shall be measured by the linear foot along the center of the pipe and shall be paid for at the unit price in the bid proposal.

WATER LINE SPECIFICATIONS

1. SCOPE OF WORK

The work covered by this section consists of all water pipe lines and piping, including valves, valve boxes, tapping sleeves, fire hydrants and other accessories, required to complete the project. The contractor shall furnish all materials, labor, superintendence, tools, equipment and incidentals necessary for the complete construction of this work in accordance with the drawings and these specifications.

2. PIPE AND MATERIAL

2.1 General

Pipe shall be polyvinyl chloride (PVC) AWWA C900, ductile iron AWWA C-151 or steel cylinder concrete pipe AWWA C-303.

2.2 Polyvinyl Chloride (PVC) Pipe

A. PVC pipe furnished for use on this project shall conform to the requirements of AWWA C900 Polyvinyl Chloride (PVC) Pressure Pipe, 4 in. through 12 in., for water distribution pressure class 150, DR18. and shall be NSF approved for potable water supply.

B. The pipe furnished shall have an integral bell designed for joint assembly using elastomeric seals.

C. Markings for the pipe shall include all the requirements of AWWA C900 and the MSF approval stamp.

D. Elastomeric seals shall be furnished by the pipe manufacturer. Seals shall be manufactured to conform with the requirements of ASTM F4 77 and shall be specifically designed for use with the pipe furnished.

E. Lubricants intended for use with PVC pipe and seals (gaskets) shall be compatible with both PVC and the seal material. Lubricant shall not support growth of bacteria and shall not adversely affect the potable quality of the water that is to be transported.

F. Pipe laying lengths shall be 20'.

G. Service taps on PVC water lines shall be made using hinged type or double strap type saddles. Tapping saddles shall support the full circumference of the pipe and shall have a bearing area of sufficient width along the axis of the pipe to prevent distortion of the pipe when saddle is tightened.

No direct taps into the wall of PVC pipe will be permitted.

Seals for tapping saddles shall be recessed into the body of the saddle and shall be

a rubber - compound conforming to the requirements of ASTM F477.

Tapping saddles shall be SMITH-BLAIR Taper Seal Style 313 or DMD Dresser style 194 or approved equal.

H. Tapped connections for water mains and fire lines made on PVC water mains shall be accomplished using full bodied ductile iron tapping sleeves of a pressure rating equal to or greater than the pressure rating of the pipe specified.

I. Bedding for AWWA C900 PVC water pipe shall extend from a minimum depth of 4 inches below the outside of the water line to a minimum cover of 6 inches over the top outside of the water line.

J. AWWA C900 PVC water pipe shall be installed in accord with the applicable requirements for installing ductile iron pipe.

Care shall be taken to install each joint of PVC water pipe to, but not beyond the factory insertion mark on the pipe.

When a joint of PVC water pipe must be cut, the end of the pipe shall be carefully beveled to match the factory bevel on the uncut pipe. An insertion mark matching the factory insertion mark on the uncut pipe must be made before the pipe is inserted into the bell.

When PVC water pipe is to be inserted into a ductile iron fitting or valve, the factory bevel must be removed to form a square plain end pipe.

2.2 (a) Metallic Marking Tape (For PVC Water Pipe)

2.2(a).1 General

When non-metallic pipelines are to be installed, then the Contractor shall furnish and lay, above the pipeline, a continuous strip of metallic identification tape.

2.2 (a).2 Tape Material

The metallic identification tape shall be at least two inches (2”) in width and shall be of corrosive resistant metal of sufficient thickness to be stable and reflect electronic signals to electronic pipeline detector when buried to a dept of twenty-four (24”) below normal ground level.

The metallic tape shall be painted blue on one side and shall have 1-inch high letters painted continuously on the same side of the tape which read, “CAUTION: BURIED WATER LINE BELOW” or other words to this effect.

The marking tape shall be “Detectable Warning Tape”, as manufactured by the Omega Marking Company, or equal approved by the Engineer.

2.2(a).3 Construction Methods

The Contractor shall backfill over non-metallic pipelines to a depth which is less than twenty-four (24”) and not more than twelve inches (12) from the top of the cut of the ditch section in which the pipeline is laid. Contractor shall stop the backfilling material to a generally uniform level. All machine tamping, jetting and other compaction activities shall be accomplished up to this point of height in the backfilling the marking tape is placed in the trench.

The Contractor shall then lay the marking tape in the pipe trench and shall be held in position by the spot placement of backfill materials over it to keep it from sliding t the sides and/or from being blown about in the ditch by the wind. The tape shall be lid with the painted side, which shall also be the side with the identification lettering on it, in the “up” position. The tape shall be laid in the flat position and kept there until backfill is accomplished.

The Contractor shall then complete the backfilling operation in such a manner that the marking tape is not cut, crimped, ruptured or separated by the backfilling work.

2.2(a).4 Measurement and Payment

No separate pay item will be provided for furnish and placing the marking tape. This item shall be considered subsidiary to the non-metallic pipe being placed.

2.3 Ductile Iron Pipe

A. All ductile iron pipe used in the construction of water works improvements shall be Cement Lined and shall be manufactured in accordance with and shall meet the requirements of AWWA Specification C-l5l.

B. Pipe shall be cast in lengths of not less than l2 feet and shall be designed for a working pressure of l50 pounds per square inch. Thickness of ductile iron pipe shall be as shown on the plans and bid proposal or shall be computed in accordance with AWWA Specification C-l50, based on l50 pounds per square inch working pressure for 10 feet of cover and laying condition 2.

C. All ductile iron pipe shall have an exterior, bituminous coating and an inside cement-mortar lining in accordance with the requirements of AWWA Specification C-l04.

2.4 Polyethylene Plastic Tubing

Service lines shall be constructed with polyethylene plastic tubing as specified in ASTM D 2737 with a rating of l60 psi.

2.5 Ductile Iron Pipe Fittings

All fittings for ductile iron pipe and PVC pipe shall be ductile iron and shall be mechanical joint all connections except tees for fire hydrant leads unless shown otherwise on the plans. Tees for connecting fire hydrant leads shall be MJ- with a flange outlet.

All ductile iron fittings shall conform to AWWA Specification C-110, designed for a working pressure of 250 psi. All ductile iron fittings shall have an external coating and shall be cement lined in accordance with the specifications for coating and lining the pipe.

2.6 Pretensioned Concrete Cylinder Pipe

A. The contractor shall furnish and install all concrete cylinder pipe and fittings, including connections and appurtenances complete as shown on the plans and specified herein.

B. The contractor shall submit six (6) sets of full and complete shop drawings on the concrete cylinder pipe and fittings. All of the drawings and data shall be complete and shall include a complete description of the pipe offered, including cuts, tabulated layout and all pertinent engineering data required for a complete evaluation of the submittal. Submittal data shall be in such form and so presented that the Engineer may readily review the data.

C. Prior to delivery of the pipe to the project site, the manufacturer shall furnish an affidavit certifying that all pipe, fittings, and specials, and other products and materials furnished, comply with the applicable provisions of this specification.

D. The pipe manufacturer shall furnish a factory trained, job experienced field representative who shall visit the project periodically during the course of installation. He shall also be subject to call by the contractor and/or engineer to advise and assist with the solution of field problems.

During visits, the representative shall observe all phases of the project including location and condition of pipe strung ahead of the contractor, trench width, if applicable, bedding and backfill, assembly of pipe joints and protection of steel. If, in the opinion of the representative any phase of the installation is unsatisfactory, he shall so advise the contractor's superintendent and also advise the owner or engineer's representative on the job site.

E. All closure sections shall be the jack on type and "field welding" will not be permitted without the written permission of the engineer.

F. Pipe manufacturer will install all necessary taps for the contractor to disinfect and field hydrostatic test the pipe.

G. Pretensioned concrete cylinder pipe, fittings and specials shall be designed, fabricated and tested in accordance with the latest requirements of AWWA C-303, "Reinforced Concrete Pressure Pipe Steel Cylinder Type, Pretensioned, for Water and Other Liquids" with additional requirements or modifications as described herein.

H. Pretensioned concrete cylinder pressure pipe shall be designed for l50 psi, working pressure and manufactured in 32 foot nominal lengths in accordance with the provisions of AWWA Standard C-303.

I. Inspection and Testing

(1) The owner reserves the option to have an independent testing laboratory, at the owner's expense, inspect pipe and fittings at the pipe manufacturer's plant to ensure compliance with the applicable specifications. The owner's testing laboratory and Engineer shall have free access to those parts of the manufacturer's plant that are necessary to ensure compliance with the governing standard. The pipe manufacturer shall notify the owner, in writing, at least two weeks ahead of pipe fabrication as to start of fabrication and fabricating schedule so that the owner can advise the manufacturer as to owners' decision regarding tests to be performed by an independent testing laboratory. In event the owner elects to retain an independent testing laboratory to make material tests and weld test, it is the intent that the tests be limited to one spot testing of each category unless the tests do not show compliance with the standard. If these tests do not show compliance, the owner reserves the right to have the laboratory make additional tests and observations to ensure compliance of the finished product with the standard.

(2) In any event, the manufacturer shall perform the tests described in AWWA C 303, and furnish the owner with a copy of the test reports, if requested, at the expense of the pipe manufacturer. The pipe manufacturer shall furnish the owner with affidavit of compliance as outlined in the standard.

(3) All welds for water tightness in special pipe and fittings that have not been hydrostatically tested may be examined by use of visible dye penetrant system meeting requirement of ASTM El65; however, collar reinforcement and all other lap welds shall be tested by introducing air under l0 psi pressure between the collar and cylinder and checking for leaks around and through the welds with soap solution.

The area to receive the dye penetrant shall be cleaned free from contaminants that might interfere with the penetrant process. The temperature of the steel in the weld area shall be between 60 and l25 degrees F. when the penetrant is applied. Dwell time of six hours shall be allowed after application of the penetrant and developer before interpreting the results.

Defects that are found shall be repaired and the test repeated until all defects

are eliminated. Colored penetrant shall be removed before fittings are lined.

2.7 Casing Pipe

Casing pipe to be installed in bore or open cut may be limited service pipe, corrugated galvanized steel pipe or new straight seam or spiral welded steel pipe. Casing pipe shall be furnished in thickness or gage as shown on the plans.

Limited service pipe proposed for use on this project must be approved a minimum of four (4) working days prior to the time of opening bids and shall be in good condition and shall meet the same service requirements as the corrugated galvanized steel or welded steel pipe.

Welded steel casing pipe shall be coated inside and out using a coal tar epoxy or shall be bituminous coated in side and out by the hot dip method.

2.8 Bedding Materials

A. All water pipelines placed on this project shall be bedded with crushed stone bedding materials to the minimum as shown on the plans and in the Detail Drawings.

B. Granular material furnished for foundation, bedding, encasement, backfill, or other purposes as may be specified, shall consist of any natural or synthetic mineral aggregate such as, crushed gravel, crushed rock, crushed stone, or slag, and shall conform to the following specifications and/or gradation.

Note, all materials used for these purposes shall be crushed and shall have at least two broken faces. Pea gravel will NOT be allowed.

	Foundation	Bedding	Encasement	Backfill
ASTM c33 Grade #57	X			
ASTM C33 Grade #67	X			
ASTM C33 Grade #8		X	X	
THD 1982 ITEM 302 Type "D" Grade #4		X	X	
THD 1982 Item 302 Type "D" Grade #5			X	
Crusher Fines**			*X	X

* 100 percent of crusher fines that are to be used within 12 inches of the top of pipe must pass the 3/4" sieve.

** Approximate Gradation for Crusher Fines

Sieve Size	% Passing
2 inch	100
#4	35 - 100
#10	20 - 100
#40	5 - 35
#200	4 - 10

Crushed stone material proposed as an alternate for use on this project and not meeting the above specifications must be approved in writing at least 48 hours prior to the time scheduled for opening bids.

C. Granular materials provided for Foundation, Bedding, Encasement, or backfill use as required by the contract, either as part of the pipe item work unit or as a separate contract item, shall be classified as to use in accordance with the following:

MATERIAL USE DESIGNATION	ZONE DESIGNATION
Granular Foundation	Placed below the bottom of pipe grade as replacement for unsuitable or unstable soils, to achieve better foundation support.
Granular Bedding	Placed below the midpoint of the pipe prior to pipe installation, to facilitate proper shaping and achieve uniform pipe support. Also for Class B Bedding where specified.
Granular Encasement	Placed below an elevation one half (6") foot above the top of pipe, after pipe installation, for protection of the pipe and to assure proper filling of voids and thorough consolidation of backfill.
Granular Backfill	Placed below the surface base course, if any, as the second stage of backfill, to minimize trench settlement and provide support for surface improvements.

In each case above, unless otherwise indicated, the lower limits of any particular zone shall be the top surface of the next lower course as constructed. The upper limits of each zone are established to define variable needs for material gradation and compaction or void content, taking into consideration the sequence of construction and other conditions. The material use and zone designations described above shall only serve to fulfill the objectives and shall not be construed to restrict the use of any particular material in other zones where the gradation requirements are met.

3. VALVES AND VALVE BOXES

3.1 General

A. Valves 4" through l2" shall be resilient seated gate valves with non-rising stems and shall open by turning to the left (counter clock wise).

B. Valves l4" and larger shall be resilient seated butterfly valves and have operators suitable for direct burial and shall open by turning to the left (counter clock wise).

All valves except valves for use in fire hydrant leads shall have mechanical joint ends unless shown otherwise on the plans. Valves for use in fire hydrant leads shall be flange by mechanical joint.

C. All valves and fire hydrants shall be spray coated with a two component thermal setting epoxy to cover all interior wetted ferrous surfaces. Finished coating shall have a minimum thickness of 4 mils. The coating shall conform to the coating section of these specifications.

D. All valves for buried service shall be equipped with 2" square AWWA operating nuts.

3.2 Gate Valves

A. Gate valves shall be iron body, resilient **wedge gate** and shall be in compliance with AWWA Standard C-509-80 or latest revision thereof and shall have the following design features:

B. All valves shall have a working pressure of 200 psi and shall be bottle tight tested at this pressure from both directions. The gate body shall also be hydrostatically tested at 400 psi. Zero leakage will be required in all tests. The body, bonnet, and stuffing box shall be flange together with ASTM A-307 Grade B bolts and nuts to insure repairability.

C. Stems shall be machined from modified manganese bronze rod with an integral forged thrust collar machined to size.

D. Stem seals shall be dual "O" ring type.

E. Valve discs shall be rubber encapsulated or have disc seat rings molded of natural rubber, internally steel reinforced retained to the disc by self-locking type 304 stainless steel screws. Valve gates shall seat against a machined epoxy coated mating surface in the body of the valve.

F. All internal ferrous metal surfaces (machined or cast) shall be factory spray coated with a two component thermosetting epoxy to a nominal thickness of 4 mils and the exterior shall be coated with asphalt varnish as specified for coating of the pipe. (See Sec. 3.4 of these specifications for epoxy coating).

G. Valves shall be Mueller A-**2360** or Dresser-M&H **4067** or approved equal. Any alternate (approved equal) to these specifications **shall have completely interchangeable parts with either of the specified valves.**

3.3 Butterfly Valves

A. General - All butterfly valves shall be of the rubber seated tight-closing type. They shall meet or exceed AWWA Standard C-504, Class l50B. Both valve ends shall be mechanical-joint per AWWA Standard C-lll. Accessories (bolts, glands, and gaskets) shall be supplied by the valve manufacturer.

B. All valves must use full AWWA C-504 Class l50 B valve shaft diameter, and full Class l50 B underground service operator torque rating throughout entire travel, to provide capability for operation in emergency service.

C. Valve body shall be high strength cast iron ASTM A 126 Class B with l8-8 type 304 stainless steel body seat. Valve vane shall be high strength cast iron ASTM A 48 Class 40 or ASTM A 536, Grade 65-45-l2 ductile iron having rubber seat mechanically secured with an integral l8-8 stainless steel clamp ring and l8-8 stainless steel self locking screws.

D. Rubber seat shall be a full circle 360° seat not penetrated by the valve shaft. Valve shall have permanently set two way thrust bearing. Packing shall be designed for permanent duty in underground service.

E. Valve operator shall be of the traveling nut type, sealed, gasketed and lubricated for underground service. It shall be capable of withstanding an overload input torque of 450 ft. lbs. at full open or closed position without damage to the valve or valve operator. It shall be designed to resist submergence in water to 25 ft. head pressure. Number of turns to operate valve shall be as listed below in order to closely resemble conventional distribution valve practices and to minimize water hammer:

Pipe and Valve Size	Turns to close	Pipe and Valve Size	Turns to Close
4" - 6"	16-1/2	14" - 16"	48"
8"	24	18" - 20"	72
10" - 12"	36	24"	90

F. Valves shall be capable of easy closure by one man using standard valve key, even under emergency line-break conditions as severe as those that would - cause a valve maximum opening torque requirement of as much as two times AWWA Class l50 B.

G. All valves shall be tested bottle-tight at rated working pressure by the manufacturer as follows:

l4" up. . . . . l50 psi

In addition a hydrostatic test with vane partially open shall be given to the assembled valve as follow:

l4" up. . . . . 300 psi

H. Valve shafts shall be l8-8 type 304 stainless steel. Shaft bearings shall be of the self lubricating sleeve type.

I. Valve discs or vanes for valves 30" and larger shall be the flow through (bridge or truss) type.

J. Butterfly valves shall be Dresser-M&H Model "450", "4500" or "l450" or Mueller line seal III or approved equal. Alternates (approved equal) to these specifications must be approved in writing 48 hours prior to time bids are received.

3.4 Coating

A. The coating shall be a two part thermosetting epoxy protective coating and shall function as a physical, chemical and electrical barrier between the base metal to which it is applied and the surroundings.

B. The coating shall be non-toxic and shall not impart taste to water. The coating must be formulated from materials deemed acceptable per the FOOD AND DRUG ADMINISTRATION DOCUMENT TITLE 2l of the FEDERAL REGULATIONS ON FOOD ADDITIVES SECTION l2l.25l4 entitled, RESINS AND POLYMERIC COATINGS.

C. The coating shall have a satin finish and shall be suitable for field over coating and touchup with same coating material without sanding or special surface preparation, or application of heat in excess of room temperature.

D. The coating shall have a successful record of performance in valves, pipe or other allied equipment for a minimum of two years.

E. The coating adhesion to the substrate shall exceed cohesion of the coating film as demonstrated by the following test:

(1) Prepare test panel and apply coating per manufacturer's recommendation.

(2) After sample has properly cured per manufacturer's recommendation, scribe an "X" using a sharp knife or scalpel through the coating to the metal substrate.

(3) Then with the point of the knife at the juncture of two scribes, attempt to lift off coating. Coating should not lift off substrate or between coats readily, but should break up leaving coating material on the substrate of this damaged area.

(4) No disbandment of the film shall be noted as tested above after immersion in tap water for l500 hours at l00`F.

F. A falling sand abrasion test using ASTM D968 shall produce an abrasion coefficient of 25-30 liters/mil. As an alternative, a Taber Abrader Test should find 3.5 - 3.7 milligrams coating loss per l00 cycles when using a CSF l0 Wheel (l000 gram weight).

3.5 Valve Boxes

All valves to be used in buried service shall be enclosed in cast iron valve boxes. Care shall be taken to place and maintain the 2" square operating nut in the center of the valve box. The valve box shall be two piece cast iron suitable for use with PVC pipe box risers. The 6 inch diameter cover shall be marked " Water". The PVC riser pipe shall be furnished in lengths as required (minimum pipe cover 42") PVC pipe for valve box riser may be ASTM C-900, ASTM D1785 schedule 40, ASTM D2241 pressure class 125 or ASTM D3034 DR 35. Valve boxes shall have a concrete ring 8" thick and having a radius equal to the radius of the valve box plus one foot (1') cast around them. Valve boxes placed in unpaved areas shall be set level with or slightly higher than the finished ground elevation. Valve boxes set in paved areas shall match the finished pavement surface.

3.6 Fire Hydrants

A. Fire hydrants shall conform to the requirements of AWWA C 502 dry barrel type. The fire hydrants shall be designed for a depth of bury of 4.5 feet, however the depth of bury may vary according to field conditions and extensions or shorter bury depth may be required.

B. The hydrants shall have a 5-l/4 inch valve opening, two 2-l/2 inch hose nozzles and one 4-l/2 inch pumper nozzle.

C. Hose threads shall be National Standard threads.

D. The hydrants shall be sized for 6-inch mains and shall have an inlet connection compatible with the type pipe used. All gaskets, nuts, bolts and other jointing materials shall be considered part of the fire hydrant installation.

E. Operating nut shall be standard l-l/2 inch pentagon opening counter-clockwise. The hydrant shall close with the pressure.

F. Hydrants shall be painted Federal Safety Yellow.

G. Fire hydrants shall have all interior wetted ferrous surfaces epoxy coated as required in the general and coating section of this item.

H. The hydrants shall have a minimum of two (2) drain holes located on opposite sides of the hydrant. The entire drainage channel must be made of non-corrosive material and sealed by acceptable resilient material (metal and/or leather seals are not acceptable).

I. The hydrants shall have a breakable safety flange and breakable stem coupling which breaks cleanly upon impact.

J. The hydrants shall be AWWA improved type hydrants and shall have self-oiling reservoirs.

K. Fire hydrants shall be the Mueller Centurion, the Dresser -M & H 929 Reliant, or The American Darling.

4. EXCAVATION, TRENCHING BEDDING AND BACKFILLING

4.l Trenching

A. The trench shall be excavated to the lines and grades as established by the engineer and as shown on the plans. The depth of cover for all main lines on which the grades and elevations are not shown on the plans, shall in general be Forty-two (42) inches. The amount of cover may vary over or under 42 inches as directed by the engineer but in no case will the amount of cover be less than thirty-six (36) inches. Depth of cover for service lines shall be as shown on the detail drawings.

B. Water lines constructed in proposed streets and service drives shall have the depth of cover measured from the finished grade. The contractor is hereby cautioned that proposed street finished grades are sometimes cut below the existing ground elevation.

C. The minimum width of the trench shall be the outside diameter of the pipe plus twelve (l2) inches for pipe diameter through l8", the outside diameter of the pipe plus eighteen (l8) inches for pipe diameters over l8". The trenching equipment shall be maintained on a sufficiently level road bed to provide substantially vertical trench walls. The maximum horizontal offset of the trench wall from bottom of trench to the top of the trench (under-cutting) shall be four (4) inches.

D. The trench shall be over excavated to an even grade to the depth of required bedding so that the bottom of the pipe will rest on a uniform thickness of bedding material on the bottom of trench throughout the entire length of the pipe. In order to obtain a true even grade, the bedding material shall be fine graded by hand. On lines that are to be laid to established grades batter boards shall be set at fifty foot intervals and the trench graded to the established grade.

E. Any part of the trench excavated below grade shall be corrected by filling with bedding material. The bedding material shall be thoroughly compacted.

E. If large rock, rock fragments or other unyielding materials are encountered in the bottom of the trench they shall be removed to a depth of six inches below grade, and the void filled with thoroughly compacted approved bedding material.

G. Bell holes of ample dimensions shall be dug at each joint to permit the jointing of pipe to be made properly and of sufficient depth to prevent the bell of the pipe from resting on undisturbed materials.

H. Wherever necessary to prevent caving, the trench shall be adequately braced and sheeted. Trench safety shall be in accordance with item l4 "Shoring and Sheeting of this specification.

I. Trench digging machinery may be used to make the trench excavations except in places where operation of same would cause damages to trees, buildings or other existing structures either above or below ground. In such instances hand trenching methods shall be employed.

J. All excavated material shall be stockpiled in a manner that will not endanger the work or existing structures and that will cause the least amount of obstructions to walks and driveways.

K. There will be no classification of the excavated materials and the term excavation shall include all materials encountered in excavating the trenches or structural excavations.

L. The contractor shall take all necessary precautions for protecting paved areas from being damaged by the trenching and backfilling equipment. Any damage done to any paved area, outside of the area set forth in the plans, as a result of the construction work shall be repaired by the contractor at his own expense.

M. Where the lines are located behind curbs, the contractor shall take special precautions to protect trees and shrubs. Care shall be exercised to cause as little damage to lawns as possible.

Where lines cross under curbs, gutters or curbs and gutters, tunneling will be required.

N. Blasting for excavation of solid rock will be permitted only after securing the

approval of the Director of Engineering and Transportation and the engineer and only when proper precautions are taken for protection of persons and property. The hours of blasting will be fixed by the engineer. Any damage caused by blasting shall be paid for by the contractor. The method or procedure relative to blasting shall conform to all state laws and local ordinances.

O. The contractor will be required to locate all known utility lines, including consumer service lines, far enough in advance of the trenching to make proper provisions for protecting the lines and to allow for any deviations that may be required from the established lines and grades.

P. The contractor shall not be allowed to disrupt the service on any utility lines except consumers service lines, which may be taken out of service for short periods of time, if the contractor obtains permission from the engineer and from the owner of the premises being served by the utility.

Q. The contractor shall immediately notify the proper utility company of any damage to utility lines, in order that service may be reestablished with the least possible delay. Repair of any damage to existing lines and the repair of consumer lines which are authorized to be cut or temporarily taken out of service shall be made by the contractor at his own expense, and as directed by an official representative of the utility company involved.

R. All utility lines shall be properly supported to prevent settlement or damage to the line both during and after construction.

S. Any permanent relocations of existing utility lines shall be done by the proper utility company without expense to the contractor.

4.2 Backfill General

A. All pipeline excavations shall be backfilled in a manner that will restore pre-existing conditions as the minimum requirement and fulfill all supplementary requirements indicated in the Plans and Specifications. The backfilling operations shall be started as soon as conditions will permit on each section of pipeline to provide continuity in subsequent operations and restore normal public service as soon as practicable on a section-by- section basis. All operations shall be pursued diligently, with proper and adequate equipment, to assure acceptable results.

B. Depositing of the backfill shall be done so the shock of falling material will not injure the structure. Grading over and around all parts of the work shall be done as directed by the Engineer.

C. Whenever soil types which are determined by the Inspector to be undesirable for backfill are excavated from the trench, such material shall be hauled away and deposited where directed by the Inspector at no additional compensation.

D. In the absence of special work item requirements the backfilling shall be accomplished with the use of suitable materials selected from the excavated

materials to the extent available and practical. Should the materials available from the trench section be unsuitable or insufficient, the required additional materials shall be furnished from outside sources at the Owners expense.

E. Suitable material shall be defined as a mineral soil reasonable free of foreign materials (rubbish, debris, etc.) frozen clumps, oversize stone, rock, concrete or bituminous chunks and other unsuitable materials, that may damage the pipe installation, prevent thorough compaction, or increase the risks of after settlement unnecessarily. Material selection shall be such as to make the best and fullest utilization of what is available, taking into consideration particular needs of different backfill zones. Material containing stone, rock, or chunks of any sort shall only be utilized where and to the extent there will be no detrimental effects.

F. Backfill materials shall be carefully placed in relatively uniform depth layers spread over the full width and length of the trench section in a manner and/or sequence that will provide simultaneous support on both sides of the pipeline. Each layer shall be compacted effectively, by approved mechanical of hand methods, until there is no further visual evidence of increased consolidation. Compaction of the in place layer shall be completed acceptably before placing material for a succeeding layer thereon. The manner of placement, layer thickness, compaction equipment, and procedure effectiveness shall be subject to approval of the Engineer. Water jetting or flooding shall NOT be used to compact trench backfill.

G. Within the pipe bedding and encasement zones described as that portion of the trench which is below an elevation one foot above the top of the pipe, the materials placed shall be limited in particular size to 3/4 inch maximum. For larger pipe in access of 18 inches in diameter the Engineer may allow particle sizes up to 2 inches maximum if it can be shown that the backfill can be satisfactorily compacted without leaving voids or damaging pipe or joints. Above these zones, the placement of material containing stones, boulders, chunks, etc. shall be governed by the layer thickness and compaction equipment capabilities.

H. Compaction of materials placed within the pipe bedding and encasement zones shall be accomplished with portable or hand equipment methods to achieve thorough consolidation under and around the pipe and avoid damage to the pipe. Above the pipe zone material, the use of heavy roller type compaction equipment shall be limited to safe pipe loading.

I. The maximum loose thickness of each backfill layer shall be l2 inches, except that l6 inches will be permitted for Granular Materials placed above an elevation one foot above the top of pipe, and with the provision that, by authority of the Engineer in consideration of the demonstrated capability of special type vibratory compactors, these maximums may be increased at his discretion. "Hydro tamps" or "vibra tamp: or other heavy vibrating equipment shall not be used until the backfill has reached a depth of four (4) feet above the top of the pipe.

J. All surplus or waste materials remaining after completion of the backfilling operations shall be disposed of in an acceptable manner within 24 hours after

completing the backfill work on each particular pipeline section. Disposal at any location within the project limits shall be as specified, or as approved by the Engineer; otherwise, disposal shall be accomplished outside the project limits at the Contractor's discretion. The backfilling and surplus or waste disposal operations shall be a part of the work required under the pipeline installation items, not as work that may be delayed until final cleanup.

K. Until final acceptance of the project, the Contractor shall assume full Responsibility and expense for all backfill settlement and shall refill and restore the work as directed to maintain an acceptable surface condition. All additional materials required shall be furnished without additional cost to the Owner.

4.3 Backfill Procedure above Pipe Zone, in Public Rights-of-way and other areas where settlement is important.

A. Backfill above the pipe zone shall be made using Portland cement stabilized backfill or crushed stone screening (crusher fines).

B. Backfill around structures such as manholes, junction boxes, transformer boxes and valve boxes shall be made using portland cement stabilized backfill material or crushed stone screening (crusher fines).

C. The minimum depth of stabilized backfill or crusher fines shall be twelve (12") inches.

When utilities are being constructed under existing paving, the stabilized backfill or crusher fines shall extend from top of the pipe zone to the top of the base course.

When utilities are being constructed under existing unpaved streets that are not scheduled for immediate pavement construction, the stabilized backfill or crusher fines shall extend from the top of the pipe zone to the existing roadway surface.

When utilities are being constructed in new streets that are scheduled for immediate paving or in streets in a new subdivision for which a paving contract with the property developer has been approved the stabilized backfill or crusher fines shall extend from the top of the pipe zone to the bottom edge of the eight (8") inches of subgrade, or, if the paving contractor has constructed a portion of the roadway prior to the construction of the utilities stabilized backfill shall extend to the top of the course the contractor has finished. In no case shall the backfill extend above the top of the base course.

If the final course of asphaltic concrete has been placed, the street or alley surface shall **NOT** be cut for utility installation.

In new streets where stabilized backfill is required only to the bottom of the subgrade course, the minimum depth of stabilized backfill may be reduced to six (6") inches in which case the maximum depth of the "pipe zone" shall be limited to six (6") inches above the top of the utility line or conduit.

D. Backfill Materials

(1) Portland cement stabilized backfill shall consist of caliche base material, blow sand or native soil stabilized by the addition of Portland cement. Crushed stone or concrete aggregate shall **NOT** be used.

The Contractor shall submit a mix design prepared by an approved Commercial Laboratory that will produce a minimum 7 day compressive strength of 150 psi. In no case shall the minimum cement content of the mix be less than 1 sack per cubic yard.

(2) Cement used in Portland cement stabilized backfill shall be Type I or Type II conforming to the requirements of ASTM Designation C150.

(3) Caliche used for Portland cement stabilized backfill shall be crushed material con-forming to Texas State Department of Highways and Transportation 1982Standard Specifications for Construction of Highways, Streets and Bridges Item 248 Type F, Grade 2.

(4) Blow sand used for Portland cement stabilized backfill shall be clean, free from organic matter, clay lumps, rock and other deleterious matter.

(5) Native soil used for Portland cement stabilized backfill shall be clean, free from clods and organic matter, and rock in excess of 2".

(6) Crushed stone screening (crusher fines) used for back fill shall be sharp grained particles of crushed stone conforming to the following gradation

Sieve Size	% Passing
2"	100
#4	35-100
#10	20-100
#40	5-35
#200	4-10

and may be the by product of crushing stone for other purposes or may be stone specifically crushed for use in backfill. Crusher fines not meeting these specifications may be approved for backfill upon demonstration that the desired results will be obtained.

E. Backfill Construction

(1) Portland cement stabilized caliche backfill or Portland cement stabilized native soil backfill may be constructed using either the "dry" method or the "wet" method.

(a) The dry method of stabilized backfill construction consists of dry mixing of the cement and caliche, sand or soil to produce a homogenous mixture then adding and mixing sufficient water for proper compaction and hydration of the cement. The water content of the mixture will be approximately one to two percent above the optimum moisture for soil compaction. The mixing may be accomplished by using batch mixers or on the job site by "blade Mixing" or other suitable method to produce the desired backfill material. The mixed material shall be placed in lifts of up to a maximum of 12 inches and compacted to ninety five (95%) modified proctor density by use of suitable compacting equipment.

(b) In the "wet" method of cement stabilized backfill construction, the materials shall be mixed in an approved concrete batching plant or mixer to the consistency of concrete and placed as concrete would be placed. The slump of the backfill material shall be such that all voids will be filled, approximately four (4") to six (6") inches. The backfill shall be consolidated by rodding or by the use of mechanical vibrators.

(c) The mix design used must be for the method of placement chosen.

(2) Portland cement stabilized blow sand backfill shall be mixed and placed by the "wet" method as described above.

(3) Crushed stone screening (crusher fines) shall be wetted uniformly throughout with sufficient moisture to assure proper compaction before being placed in the trench.

The moistened crushed stone screening (crusher fines) shall be placed in maximum lifts of twelve (12") inches and consolidated using vibratory type compaction equipment except when it has been demonstrated that the compaction equipment employed will adequately compact deeper lifts in which case the maximum depth of a lift shall be limited by the capabilities of the equipment used.

Tests to determine the compacted density of the backfill shall be ordered by the Engineer if in his opinion the compaction is not adequate. Test showing a minimum compacted density of 90% modified proctor will be deemed adequate compaction.

5. INSTALLATION OF DUCTILE IRON PIPE

5.1 Pipe Laying - General

A. All pipe and accessories shall be unloaded, handled, laid, jointed, tested for defects and for leakage and chlorinated in the manner herein specified.

B. The pipe, fittings, valves, and accessories shall be inspected upon delivery and during the progress of the work and any material found to be defective will be rejected by the engineer and the contractor shall remove such defective material from the site of the work.

C. The contractor shall be responsible for all material furnished by him and he shall replace at his own expense all such material that is found to be defective in manufacturer or has become damaged in handling after delivery.

D. All pipe, fittings, valves, and other accessories shall, unless otherwise directed, be unloaded at the point of delivery, hauled to and distributed at the site of the work by the contractor. Loading and unloading, of pipe and fittings shall be by hoisting or by sliding, or rolling on skidways in such a manner as to avoid shock or damage to the material. Under no circumstances shall pipe or fittings be dropped. Pipe handled on skidways must not be skidded or rolled against pipe already on the ground.

The pipe, fittings and accessories shall be placed along the site in such a manner as to be kept as free as possible from dirt, sand, mud, and other foreign matter.

E. All pipe shall be laid and maintained to the lines and grades shown on the plans
or as established on the ground by the engineer.

F. Wherever it is necessary to deflect pipe from a straight line either in a vertical or horizontal plane to avoid obstructions, to plumb valves and hydrants, or where vertical or horizontal curves are shown or permitted, the degree of deflection at each joint shall not exceed the maximum deflection recommended by the manufacturer of the particular kind of pipe being laid and the degree of deflection shall be approved by the engineer.

G. After the trench grade has been completed and all bell holes dug and the grade inspected, the pipes and accessories my be placed in the trench. All pipe, fittings, valves, and hydrants shall be carefully lowered into the trench piece by piece by means of derricks, ropes, or other suitable tools or equipment, in such a manner as to prevent damage to the material in any way. Under no circumstances shall pipe or accessories be dropped or dumped in the trench.

H. Before lowering into trench the pipe shall be again inspected for defects and the pipe while suspended shall be lightly hammered to detect cracks. Any defective, damaged or unsound pipe and materials shall be rejected.

I. All foreign matter or dirt shall be removed from the inside of the pipe and from all bells, spigots or parts of the pipe used in forming the joint, before the pipe is lowered into the trench, and it shall be kept clean by approved means during and after laying.

5.2 Laying and Jointing Ductile Iron Pipe

A. Unless otherwise directed, pipe shall be laid with bells facing in direction of laying; and for lines on appreciable slopes, bells shall, at the discretion of the engineer, face up grade. Cutting of pipe for inserting valves, fittings or closure pieces shall be done in a neat and workmanlike manner without damage to the pipe or the cement lining.

B. The jointing shall be completed for all pipe laid each day. No open joints will be left in the trench overnight. At times when pipe laying is not in progress, the open ends of pipe shall be closed by approved means. No trench water shall be permitted to enter the pipe.

C. No pipe shall be laid in water, or when the trench conditions or weather is unsuitable for such work, except by written permission of the engineer.

D. Rubber Gasket joints for cast iron or ductile iron pressure pipe and fittings shall conform to AWWA Standard C-lll.

E. Before laying the pipes, all lumps, blisters and excess coal tar coating shall be removed from the bell and spigot ends of each pipe; the outside of the spigot and the inside of the bell shall be wire brushed and wiped clean and dry. Pipe ends shall be kept clean until joints are made.

F. The pipe and fittings shall be properly aligned and free to move in any direction while bolting, and the bolts shall be gradually tightened at a uniform rate around the entire flange.

G. Flange joints where used shall be bolted with flange bolts of best quality mild steel and of the size and length required by AWWA C-ll5: Bolts and nuts shall be provided with standard hexagonal heads. Gasket rings shall be used and shall be made of best quality rubber composition sheet packing one-eighth (l/8) inch thick, of a brand and quality approved by the engineer.

H. Standard plugs shall be inserted into the bells of all dead end pipes, tees, or crosses and spigot ends shall be capped. Plugs or caps shall be jointed to the pipe or fittings in the same manner used in joining the pipe.

6. SPECIFICATIONS FOR INSTALLING PRETENSIONED CONCRETE CYLINDER PIPE

6.l General

The applicable portions of the specifications for installing ductile iron pipe shall apply except as amended or supplemented herein.

6.2 Pipe Laying

A. Pipe and fittings shall be handled with care at all times to avoid damage. They shall be lifted by hoists or slide or rolled on skid-ways in such manner as to avoid shock. Under no circumstances shall they be dropped. Pipe must not be skidded or rolled against other pipe or object.

B. Just before making the joint, the bell and spigot rings shall be thoroughly cleaned by wire-brushing until clean and dry. The gasket and the inside surface of the bell shall be lubricated with a light film or soft vegetable soap compound (flax soap) to facilitate telescoping the joint. The rubber gasket shall be stretched uniformly as it is placed in the spigot groove to insure a uniform volume of rubber around the circumference of the groove.

C. The joint shall be telescoped by pulling directly along the centerline of the pipe so that the spigot enters squarely into the bell. After the spigot has been telescoped into the bell, the bell end of the pipe being laid shall be moved in accordance with the plans to secure proper grade and alignment. After the joint is in place, a thin metal feeler gauge shall be used to check the position of the rubber gasket around the circumference of the joint.

D. The inside joint recess shall be filled immediately prior to placing the pipe together by buttering the bell end with mortar. After the joint is engaged, the joint mortar of pipe l8" in diameter and larger shall be finished off smooth by hand. The mortar in pipe smaller than l8" in diameter shall be smoothed and cleaned with a swab.

E. After the spigot has been telescoped into the bell, the joint checked and found satisfactory, a canvas wrapper shall be placed around the pipe, covering the joint. The canvas type wrapper shall be of the quality manufactured by the Mar-Mac Manufacturing Company or approved equal burlap type, and shall be hemmed at each edge to allow threading with a steel strap to securely fasten the wrapper around the pipe by means of a stretcher and sealer.

The wrapper shall have a minimum width of 7" and sufficient length to encircle the pipe leaving enough space between the ends at the top to allow the cement mortar to be poured. The entire joint shall be poured with cement mortar and rodded or agitated to eliminate voids and settlement. Prior to pouring the cement mortar the joint shall be thoroughly cleaned and saturated with clean water. Any joint showing shrinkage or excessive cracking shall be cleaned and remade. In hot weather,

additional measures may be required to obtain the best quality of joint, such as additional wet burlap, curing membrane, or immediate careful and well controlled backfilling of the joint with damp earth.

F. The mortar used at the exterior joint shall consist of one part Portland cement to 2-l/2 parts fine, sharp, clean sand and mixed with water to the consistency of thick cream. Mortar required at the joint shall not be placed in freezing weather unless adequately protected from freezing.

G. The joints for pipe to be installed in casing shall be made as for pipe laid in trench except that the outside portion of the joint shall be wrapped in a special polyurethane wrap impregnated with unhydrated cement manufactured for this purpose, prior to being jacked into the casing pipe. The wrap shall be "Flex-Protex" as manufactured by Mar-Mag Mfg. Corporation or approved equal. The interior of the joints shall be mortared after the pipe to be installed in casing has been jacked into place. The pipe shall not be moved after interior mortaring is completed. After the water line has been installed in the casing the ends of the casing shall be sealed using concrete or cement mortar.

H. Steel cylinder reinforced concrete pipe shall not be pressure tested until it has been in place a minimum of l4 days.

I. The contractor shall fill the steel cylinder reinforced concrete pipe under slight pressure and allow approximately 24 hours for water absorption by concrete lining before performing pressure test.

7. SETTING VALVES, VALVE BOXES, FIRE HYDRANTS AND FITTINGS

7.1 General

Valves and fittings shall be set at the locations shown on the plans or at locations as established by the engineer, and shall be set and jointed to the pipe in the manner heretofore specified for pipe installation. All valves buried in the ground shall have a cast iron valve box set over the valve and set to grade. All valves shall be set vertical, unless otherwise specified, and shall be thoroughly inspected and checked for operation before installation.

7.2 Valve Boxes

Cast Iron valve boxes shall be firmly supported and maintained centered and plumb over the wrench nut of the valve, with box cover flush with the surface of the ground or street paving.

Valve boxes shall be supported by a ring of concrete as shown on the plans and Detail Drawings. This ring shall be Class "A" concrete having a minimum thickness of six (6") inches and shall extend a minimum of twelve (12") inches in all directions from the outside diameter of the valve box and shall be supported on thoroughly compacted backfill.

7.3 Setting Fire Hydrants

A. Fire hydrants shall be located at points shown on the plans, the exact location of the hydrant to be established by the engineer. All hydrants shall be set plumb, to the grade as established by the engineer, and shall have their nozzles parallel with and/or at right angles to the curb, with the pumper nozzle facing the curb. The hydrants shall be supported in such a manner as not to cause a strain on the fire hydrant lead or branch.

The bowl of the hydrant shall be well braced against unexcavated earth at the end of the trench with concrete blocking. The concrete blocking shall be placed so as not to interfere with the hydrant drains and so that the joints or flanges are accessible.

B. Each hydrant shall be connected to the main with a six (6) inch ductile iron branch controlled by an independent six (6) inch gate valve. Each hydrant shall be set upon a stone or concrete slab not less than four (4) inches thick and not less than one square foot of surface area. Where solid rock exists in the bottom of the trench and same is excavated to the proper depth to form a foundation for the hydrant, the slab of stone or concrete may be omitted.

C. There shall be placed around the base of the hydrant not less than seven (7) cubic feet of sound broken stone or clean gravel, or other suitable material to provide reservoir capacity so that the hydrant will completely drain when closed. The gravel or broken stone shall reach from the bottom of the trench to at least six (6) inches above the waste opening in the hydrant. Each hydrant shall be operated by the contractor to prove to the inspector that the drain hole has not been plugged with concrete or other material.

8. **ANCHORAGE OF BENDS, TEES AND PLUGS, ETC.**

Reaction or thrust blocking shall be applied to all pipe lines at all tees, plugs, caps, valves, fire hydrants, and at bends deflecting ll-1/4 degrees or more. Concrete shall be used for blocking the pipe and fittings. Concrete for thrust block shall have a minimum compressive strength of 3,000 psi and shall conform to Texas Highway Department Class "A" concrete. Before thrust blocking is placed the element to be blocked shall be carefully wrapped in polyethylene sheeting having a minimum thickness of 3 mils. The blocking shall be placed between solid ground and the fitting to be anchored; the area of bearing on pipe and on the ground in each instance shall be that required by the engineer. The blocking shall be so placed that the pipe and fitting joints will be accessible for repair.

9. DISINFECTION OF PIPE LINES

The contractor shall furnish all labor, equipment, and materials necessary to the disinfecting of the new pipe lines which shall be disinfected before being placed in service. The lines shall be disinfected by the application of a chlorinating agent. The chlorinating agent may be a liquid chlorine, liquid chlorine gas water mixture, or a calcium hypochlorite solution, which shall be fed into the lines through a suitable solution feed device, or other methods approved by the engineer. The chlorinating agent shall be readily dissolvable and of a type that will rapidly mix with the water as it is loaded into the water line. Tablets or other solid form shall not be used unless they are dissolved before being placed into the line. The chlorinating agent shall be applied at or near the point from which the line is being filled, and through a corporation stop or other approved connection inserted in the horizontal axis of the newly laid pipe. The water being used to fill the line shall be controlled to flow into the section to be disinfected very slowly, and the rate of application of the chlorinating agent shall be in such proportion to the rate of water entering the pipe that the chlorine dose applied to the water entering the line shall be at least 50 parts per million. The treated water shall be retained in the pipe lines for a period of not less than twenty four (24) hours. At the end of the retention period all treated water shall be thoroughly flushed from the lines until the replacement water in the lines shall have a chlorine residual of not more than 0.2 parts per million. Where it is necessary to place the new lines in service in less than 24 hours, the concentration of chlorine may be increased to 300 ppm and the lines flushed and placed in service in 3 hours. Disinfecting procedures shall conform to AWWA C 60l.

l0. HYDROSTATIC TESTS

All pipe lines constructed under this contract before being accepted, shall be tested at l20% design pressure as described in the following paragraphs. This test shall apply to all newly laid pipe or any valved sections thereof.

The required test pressure (l80 pounds per square inch) shall be maintained over a continuous period of not less than eight (8) hours.

Each valved section of pipe shall be slowly filled with water, being certain that all air is expelled from the pipe by using hydrants, blow-offs or taps at points of highest elevation in the line. The specified pressure shall be applied by means of a pump and flow meter (gpm and amount) connected to the pipe in a manner satisfactory to the engineer. The contractor shall furnish all necessary equipment, materials and labor to satisfactorily make the hydrostatic tests.

After the line section to be tested has been brought to pressure, a visual inspection shall be made of all joints, fittings, valves, and appurtenance. Any leaks thus located shall be corrected before continuing with the test.

If the test indicates a leakage in excess of a rate equal to twenty-five (25) gallons per inch of nominal diameter of pipe line per mile per day (maximum 600 gallon per mile per day total leakage) the cause of such leaks shall be determined and corrected and the line retested until satisfactory results are obtained.

11. **REMOVING AND REPLACING PAVEMENT**

A. When it is necessary to cut existing paving to install utilities the paving shall be repaired as soon after the backfill is consolidated or the cement stabilized backfill has reached sufficient strength as practical. The repair shall be made using Texas Highway Department Type "D" Hot Mix Asphaltic Concrete and shall have a minimum thickness equal to the thickness of the existing surface.

B. Edges along the trenches and around pits shall be saw cut to remove damaged edges and/or surface. Saw cuts shall be straight and parallel to or at right angles to the street or alley center line in so far as practical. Meandering, zig-zag or notched saw lines will not be permitted. The saw cuts shall be such that a minimum of 6" of surface is removed beyond the edges of the trench.

C. The edges of the saw cut and surface of the backfill material shall be tack coated prior to the placing of hot mix asphaltic concrete. The tack coat shall be either RC-250 cut back asphalt or RS2h emulsified asphalt or approved equal. When emulsified asphalt is used for tack coat the asphaltic concrete shall not be placed until the break of the emulsion is complete and all free water has evaporated or has been removed.

D. After the tack coat is cured the hot mix asphaltic concrete shall be placed uniformly throughout the repair area. The edges of the repair shall be squared up and the hot mix asphaltic concrete thoroughly compacted. Any large aggregate that is separated from the mix during the leveling process shall be removed from the surface and disposed of off the project. Care shall be taken that none of the mix over laps the old paving. Any mix that has "scabbed" onto the paving shall be removed before the section is reopened to traffic.

Sufficient mix shall be placed so that the finished repair is from one eight (1/8") inch to one quarter (1/4") inch above the old paving surface to allow for further consolidation by traffic.

12. **TUNNELING UNDER UTILITY LINES, ETC**.

Where pipes, conduits or concrete curbs, gutters or other obstructions are encountered in the construction, the cost of tunneling under such obstructions shall be included as a part of the cost of the pipe line, or other pay items, complete in place.

13. **HIGHWAY CROSSING**

A. The City of Midland will obtain any required permits from the State Highway Department for installation of the water line along and across the highway right-of-way. It shall be the contractor's duty and responsibility to coordinate the time of making the crossing and the manner of handling traffic.

B. Installations of the casing pipe shall be accomplished by boring or open cut trench as indicated on the drawings and in accordance with the Texas Department of Transportation permit and requirements. Equipment used shall be of such size and capacity as to allow the placement of the casing to proceed in a safe and expeditions manner. Installation of the casing and the excavation and removal of the materials

within the casing shall proceed simultaneously.

The boring shall proceed from a pit provided for the boring equipment and workmen. Excavation and location of the pit shall be approved by the Engineer. Boring without the concurrent installation of the casing pipe will not be permitted. The use of water or other fluids in connection with the boring operation will be permitted only to the extent of lubricating cuttings. Jetting will not be permitted. Overcutting in excess of one inch shall be remedied by concrete pressure grouting the entire length of the installation. All joints for casing pipe installed in bore shall be welded. Care shall be taken to keep the casing pipe on the proper line and grade.

C. After the casing pipe has been installed and is accepted by the Engineer, the pipe shall be shoved through the casing. The pipe shall be pushed or pulled through the casing by exerting pressure on the barrel of the pipe and not on the bell, and shall be done in such a manner that the joint is always in compression during the shoving operation. Hardwood, or other suitable material skids shall be banded with stainless steel bands to each joint of pipe In accordance with the pipe manufacturers recommendation. The hardwood skids shall be of sufficient dimensions to allow the bell of the pipe to clear the casing pipe by at least one-half inch. The length of the skid shall be in accordance with the pipe manufacturers recommendations. A minimum of three bands shall be used to secure the skids to the pipe. The skids shall be such that the carrier pipe will be centered in the casing pipe. The design of skids and bonding techniques shall be submitted to the Engineer for approval prior to use.

In general waterline installation in the casing pipe shall conform to AWWA C 600-Section 6 requirements.

After completion of pipe installation in casing, the ends of the casing shall be sealed off by use of concrete grout. The minimum compressive strength of the grout shall be 2,000 psi in 28 days.

14. SHORING & SHEETING

14.1 Description

This item shall govern for the Trench Safety Systems required for the construction of all trench excavation to be utilized in the project and including all additional excavation and backfill necessitated by the safety system. A trench shall be defined as a narrow excavation (in relation to its length) made below the surface of the ground. In general, the depth is greater than the width, but the width of a trench (measured at the bottom) is not greater than 15 feet. The depth is five feet or more.

Trench Safety Systems include but are not limited to sloping, sheeting, trench boxes or trench shields, sheet piling, cribbing, bracing, shoring, dewatering or diversion of water to provide adequate drainage.

l4.2 Construction Methods

Trench safety systems shall be accomplished in accordance with the detailed specifications set out in the provisions of Excavation, Trench, and Shoring, Federal Occupational Safety and Health Administration (OSHA) Standards, 29CFR, Part 1926, Subpart P, as amended, including Proposed Rules published in the Federal Register (Vol. 52, No. 72) on Tuesday, October 31, l989. The sections that are incorporated into these specifications by reference include Sections 1926-650 through 1926-652. Legislation that has been enacted by the Texas Legislature, being Tex. Rev. Civ. Stat. Ann. arts. 1015q, 2368a.6 (Vernon Supp. 1988) with regard to Trench Safety Systems, is hereby incorporated, by reference into these specifications.

A reproduction of the OSHA Publication 2226 is attached for the convenience of the Contractor. The City assumes no responsibility for the accuracy of the reproduction or that it reflects current law. The Contractor is responsible for obtaining a copy of this section of the Federal Register for his use.

If the contractor elects to use a trench protective system that, in the Proposed Rules, requires "Design by a qualified person or a qualified engineer," [For example see 1926.652(b) (3) and 1926.652(c) (4)], "a qualified person or qualified engineer" shall be a Professional Engineer registered in the State of Texas. The Contractor is responsible for obtaining boring and soil analysis as required for the planned design. The trench excavation is to be designed in conformance with OSHA standards and regulations.

14.3 Safety Program

The Contractor shall submit a safety program specifically for the construction of trench excavation. The trench safety program shall be in accordance with OSHA standards governing the presence and activities of individuals working in and around trench excavation.

14.4 Inspection

The Contractor shall make daily inspections of the Trench Safety Systems to ensure that the systems meet OSHA requirements. Daily inspection is to be made by a "competent person" provided by the Contractor. If evidence of possible cave-ins, or slides, is apparent, all work in the trench shall cease until the necessary precautions have been taken by the Contractor to safeguard personnel entering the trench. It is the sole duty, responsibility and prerogative of the Contractor, not the owner or the Engineer, to determine the specific applicability of the designed trench safety systems to each field condition encountered on the project. The Contractor shall maintain a permanent record of daily inspections.

14.5. Safety Restrictions - work near high voltage lines

The following procedures will be followed regarding the subject item on this contract:

A. Warning signs painted yellow with black letters that are legible at twelve feet shall be placed inside and outside vehicles such as cranes, derricks, power shovels, drilling rigs, pile drivers, hoisting equipment or similar apparatus. The warning sign shall read as follows:

"WARNING - UNLAWFUL TO OPERATE THIS EQUIPMENT WITHIN SIX FEET OF HIGH VOLTAGE LINES."

B. All equipment except back hoes or dippers that may be operated within ten feet of high voltage lines shall have an insulating cage-type of guard about the boom or arm and insulator links on the lift hook connections.

C. When necessary to work within six feet of high voltage electric lines, notification shall be given the power company who will erect temporary mechanical barriers, de-energize the line, or raise or lower the line. The notifying department shall maintain an accurate log of all such calls to the Power Company, and shall record action taken in each case.

D. The Contractor is required to make arrangements with the Power Company for the temporary relocation or raising of high voltage lines at the Contractor's sole cost and expense.

l5. MEASUREMENT AND PAYMENT

l5.l General

The unit price or lump sum price bid on each item, as stated in the proposal, shall include furnishing all labor, superintendence, machinery, equipment, and materials necessary to complete the various items of work in accordance with the plans and specifications. Cost of work or materials shown on the plans and called for in the specifications and on which no separate payment is made shall be included in the bid price on the various pay items.

l5.2 Water Lines

A. Measurement

The length of pipe lines for the various sizes, classes and types to be paid for will be determined by measurement along the center lines of the pipe installed, measurement being made from the center of fitting to center of fitting or end of pipe, without any deduction for the length of intermediate fittings or valves including pipe installed in casing.

B. Payment

Furnishing and installing approved type pipe of the various sizes and classes shown on the plans or as required will be paid for at the unit price bid per linear foot for furnishing and installing the various sizes and classes of approved pipe complete in place. The unit price bid shall be complete compensation for furnishing and installing the pipe complete in place including all excavation, backfilling, testing and disinfection of lines and shall include any and all incidental work not otherwise included in the bid items or otherwise provided for in the specifications.

I5.3 Solid Rock Excavation

All excavation for pipe trenches shall be unclassified and no extra compensation will be made for solid rock excavation. The contractor is expected to make boring of his own and satisfy himself to the character of material which will be encountered.

I5.4 Gate Valves or Butterfly Valves

A. Measurement

Gate valves or butterfly valves will be counted in the field after installation by the size and type specified and actually installed.

B. Payment

The unit price bid for each type and size valve shall be complete compensation for furnishing and installing the valves, complete in place, including the furnishing and installation of cast iron valve boxes on all valves to the finished grade of the adjacent surface. All valves in paved areas shall be set to finish pavement grades

I5.5 Fire Hydrants

A. Measurement

Fire hydrants will be counted in the field after installation in accordance with the plans and specifications.

B. Payment

The unit price bid shall be complete compensation for furnishing and installing the fire hydrants, complete in place, each, including lead pipe the gravel drain, concrete blocking, extension or additional bury depth as required for a complete installation.

I5.6 Service Connections

A. Measurement

The number of service connections of the type and size specified to be paid for will be counted in the field after complete installation.

B. Payment

The unit price bid shall be complete compensation for furnishing and installing the service connections, complete in place, including the meter box and lid, service line, corporation stop, meter stop and incidentals required for a complete installation.

I5.7 Ductile Iron Fittings

A. Measurement

The weight of the various ductile iron fittings and specials were estimated by using the standard weights for cast iron fittings as established by the American Water Works Association or American Standard Association. Measurement of ductile iron fittings will be made by counting the actual number of fittings installed and multiplying the number of fittings by the catalog weights for those types of fittings actually installed. Allowance will be made for glands and bolts.

B. Payment

The ductile iron fittings or specials required in the construction of the various size pipe lines as shown on the plans or as required will be paid for at the unit price bid per ton for furnishing and installing the ductile iron fittings complete in place. The unit price shall also include all materials, excavation, backfilling, concrete blocking and other incidental work required for the complete installation.

I5.8 Steel Cylinder Concrete Pipe Fittings

A. Measurement

No separate measurement or count of fittings and specials for steel cylinder concrete pipe will be made.

B. Payment

No separate payment will be made for fittings or specials for steel cylinder concrete pipe used on this project, but the cost of same shall be included in the price bid per linear foot for the various classes and sizes of pipe in the bid proposal.

I5.9 Casing Pipe In Bored Hole Or Open Cut

A. Measurement

Measurement of the casing pipe, of the type and size specified, shall be made by the linear foot of casing installed complete in bored hole or installed complete in open cut.

B. Payment

The unit price bid per linear foot for casing in bored hole or for casing in open cut shall be complete compensation for furnishing and installing the casing, complete in place, including all pits, boring equipment, materials and labor required for a complete installation. Payment for carrier pipe installed in the casing will be made as stated under Waterlines above.

I5.I0 Paving Cut and Repair

A. Measurement

Measurement of paving cut and repair will be made by the square yard for replacing pavement of the type specified. The area of the pavement replaced shall be determined by actual measurements on the ground; however, measurement will be limited to areas within widths of cuts as shown on the plans unless additional widths are authorized by the engineer. Any pavement removed or damaged outside of the aforementioned limits shall be replaced as prescribed with these specifications, but will not be measured for payment.

B. Payment

The unit price bid, per square yard, shall be complete compensation for cutting and removing the pavement, and constructing the concrete base and surfacing of the type specified, all as specified herein and as shown on the plans.

15.II Trench Safety Systems, Sheeting and Shoring

A. Measurement

Trench Safety Systems shall be measured by the linear foot along the centerline of trench including manholes and other line structures.

B. Payment

Payment for Trench Safety Systems, measured as prescribed above, shall be made at the unit price bid per linear foot of "Trench Safety Systems: Payment of all work prescribed under this item shall be full compensation for the Trench Safety Systems including all Engineering cost and any additional excavation and backfill required, for furnishing, placing, maintaining and removing all shoring, sheeting, or bracing; for dewatering or diversion of water; for all jacking and jack removal; and for all other labor, materials, tools, equipment and incidentals necessary to complete the work.

Revised 08/07

GRAVITY FLOW PIPE SEWERS AND FITTINGS FOR WASTE WATER AND STORM WATER

PART I – GENERAL

1.01 SCOPE

A. The work covered by this specification shall include the furnishing of all material, labor and equipment to construct, complete in place, all Gravity sewers including jointing, gaskets, fittings, castings, mortar, concrete, the placing of sewer pipe, and the construction of manholes and other appurtenance, all in accordance with the details shown on the plans and these specifications for the drainage of sanitary and/or storm sewage.

B. Sanitary and storm sewer lines constructed under these specifications shall be straight in grade and alignment between manholes. Manholes shall be constructed at any change in grade and at any change in alignment. In general manholes are to be constructed at 300 feet intervals or less with the maximum distance between manholes being 350 feet when approved by the Engineer.

1.02 QUALITY ASSURANCE

A. The Contractor, at the Engineer's request, shall furnish a certificate from the manufacturer of the pipe and fittings that the manufacturer is fully competent and capable of manufacturing sewer pipe, fittings, and accessories of the type, size and grade proposed for use in this project that are of uniform texture and strength that will fully comply with these specifications and have so manufactured this class of pipe in sufficient quantities to be certain that it will meet all normal field conditions of usage. The manufacturer must have adequate equipment and quality control facilities to be sure that each extrusion casting or run of pipe is uniform in texture, dimensions, and strength.

B. All PVC, HDPE, or plastic resin based pipe and fittings shall be covered during storage to protect them from excessive heat and direct sunlight.

C. All pipe and accessories shall be stored above ground and fully supported so that they will not bend or deflect excessively under their own weight.

D. Pipe in any way damaged or deformed during storage shall not be incorporated into this project, but at the direction of the Engineer, shall be permanently removed from the job site and project area.

1.03 TYPE OF PIPE

A. Pipe for sanitary sewers 15 inches in diameter and less shall be PVC. Pipe for storm drains 15 inches in diameter and less may be corrugated steel pipe when called for on the plans and in the bid proposal. Pipe 18 inches in diameter and larger shall be of the type shown on the plans and bid proposal.

B. The contractor may be allowed to bid a choice of two or more of the pipe materials when pipe 18 inches in diameter and larger are proposed for use on a project. When such choice is allowed the permissible choices will be clearly stated on the plans and/or bid proposal and a blank space will be provided for the contractor to write in the type of pipe proposed for use on the project. When such blank spaces are provided, the contractor must choose one of the permitted pipe materials as specified in part 2 “Materials” of these specifications and write in the type of pipe bid. Failure to write in the type of pipe bid may be reason to disqualify the bid. One or more types of pipe 18 inches in diameter and larger may be excluded from consideration on any given project by notes on the plans and/or the bid proposal.

PART 2 – MATERIALS

2.01 POLYVINYL CHLORIDE (PVC) PIPE AND FITTINGS FOR SANITARY AND STORM SEWERS

A. GRAVITY SEWERS

(1) Pipe and fittings in nominal diameters from 4-inch through 15-inch shall be manufactured in accordance with ASTM D3034, “Type PSM Polyvinyl Chloride (PVC) Sewer Pipe and Fittings” and pipe and fittings in diameter 18” through 36” shall be manufactured in accordance with ASTM F-679 or ASTM F-794, closed profile, subject to the modifications and limitations below.

B. MODIFICATIONS AND LIMITATIONS

(1) The concrete slab manhole tops shall be reinforced with number 4 steel reinforcing bars spaced at 12 inches on center each way. Additional diagonal bars shall be placed on 4 sides around the manway opening. The diagonal bars shall be number 4 rebar with a minimum length equal to the diameter of the manway opening plus 4 inches. The steel reinforcing mat shall be placed in the bottom of the slab with 1-1/2 inches protective covering.

(2) The term Dimension Ratio (DR) or standard dimension ratio (SDR) is the ratio of the average outside pipe diameter to the minimum wall thickness rounded to the nearest 0.5. The maximum DR for PVC sewer pipe shall be 35. PVC pipe sewers that will have less than 4 feet of cover shall be DR26.

(3) PVC pipe manufactured under ASTM F679 or F794 shall have a wall thickness that will meet or exceed the D.R. and stiffness specified herein. The minimum pipe stiffness for pipe having a DR of 26 shall be 115 psi. The minimum pipe stiffness for DR 35 pipe shall be 46 psi.

(4) Where DR 26 pipe is specified, all necessary fittings shall be the same as for SDR 35 PVC pipe.

(5) Minimum wall thickness for ASTM D-3034 PVC pipe shall be as follows:

Nominal Size (in.)	Min. Wall Thickness (in.)	
	DR 26	DR 35
4	0.162	0.120
6	0.241	0.180
8	0.323	0.240
10	0.404	0.300
12	0.481	0.360
15	0.588	0.437

The minimum wall thickness for PVC pipe meeting ASTM F-679 or F-794 requirements shall be the thickness as set forth in said ASTM specification that will meet or exceed the pipe stiffness and DR required.

(5) The identification markings as shown in Section 12 of ASTM 3034 shall note the specified DR of 26 where applicable.

(6) All pipe and fittings shall have the dimensions for inside diameter, outside diameter, etc. as shown in ASTM D3034 and/or ASTM F-679 except that the inside diameter DR 26 may be reduced by the added wall thickness.

(7) The pipe and fittings shall be homogeneous throughout and free from visible cracks, holes, foreign inclusions, or other injurious defects. The pipe shall be as uniform as commercially practical in color, opacity, density, and other physical properties.

(8) The Contractor shall provide wyes, tees, bends, adapters, and any other fittings called for in the specifications and/or shown on the plans or directed by the Engineer.

(9) The standard length of ASTM, D-3034 SDR 35 or SDR 26 PVC pipe under this specification shall be 20 feet with a minimum of 10 feet, except that all pipe used in service lines shall not exceed 10 feet in length unless otherwise approved by the Engineer. The standard laying length for ASTM F-679 PVC pipe shall be 13 feet. The Engineer must approve other laying lengths.

C. SEWER LATERALS AND CONNECTIONS

Pipe and fittings for service lines shall be the same material and thickness class as required for the main sewer. Schedule 40 PVC pipe may be used for 4” service lines when PVC pipe meeting requirements of ASTM 3034, SDR 35 is required.

D. JOINING SYSTEMS

(1) PIPE JOINTS

The pipe shall be joined with an integral bell, bell and spigot type rubber gasket joint. Each integral bell joint shall consist of a formed bell complete with a single rubber o-ring gasket. Gaskets shall be manufactured in accordance with ASTM F477 and shall be installed in accordance with the pipe manufacturer's instructions using all the necessary materials, lubricants and equipment recommended by the manufacturer.

For pipe 18" through 36" gaskets shall be factory installed and chemically bonded to the bell end of the pipe.

Lubricant shall be water soluble, non-toxic and have no deteriorating effects on gasket or pipe materials and shall not support the growth of bacteria. Lubricant shall be suitable for use at temperatures from 5° to 120° F (-15° to 50° C). Containers shall be labeled with the manufacturer's name and identified as PVC pipe joint lubricant. Each lubricant container shall have printed instructions for usage and joint assembly.

Field welded joints will not be allowed.

(2) FITTING JOINTS

All fittings shall utilize rubber gasket joints of the same type design and specifications as pipe joints.

(3) PIPE SPIGOT

The pipe spigot shall have a bevel and an insertion stop mark. The assembled joint shall be designed so the gasket shall be radially compressed to assure a positive water-tight seal for all installation conditions recommended by the manufacturer and under all combinations of production tolerances for the joint components. Each size joint shall be qualified to no leakage under various test conditions in conformance with ASTM Specification D-3212, "Joints for Drain and Sewer Plastic Pipes Using Flexible Elastomeric Seals."

E. INSPECTION AND TESTING

(1) INSPECTION REQUIREMENTS

Certification: as the basis of the acceptance of the material, the manufacturer will furnish a certificate of conformance to these specifications. The manufacturer will furnish other conformance certification in the form of affidavit of conformances, test results, and copies of test reports.

(2) PHYSICAL TEST REQUIREMENTS

For each 4,000 linear feet of pipe manufactured of each class and size of pipe, the following certified test data shall be required:

1. The basic dimensions shall be measured.
2. The allowable crush load (lbs/ft ^{2}) shall be calculated.
3. Impact resistance, fusion quality and ductility shall be tested.

F. MARKING AND DELIVERY

Each pipe shall be identified with the name of manufacturer, nominal size, cell classification, ASTM designation F794, Uni-Bell Plastic Pipe Association designation Uni-B-9, the pipe stiffness designation “PS-46 psi” and manufacturer’s date code.

1. MANHOLE CONNECTIONS

The Contractor shall provide smooth pieces of pipe for connecting sewer line into manholes. The Contractor shall be required to assist the manhole gasket supplier with the nominal outside diameter of these smooth pieces of pipe, as manufactured. There shall be only one plain end thickness for each diameter of pipe specified for the project.

2. DELIVERY

All pipe couplings and fittings shall be prepared for standard commercial shipment.

The pipe shall be inspected upon delivery to the job site for final acceptance. The contractor shall be responsible for all material furnished by him and he shall replace, at his own expense, all such material that is found to be defective in manufacture or which has become damaged in handling until final acceptance has been made. Pipe, which exhibits excessive ovalty or curvature, shall be rejected.

PVC pipe and fittings shall be covered during storage to protect them from excessive heat and direct sunlight.

All pipe and accessories shall be stored above ground and fully supported so as not to bend or deflect excessively under its own weight.

2.01(a) Metallic Marking Tape (For PVC Sewer Pipe)

2.01 (a).1 General

When non-metallic pipelines are to be installed, then the Contractor shall furnish and lay, above the pipeline, a continuous strip of metallic identification tape.

2.01 (a).2 Tape Material

The metallic identification tape shall be at least two inches (2”) in width and shall be of corrosive resistant metal of sufficient thickness to be stable and reflect electronic signals to electronic pipeline detector when buried to a dept of twenty-four (24”) below normal ground level.

The metallic tape shall be painted green on one side and shall have 1-inch high letters painted continuously on the same side of the tape which read, “CAUTION: BURIED SEWER LINE BELOW” or other words to this effect.

The marking tape shall be “Detectable Marking Tape”, as manufactured by the Omega Marking Company, or equal approved by the Engineer.

2.01(a).3 Construction Methods

The Contractor shall backfill over non-metallic pipelines to a depth which is less than twenty-four (24”) and not more than twelve inches (12) from the top of the cut of the ditch section in which the pipeline is laid. Contractor shall stop the backfilling material to a generally uniform level. All machine tamping, jetting and other compaction activities shall be accomplished up to this point of height in the backfilling the marking tape is placed in the trench.

The Contractor shall then lay the marking tape in the pipe trench and shall be held in position by the spot placement of backfill materials over it to keep it from sliding t the sides and/or from being blown about in the ditch by the wind. The tape shall be lid with the painted side, which shall also be the side with the identification lettering on it, in the “up” position. The tape shall be laid in the flat position and kept there until backfill is accomplished.

The Contractor shall then complete the backfilling operation in such a manner that the marking tape is not cut, crimped, ruptured or separated by the backfilling work.

2.01(a).4 Measurement and Payment

No separate pay item will be provided for furnish and placing the marking tape. This item shall be considered subsidiary to the non-metallic pipe being placed.

2.02 CORRUGATED STEEL PIPE (CSP) FOR STORM SEWERS AND CULVERTS ONLY

1. PIPE

A. STEEL SHEET STOCK

(1) Corrugated steel pipe shall be manufactured using galvanized steel sheet AASHTO M 218 or aluminized steel sheet AASHTO M 274.

(2) The lining for smooth lined corrugated steel pipe shall be polymer coated on both sides. The minimum thickness of the polymer coating shall be 10 mils.

B. PIPE DESIGNATION

(1) Pipe furnished shall be manufactured in accordance with AASHTO Specification M 36.

(2) Corrugated steel pipe shall be one or more of the following type as designated in AASHTO M 36.

Type I - Full circular cross section having helical corrugations.

Type IA - Full circular smooth lined pipe constructed of an outer shell having helical corrugations with a smooth sheet lining attached to the outer shell at helical lock seams.

Type IR - Full circular cross section with helical rib protruding outward.

Type II - Type I pipe formed into a pipe arch.

Type IIA - Type IA pipe formed into a pipe arch.

The type of pipe furnished on this project will be as shown on the plans and in the bid proposal.

When no type of pipe is called for on the plans or in the bid proposal helically corrugated circular single wall pipe (Type I or Type IR) shall be furnished.

C. MANUFACTURERS CERTIFICATION

(1) The pipe manufacturer will be required to certify the adequacy of the pipe furnished for the application and design life of the project.

(2) The design life for storm sewers constructed under this specification is 50 years.

(3) The pipe manufacturer will be required to run soil pH, soil resistivity and such other test as they deem necessary to design pipe thickness and protective coatings required to assure the adequacy of the pipe supplied.

D. CORRUGATION AND MINIMUM THICKNESS

(1) Thickness used in this specification refers to the bare steel thickness before coating is applied. The minimum thickness for any single wall corrugated steel pipe furnished under this specification is 16 gage.

(2) All corrugated steel pipe furnished under these specifications shall have helical corrugations.

(3) Circular corrugated steel pipe 48” in diameter and smaller shall have 2-2/3” x ½” corrugation and shall be a minimum of 16 gage in thickness.

Circular corrugated steel pipe larger than 48” in diameter may have either 2-2/3 x ½” or 3” x 1” corrugations. The minimum thickness for corrugated steel pipe larger than 48” in diameter and having 2-2/3 x ½” corrugation shall be as follows:

54” Diameter - 12 gage
60” Diameter - 10 gage
66” through 90” Diameter - 8 gage

The minimum thickness for circular corrugated steel pipe having 3” x 1” corrugation and diameters of 54” through 90” shall be 14 gage.

(4) For smooth lined corrugated steel pipe the minimum thickness for the lining shall be 20 gage and the minimum thickness for the outer shell shall be 18 gage.

The corrugations for the outer shell shall be 2-2/3” x ½” for pipe 48” diameter and smaller. Larger diameter pipe may use 3” x 1” corrugations in the outer shell. The sum of the thickness for the outer shell and the liner shall be a minimum of one thickness unit greater than the thickness that would be required for single wall pipe of the same diameter or span.

(5) Spiral rib steel pipe (Type IR) shall have outward projecting spiral corrugations of ¾” x 1” at 11-1/2” on center in accord with AASHTO specification M 36 or ¾” x ¾” at 7-1/2” on center as described in AASHTO specification M 196.

The minimum thickness for spiral rib pipe 48” in diameter and smaller shall be 16 gage.

The minimum thickness for spiral rib pipe 54” and 60” in diameter shall be 14 gage.

The minimum thickness for spiral rib pipe 66” and 72” in diameter shall be 12 gage.

The minimum thickness for spiral rib pipe larger than 72” in diameter shall be as shown on the plans.

(6) The corrugations and minimum thickness of corrugated steel pipe arch shall be in accord with the following table:

EQUIV. Dia. (in.)	2-2/3" x ½" Corrugations Span (in.)	Rise (in.)	Gage	3" x 1" Nominal Size Span (in.)	Rise (in.)	Gage
15"	17	13	14			
18"	21	15	14			
24"	28	20	14			
30"	35	24	14			
36"	42	29	14	40	31	16
42"	49	33	12	40	36	14
48"	57	38	10	53	41	12
54"	64	43	10	60	46	12
60"	71	47	8	66	51	12
66"	77	52	8	73	55	12
72"	83	57	8	81	59	12
78"				87	63	12
84"				95	67	12
90"				103	71	12

When 2-2/3" x ½" corrugations are called for on the plans and/or on the bid schedule the substitution of 3" x 1" corrugations will be allowed only upon the demonstration by the contractor that there is sufficient head room to accommodate the higher rise for arch pipe of this cross section.

E. END TREATMENT AND JOINING

(1) The ends of all corrugated steel pipe furnished for this project shall be rolled to provide circumferential corrugations for coupling. The end corrugations for all pipe 48" in diameter and less shall be 2-2/3 x ½". The end corrugations for single wall helically corrugated steel pipe or for smooth lined corrugated steel pipe 54" in diameter and larger shall be the same pitch as the pipe furnished and may be either 2-2/3" x ½" or 3" x 1". The end corrugations for spiral rib (Type IR) corrugated steel pipe shall be 2-2/3" x ½" or 3" x 1" for pipe 54" and larger in diameter.

(2) Coupling bands shall be made of the same material as the pipe and shall be not more than 3 nominal sheet thicknesses lighter than the pipe joined and in no case less than .052 inch.

Jointing devices for joining corrugated steel pipe shall have a gasket and shall produce a joint meeting the infiltration/exfiltration requirements of these specifications.

If it should be necessary to cut a joint of Helically corrugated pipe and join the unreformed end to another section of pipe or fitting extra width bands will be required and special care must be taken to insure a water tight connection.

Locking bands shall be corrugated and shall securely fit into at least one full annular corrugation. The corrugations on the locking band must match the corrugations on the pipe being joined.
The minimum width for locking bands is as follows:

for 2-2/3 x ½ inch corrugations	10-1/2 inches
3 x 1 inch corrugation	12 inches

For helical corrugations that have not been reformed the coupling bands must be at least 2 inches wider than the widths listed above.

Unless shown otherwise on the plans all bolts for coupling or locking bands shall be ½ inch in diameter. Bands 12 inches wide or less shall have a minimum of 2 bolts. Bands wider than 12 inches shall have a minimum of 3 bolts.

Bolts must be galvanized in accordance with AASHTO Designation M232 or ASTM A164 Type RS.

(3) Gaskets for corrugated steel pipe shall be closed cell expanded rubber and shall be formed into a continuous band. Gaskets may be either “O” ring or flat band as recommended by the pipe manufacturer. Flat band gaskets shall be a minimum of 7” wide and 3/8” thick. “O” ring gaskets shall be 13/16” diameter minimum for pipe 36” in diameter or less and 7/8” for pipe larger than 36” diameter and having ½” deep corrugations. “O” ring gaskets shall be a minimum of 1-3/8” diameter for pipe having 1” deep corrugations. When “O” ring gaskets are furnished, an additional flat gasket shall be furnished and placed between the overlapping ends of the coupling band. This flat gasket shall completely fill the gap between the “O” rings. All gasket materials shall be capable of producing a water tight joint that will meet the leakage requirements of these specifications.

2. CORRUGATED STEEL MANHOLE FITTINGS, AND CLEAN OUTS

A. FABRICATION

(1) Corrugated steel manholes and fittings shall be constructed of the same material and type of pipe furnished for the storm sewer line with the exception that manhole risers shall be helical corrugated single wall circular pipe when used with pipe arch sewers or smooth lined corrugated steel pipe. The thickness of the manhole riser shall be the same as would be required for the same type and diameter pipe if it were used for the storm sewer.

(2) Cleanouts for use on shallow storm sewer and inlet leads shall be manufactured from pipe meeting the requirements of these specifications. Cleanouts shall be constructed to the dimensions and in accord with the details shown on the plans.

B. CONNECTION TO MANHOLES AND CLEANOUTS

(1) Stub outs from manholes and cleanouts for connection to storm sewers and inlet leads shall have annular corrugations and shall be compatible with the type and size of pipe being connected. Stub outs provided for connection to PVC pipe storm sewers and inlet leads shall be sized so that the PVC pipe can be inserted into the stub leaving the least amount of annular space between the PVC pipe and the CSP practical. The PVC pipe shall be connected using an approved molded rubber or PVC sleeve connector clamped to both pipes with stainless steel straps.

The connector shall be a flexible coupling as manufactured by Fernco, 300 S. Dayton St., Davison, MI., or approved equal.

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C. LEAKAGE

Manholes, fittings and cleanouts shall meet the leakage requirements of these specifications.

D. SHOP DRAWINGS

The contractor shall submit shop drawings of all manholes, fittings and cleanouts for approval prior to their fabrication. A minimum of 5 sets of drawings for each manhole, each fitting and each cleanout shall be submitted.

E. CONCRETE SLAB TOPS

A reinforced concrete slab top shall be constructed for each manhole and cleanout. The slab shall extend to one foot (1') outside the riser section on all sides and shall have an eccentric 2' diameter opening for the manway located at the outside edge of the riser section. For manholes and cleanouts designated for standard manhole rings and covers the concrete top shall be 8 inches thick and shall be finished smooth to receive the manhole ring.

For manholes designated to receive pressure type manhole rings and covers the concrete slab top shall be a minimum of 12 inches thick and shall have L bolts imbedded in the concrete to fit the requirements of the manhole ring furnished. The slab shall be finished smooth to receive the manhole ring. The manhole ring shall be securely bolted to the slab and sealed using "Ram Nek" or an approved equal bitumastic sealer between the manhole ring and the concrete slab.

The concrete slab manhole tops shall be reinforced with number 4 steel reinforcing bars spaced at 12 inches on center each way. Additional diagonal bars shall be placed on 4 sides around the manway opening. The diagonal bars shall be number 4 rebar with a minimum length equal to the diameter of the manway opening plus 4 inches. The steel reinforcing mat shall be placed in the bottom of the slab with 1-1/2 inches protective covering.

F. PRESSURE MANHOLE RING AND COVER

(1) Pressure type manhole rings and covers shall be Western Iron Works No. 380-24P or approved equal. The manhole cover shall be sealed with an “O” ring gasket in a ring groove and shall be secured to the ring by six (6) 5/8-inch stainless steel bolts.

(2) The ring shall have six (6) 1-1/4 inch bolt holes in the flange for securing the ring to the concrete slab top on the manhole.

3. CORRUGATED STEEL PIPE SLOTTED DRAIN

(1) Corrugated steel pipe slotted drains shall be fabricated from full circle corrugated steel pipe conforming to these specifications.

(2) C.S.P. Slotted drains shall be of a type as manufactured by “Contech Construction Products, Inc.”, “Texas Corrugators”, “Caldwell Culvert Company” or approved equal.

(3) The upstream end of CSP slotted drains shall be equipped with a bend and a ring and cover of the some size as the pipe from which the slotted drain was fabricated to allow cleaning equipment to be inserted into the slotted drain. The ring and cover shall be Nenah Foundry Co. R-5901 open grate or R-5900 solid lid or approved equal. Unless shown otherwise on the plans the open grate shall be furnished.

(4) When slotted drain is to be connected to PVC leads, molded rubber or PVC flexible connector as specified for connections to manholes and cleanouts shall be furnished.

4. DAMAGED COATING

A. PROTECTION OF PIPE

(1) Pipe fittings and specials shall be handled and stored in a manner that will minimize damage to the coating.

(2) The fabrication process shall be designed to minimize the burning of coatings during welding.

(3) Pipe and/or fittings showing excessive abuse or damage will be rejected.

B. REPAIRING DAMAGE

(1) Pipe on which the metallic coating has been burned by welding or has been otherwise damaged in fabricating or handling, shall be repaired. The repair shall be done so that the completed pipe shall show careful finished workmanship in all particulars.

(2) The damaged area shall be cleaned to bright metal by blast cleaning, power disk sanding, or wire brushing. The cleaned area shall extend at least ½ inch into the undamaged section of the coating. The cleaned area shall be coated within 24 hours and before any rusting or soiling.

(3) Zinc-rich paint shall be applied to a dry film thickness of at least 0.005 inches over the damaged section and surrounding cleaned area. Zinc-rich paint shall be used for repair of damage to all types of metallic coating -zinc, aluminum, and aluminum-zinc alloy.

2.03 CAST-IN-PLACE CONCRETE SEWER PIPE (NON-REINFORCED) FOR STORM SEWERS ONLY

1. DESCRIPTION

This item shall cover machine cast-in-place monolithic non-reinforced concrete pipe, which shall consist of Portland cement concrete placed in a prepared trench at such locations and grades shown on the plans and intended to be used for the conveyance of storm water. Items and item numbers referred to in this specification are the items as given in the "Texas State Department of Highways and Public Transportation 1982 Standard Specifications for Construction of Highways, Streets and Bridges."

2. MATERIALS

The cast-in-place pipe shall be constructed of Class "C" concrete. The concrete shall meet the requirements of Item 421, "Concrete for Structures," and Special Provision thereto, except as otherwise noted herein or on the plans. Type III Portland Cement shall be used.

The minimum compressive strength for concrete used in this item is 4000 psi. Backfilling operations may proceed when the concrete has reached 2000 psi compressive strength.

The coarse aggregate grading for pipe diameters 48 inches or less shall conform to that of Aggregate Grade No. 3, one inch (1") maximum size aggregate under Item 421. For pipe diameters over 48 inches, Coarse Aggregate No. 2, one and one third inch (1-1/3") maximum size aggregate shall be used.

No concrete having a slump in excess of 2" will be permitted for use in pipes with diameters of 48 inches and over. For pipes with diameters less than 48 inches, no concrete having a slump in excess of 3" will be permitted for use. At the option of the Contractor, sections of precast reinforced concrete pipe (D-load) may be substituted for cast-in-place concrete pipe. Pipe and installation shall conform to the requirements of Item 465, "Pipe Sewers." Backfill shall be in accordance with the requirements for other storm sewers in these specifications using crusher fines (chat).

3. PIPE MAKING EQUIPMENT

The pipe shall be constructed with equipment specially designed for constructing cast-in-place monolithic concrete pipe. The equipment shall be acceptable to the Engineer and the Contractor may be required to furnish evidence of successful operation in other work of the equipment he proposes to use. Equipment not suitable to produce the quality of work required for the pipeline will not be permitted to operate on the project.

4. DIMENSIONS AND TOLERANCES

The design shell thickness shall be as specified in Table 1.

TABLE I

Internal Diameter inches	Min. Shell Thickness inches
18	2
24	2-1/2
30	3
36	3-1/2
42	4
48	5
54	5-1/2
60	6
66	6-1/2
72	7
84	8
96	9
108	10
120	11

Variation in the internal diameter shall not exceed plus or minus 3 percent. The maximum allowable deviation form the true grade of the design invert of the pipe shall not exceed ½ inch either side of true grade. Where deviation from true grade occurs, true grade shall be re-established at a maximum departure of one-eighth inch per foot.

5. EXCAVATION AND BACKFILL

Excavation shall be in accordance with the requirement for other types of storm drains, except as modified herein. The trench shall be excavated in the lines and grades shown on the plans or as directed by the Engineer. The width of the trench shall be sufficient to accommodate travel of the pipe machine only. The bottom of the trench shall be shaped to the nominal outside circumference of the pipe. Excavation shall be performed from the outlet to the inlet. If the trench is over-excavated for the bottom 210 degrees of the pipe the excess area shall be filled with concrete. If rock is encountered, it will be removed at least 6 inches below the bottom of the pipe and the trench refilled with material sufficiently compacted to

allow operation of the machine and provide a smooth firm surface. The sidewall of the pipe shall be placed against undisturbed material.

Backfill material will be a crusher fine (chat) as described elsewhere in these Specifications. No backfill other than permitted for curing purposes shall be placed until the line has been inspected and approved by the Engineer. The trench may be completely backfilled after the pipe has been in place at least 24 hours and concrete strength requirements have been reached. Light traffic, axle load less than 6,000 pounds, may be routed over the pipe after backfill has been completed for twenty-four (24) hours. Unrestricted traffic may be permitted over the pipe after the backfill has been in place for forty-eight (48) hours.

All backfill material shall be mechanically compacted to 95% modified proctor or as directed by the Engineer.

6. CONSTRUCTION

All surfaces against which concrete are to be placed shall be free from standing water, mud, and debris. Absorptive surfaces against which concrete are to be placed shall be moistened thoroughly so that moisture will not be drawn from the freshly placed concrete.

The concrete shall be placed in one operation around the full circumference of the pipe by means of a traveling form. The forms shall be of sufficient strength to withstand vibrating or tamping the concrete and to permit workmen to walk on the forms without causing springing or bulging at any point.

As the traveling form moves forward, forms shall be placed inside the newly formed pipe to support a minimum of 230 degrees of the upper portion of the pipe.

The concrete shall be vibrated, rammed, tamped or worked with suitable appliances until the concrete has been consolidated to the maximum practicable density, free of rock pockets, and closes snugly against all surfaces or forms and provides a bond between the pipe shell and supporting earth.

When placing operations cease for any reason, the end of the pipe shall be left rough with a slope of approximately 45 degrees. The ends of the pipeline shall be covered with canvas or other suitable cover material to prevent excessive loss of moisture from the interior of the pipe already placed.

When starting pipe laying operation from a previously laid cast-in-place pipe or section of pre-cast pipe, a construction joint shall be made by excavating a “bell” completely around the end of the existing pipe and constructing a concrete collar to extend at least one foot either side of the joint with a minimum thickness equal to that of the wall of the pipe. The end of the existing pipe shall be clean and damp before continuing pipe making operations. Cleaning of the construction joint shall consist of removing all latency, loose or defective concrete, coatings, and any other deleterious materials.

All forms shall be clean and shall be placed at the trench side at the location of their proposed use for inspection by the Engineer. Forms, which are defective in any way, will not be used, and upon condemnation they shall be removed from the site of the work. The forms shall not vary more than ½ inch from the lower edge of a straightedge laid parallel to the centerline of the form, and shall be free of any holes larger than 5/8 inch in greatest dimension. The pipe machine shall be thoroughly clean and serviced prior to the placing of the concrete. Particular attention will be given to all parts of the machine with which concrete comes into contact.

Concrete chutes or trunks shall be provided to reach within 1 foot of the pipe machine hopper. The end of the chute or trunk shall discharge the concrete at the center of the hopper. Provisions shall be maintained to minimize segregation of the concrete mix in all phases of the operation.

Delays in placing shall be handled as follows or as otherwise directed. The concrete hopper on the pipe laying machine shall be kept ½ full at all times, provided, however, that when placing operations cease or are delayed for any reason for more than 20 minutes, the pipe machine shall be pulled forward until all the concrete is exhausted and until the top troweling skirt is clear of the concrete. If the pipe laying operation proceeds within one hour of the time of the last placement, no further steps need to be taken. However, if longer than one hour has elapsed, then a construction joint must be made as previously described. The end of the pipe shall be left rough and at the natural slope when the machine is moved forward.

All junctions of pipe shall be provided for at the time the cast-in-place pipe is placed.

Inside forms shall be removed from the pipe not sooner than 4 hours nor longer than 24 hours after placement of the concrete. Care shall be taken when removing forms to prevent damage to the pipe. The inside of the pipe shall be carefully inspected for imperfections in placement, and any required repairs or smoothing shall be made immediately to provide a uniform interior surface. No wash, mortar or concrete shall be applied to a surface not properly moistened or cleaned. Visible cracks shall be brushed with cement paste or chipped out and pointed up with cement mortar. Any cracks that appear to go through the shell shall be grooved and filled with mortar. All construction operations and methods for providing a watertight pipeline shall be the responsibility of the Contractor. Mortar shall consist of one part cement; two parts well graded sand passing 1/8-inch sieve. Wash shall consist of four parts cement, one part fire clay. The finished surface of the concrete pipe shall be substantially free of fractures, cracks and surface roughness.

7. CURING CONCRETE

Immediately after the concrete is placed the exposed surface of the concrete shall be cured by covering the top with a sheet of polyethylene film sealed with dirt along the edges. During the curing period following the placement of the concrete, the ends of the pipeline and all other openings into the pipeline shall be covered with canvas or other suitable material, except at locations where work is actually in progress. The inside surface of the pipeline shall not be cured.

8. MANHOLES AND BENDS

Manhole bases shall be hand formed on top of the pipe as soon as the pipe-placing machine has passed. Where required, the extra width for manholes shall be excavated ahead of the pipe placing operation. The base for the manhole shall be formed to receive a standard precast concrete barrel section and shall be shaped and smoothed so that the joint can be sealed water tight by use of “Ram Nek” or other approved joint sealing material.

Bends may be formed and cast in place or fabricated using precast reinforced concrete pipe (load D). Design and shop drawings shall be submitted to and approved by the Engineer before the bends are fabricated or cast.

9. MEASUREMENT

Measurement of manholes shall be as specified elsewhere in these specifications. Measurement of bends shall be as for other storm sewer pipe. The method of pipe measurement shall conform to that for other types of storm drainpipe in the section or storm drains in these specifications.

10. PAYMENT

Payment for cast-in-place non-reinforced pipe sewers, measured as prescribed above, will be made at the unit price bid per linear foot for the various sizes of “Pipe Sewers (Cast-in-Place)” complete in place. Payment for manholes shall be as specified elsewhere in these specifications.

Such payment shall be full compensation for furnishing all concrete materials, precast reinforced concrete pipe used in place of cast-in-place pipe, and for all other materials, tools, labor, equipment, and incidentals required to perform the applicable work prescribed herein.

When precast reinforced concrete pipe at the Contractor’s option is used in a line of cast-in-place pipe the additional excavation for the pipe will be subsidiary.

2.04 CENTRIFUGALLY CAST FIBERGLASS REINFORCED RESIN PIPE SEWERS

A. DIRECT BURY PIPES

1. GENERAL

All pipes, joints and fittings shall be manufactured in accordance with the requirements of the applicable standard given below except as noted herein:

Service	Standard
Non pressure Sanitary Sewer	ASTM D3262
Sewer Force Main and Effluent Lines	ASTM D3754

Pipes shall be centrifugally cast, fiberglass-reinforced polyester resin as manufactured by Hobas USA, Inc. or approved equal.

Minimum pipe stiffness when tested in accordance with ASTM D2412 shall be 46 psi.

2. MATERIALS

The manufacturer shall use only approved polyester resin systems for which he can provide a proven history of performance in these particular applications. The historical data shall have been acquired from a composite material of similar construction and composition as the proposed product.

The reinforcing glass fibers used to manufacture the components shall be of highest quality commercial grade of E-glass filaments with binder and sizing compatible with impregnating resins. Sand shall be minimum 98% silica with a maximum moisture content of 0.2%

3. DIMENSIONS

Pipe outside diameters shall be in accordance with AWWA Standard C151 and C950. For diameters larger than covered in those documents, OD's shall be as shown in Table 1.

TABLE I

*WP/s		0/46		50/46		100/46		150/46		200/46	
Nomin Pipe Sz. (in.)	Pipe OD (in.)	Min. wall (in.)	Wgt. (lb/ ft)	Min. Wall (in.)	Wgt. (lb/ ft)	Min. Wall (in.)	Wgt. (lb/ ft)	Min. Wall (in.)	Wgt. (lb/ ft)	Min. Wall (in.)	Wgt (lb/ ft.)
18	19.50	.42	20	.41	20	.40	19	.38	18	.37	18
20	21.60	.46	25	.45	24	.43	23	.42	22	.40	21
24	25.80	.54	35	.53	34	.51	33	.49	31	.47	30
30	32.00	.66	54	.65	53	.62	51	.60	49	.57	47
36	38.30	.78	77	.77	76	.74	73	.71	70	.68	67
42	44.50	.90	104	.88	101	.85	98	.82	94	.78	89
48	50.80	1.02	134	1.00	131	.96	126	.93	122	.88	115
54	57.10	1.14	169	1.12	166	1.08	160	1.04	155	.99	147
60	62.90	1.26	209	1.23	204	1.19	197	1.14	188	1.09	180
66	69.20	1.38	249	1.35	243	1.30	234	1.25	228		
72	75.40	1.50	298	1.47	292	1.41	280	1.36	270		
78	81.60	1.62	352	1.58	343	1.52	331	1.47	320		
84	88.00	1.74	409	1.70	399	1.64	385				
90	94.30	1.86	468	1.82	458	1.75	440				
96	100.6	1.98	531	1.94	520	1.87	501				

- **Maximum nominal working pressure in psi/pipe stiffness in psi**

Pipe shall be supplied in nominal lengths of 20 feet. Actual laying length shall be the nominal plus or minus 2 inches. At least 90% of the total footage of each size and class of pipe, excluding special order lengths, shall be furnished in nominal length sections.

4. **PRESSURE CLASS & TESTING FOR SEWER FORCE MAINS AND EFFLUENT LINES**

The pipe nominal pressure class (PN) shall be equal to or greater than the maximum sustained operating pressure of the line. The minimum pressure rating for non-pressure pipe shall be 15 psi.

The maximum transient (operating plus surge) pressure of the line shall not exceed the pipe nominal pressure class by more than 40%.

Pipe hoop tensile strength for pressure pipe shall be verified as specified in the applicable standard (D3754 or C950) or by random burst testing at the same sampling frequency. All pipes shall be capable of withstanding a test pressure of 2 times the maximum sustained operating pressure of the line without leaking or cracking. This performance shall be periodically verified at the factory for pressure pipe at least once per lot as defined in D3754, section 7.1.

A. JOINTS

Unless otherwise specified, the pipe shall be field connected with fiberglass sleeve couplings that utilize elastomeric sealing gaskets made of EPDM rubber compound as the sole means to maintain joint water tightness. The joints must meet the performance requirements of ASTM D4161.

B. FITTINGS

Flanges, elbows, reducers, tees, wyes, laterals and other fittings shall, when installed, be capable of withstanding all operating conditions. Acceptable configurations include contact molded or metered fiberglass or properly protected standard ductile iron.

Unbalanced thrust forces shall be restrained with thrust blocks or other approved suitable methods. Fiberglass tees, wyes, laterals, or other similar fittings shall be fully encased in reinforced concrete designed to withstand the pressure forces.

2.05 POLYETHYLENE SEWER PIPE

A. SCOPE

(1) This specification covers Polyethylene (PE) pipe with a corrugated outer wall and a smooth interior wall, for use with non-pressure sanitary sewer systems. The PVC fittings and joints are included in the specification.

B. MATERIAL AND MANUFACTURING

1. PIPE MATERIALS

The pipe shall be made from clean virgin Polyethylene compounds having a cell classification of 324420C as defined by ASTM D-3350.

2. FITTING MATERIALS

The fittings shall be made from clean virgin polyvinyl chloride (PVC) compounds having a cell classification of 12454B, 1245C or 13343C as defined by ASTM D-1784.

Pipe shall be manufactured by simultaneous extrusion of the corrugated and smooth walls with the smooth inner wall fused to the outer corrugated wall.

Fittings shall be molded or fabricated.

3. JOINING MATERIALS

a. Gaskets
b. Elastomeric gaskets shall meet the requirements of ASTM F-477.
c. Lubricants

The lubricants used for assembly shall have no detrimental effect on the gasket or the pipe, and shall be per published recommendations of the pipe manufacture.

4. MATERIAL CERTIFICATION

A manufacture's or an independent laboratory certification shall be furnished to the purchaser/engineer that the products were manufactured, sampled, tested, and inspected at the time of manufacture in accordance with this specification.

C. PIPE DIMENSIONS

Pipe dimensions shall meet the following requirements when tested in accordance with ASTM D-2122.

Nominal Size	Avg. O.D.	Avg. I.D.
4	4.790 (121.7)	4.00 (101.6)
6	6.930 (176.0)	6.00 (152.4)
8	9.145 (232.2)	8.00 (203.2)
10	11.405 (289.7)	10.00 (254.0)
12	14.450 (367.0)	12.00 (304.8)
15	17.530 (445.3)	15.00 (381.0)
18	21/150 (537.2)	18.00 (457.2)

D. INSTALLATION

1. Joint Tightness

Minimum joint performance shall show no leakage when tested in accordance with ASTM D-3212.

2. Supplier Assistance

A manufacturers representative of the above referenced pipe material shall be present at the beginning of the installation as required by the Design Engineer or Contractor and shall remain on site until released by the Design Engineer or Field Inspector/Engineer.

2.06 INLETS FOR STORM SEWERS

A. CURB TYPE INLETS

(1) Curb inlets shall be constructed at the locations and to the lines and grades or shown on the plans or as directed by the Engineer.

(2) Curb inlets shall be constructed of reinforced class “C” concrete in accordance with Section 1-B “Concrete Structures” and the plans and detail drawings.

(3) The curb section and the curb inlet shall conform to the curb and gutter section in which it is placed in so far as it is possible.

B. GRATE TYPE INLETS

(1) Grate inlets shall be constructed at the locations and the lines and grades as shown on the plans or as directed by the Engineer.

(2) Concrete boxes for grate inlets shall be constructed of reinforced Class “C” concrete in accordance with Section 1-B “concrete Structures” and the plans and detail drawings.

(3) Grates shall be constructed of ASTM A-48 gray iron having minimum tensile strength of 35,000 psi or ductile iron having a minimum tensile strength of 60,000 psi and a yield strength of 40,000 psi.

The size, style, shape, type, weight and class shall be as shown on the plans.

Grate frames shall be as manufactured for the grate by the grate fabricator. If more than one type or style or frame is available, the type and/or style shall be as indicated on the plans.

C. COMBINATION INLETS

(1) Combination curb and grate inlets shall be constructed at the locations and to the lines and grades as shown on the plans or as directed by the Engineer.

(2) Combination inlets shall be constructed in accordance with the applicable requirements for “Curb type inlets” and “Grate type inlets” above.

D. INLET LEADS

(1) Inlet leads may be PVC pipe or CSP as shown on the plans and called for in the bid proposal.

(2) Inlet leads shall be constructed in accordance with the specifications for type of material used and the plans and detail drawings.

(3) Where two or more leads are joined together to form a single lead to the storm sewer they shall be joined at a cleanout unless shown otherwise on the plans.

(4) Inlet leads shall be connected to the storm sewer at a manhole. The leads shall enter the manhole at a point that will match the .8 points of the two pipes as near as practical.

E. CLEANOUT FOR STORM SEWER INLET LEADS

Cleanouts at the juncture of inlet leads shall be constructed in accordance with the dimensions and requirements shown on the plans and detail drawings.

F. CORRUGATED STEEL SLOTTED DRAINS

(1) Corrugated steel slotted drains shall be as specified in section 2.02-3 of these specifications and shall be furnished in the lengths and diameters as shown on the drawings and in the bid proposal.

(2) Corrugated steel slotted drains are approved for nuisance water inlets only and are sized to allow for considerable clogging before they will cease to function in this capacity.

2.07 MANHOLES

1. GENERAL

A. **CONCRETE MANHOLES ARE NOT TO BE USED FOR SANITARY SEWERS AFTER DECEMBER 31, 2002. FIBERGLASS MANHOLES ARE TO BE USED FOR ALL SANITARY SEWERS**. Concrete manholes can be used for storm water sewers.

All manholes furnished for this project shall be precast unless noted otherwise on the plans and or bid proposal.

Precast manholes shall conform to the requirements of ASTM Specification C-478 with the modifications given in this article.

Concrete used for precast manholes shall have a minimum 28-day compressive strength of 4,000 psi and shall have a minimum cement content of 7 sacks per cubic yards.

All manhole sections shall be furnished with tongue and groove type joints suitable for sealing water tight with rubber or bituminous joint sealer or gaskets.

B. When cast in place components for manholes are called for on the plans the concrete used shall have a minimum 28 day compressive strength of 4,000 psi and a minimum cement content of 7 sacks per cubic yard and shall conform to the requirements of ASTM Specification C-478 with wall thickness as shown on the plans and detail drawings.

Aggregate for the concrete shall meet the sodium sulfate and magnesium sulfate test as required in ASTM Specification C-33.

C. Mortar for filling and shaping the inverts in precast manhole bases and for mortaring precast grade rings and cast iron rings and covers shall consist of one part Portland cement ASTM C150 Type 1 to 3 parts washed sand mixed with just enough water to make a workable mix.

D. Manholes for corrugated steel pipe may be precast concrete or corrugated steel as described in Article 2.02. The type and material shall be as shown on the plans and called for on the bid proposal.

2. PRECAST MANHOLES

A. Manhole base sections shall be cast with an integral floor and shall be constructed in accordance with the details shown on the plans.

B. Manhole riser sections shall be constructed in accordance with the plans and details and these specifications. When pipe openings are required in manhole riser sections they shall be of the same type and meet the same requirements as the pipe openings in the precast bases.

Manhole riser sections for each manhole shall be furnished in the proper combination of lengths to construct the manhole in conjunction with the other components to the finished grade shown on the plans.

C Eccentric cone sections shall be constructed in the same manner as other components except the top of the cone will have a flat surface to accommodate the manhole ring and cover or grade adjusting rings instead of a tongue or groove.

Generally openings will not be required in the wall of the cone section of the manhole.

D. Manhole grade rings shall comply with all the requirements for manhole riser sections except they shall be cast smooth both sides without tongues and/or grooves.

Manhole grade rings shall be sized to fit the smooth small end of the cone section and shall be cast in heights of 2”, 4” or 6”.

E. Joint seals for precast concrete manholes shall be a bitumastic sealer such as Ram-Nek or approved equal, a soft rubber sealer such as Butyl-Lok or approved equal or an approved “O” ring gasket or a combination of the above if required to achieve a water tight joint.

F. All water tight Storm Sewer Manholes constructed on this project shall have Neenah R-1755-C watertight manhole rings and covers or approved equal.

No separate payment will be made for the protective plastic manhole linings or for the water tight manhole rings and covers but the cost of these items shall be included in the price bid for water tight Storm Sewer Manholes.

In addition to the markings required by ASTM Specification C-478, all components of each manhole shall be, marked with location identifying information such as manhole number or line number and station value where manhole is to be installed. If the manhole has openings for installation of branch lines above the base section, each manhole section shall be clearly marked with the sequence of installation to assure the branch opening will be at the correct elevation.

3. FIBERGLASS MANHOLES

A. SCOPE

Fiberglass reinforced polyester manholes shall be manufactured from commercial grade polyester resin or other suitable polyester or vinyl resins, with fiberglass reinforcements and in accordance with the latest edition of ASTM D 3 753 (Standard Specification for Glass-Fiber Reinforced Polyester Manholes). Fiberglass manholes shall be used with fiberglass or plastic sewer pipe.

B. MATERIALS

1. **Resin:** The resins used shall be a commercial grade unsaturated polyester resin.

2. **Reinforcing Materials**: The reinforcing materials shall be commercial Grade "E" type glass in the form of mat, continuous roving, chopped roving, roving fabric, or a combination of the above, having a coupling agent that will provide a suitable bond with the resin and leave a resin rich surface.

3. **Surfacing Materials**: If reinforcing materials are used on the surface exposed to the contained substance, they shall be a commercial grade chemical-resistant glass organic surfacing mat having a coupling agent that will provide a suitable bond with the resin and leave a resin rich surface.

4. **Fillers and Additives**: Fillers, when used, shall be inert to the environment and wet well construction. Additives, such as thixotropic agents, catalysts, promoters, etc., may be added as required by the specific manufacturing process to be used. The resulting reinforced plastic material must meet the requirement of this specification.

C. FABRICATION

1. **Exterior Surface**: The exterior surface shall be relatively smooth with no sharp projections. Handwork finish is acceptable if enough resin is present to eliminate fiber show. The exterior surface shall be free of blisters larger than ½ inch in diameter, de-lamination and fiber show.

2. **Interior Surface**: The interior surface shall be resin rich with no exposed fibers. The surface shall be free of crazing, de-lamination, blisters larger than ½ inch in diameter, and wrinkles of 1/8 inch or greater in depth. Surface pits shall be permitted up to 6 per square foot if they are less than ¾ inch in diameter and less than 1/16 inch deep.

3. **Defects not permitted**:

Exposed fibers: glass fibers not wet out with resin.
Resin runs: runs of resin and sand on the surface
Dry areas: areas with glass not wet out with resin.
De-lamination: separation in the laminate.
Blisters: light colored areas larger than ½ inch in diameter.
Crazing: cracks caused by sharp objects
Pits or Voids: air pockets.
Wrinkles: smooth irregularities in the surface.
Sharp projection: fiber or resin projection necessitation gloves for handling.

D. PHYSICAL REQUIREMENTS

1. **Load Rating**: The complete manholes shall have a minimum dynamic-load rating of 16,000 ft-lbs. when tested in accordance with this standard. In order to establish this rating, the complete manhole shall not leak, crack, or suffer other damage when load

tested to 40,000 ft-lbs. and shall not deflect vertically downward more than ¼ inch at the point of load application when loaded to 24,000 lbs.

2. **Stiffness**: The manhole cylinder shall have a minimum pipe stiffness value as shown below when tested in accordance with A.S.T.M. 3753 8.5 (note 1)

Depth Ft.	F/dy.psi
3 – 6.5	0.75
7 – 12.5	1.26
13 – 20.5	2.01
21 – 25.5	3.02
26 – 35	5.24

3. **Soundness:** In order to determine soundness, apply an air or water pressure test to the manhole test sample. Test pressure shall not be less than 3 psig or greater than 5 psig. While holding at the established pressure, inspect the entire manhole for leaks. Any leakage through the laminate is cause for failure of the test. Refer to A.S.T.M. 3753 8.6.

4. **Chemical Resistance**: The fiberglass manhole and all related components shall be fabricated from corrosion proof material suitable for atmospheres containing hydrogen sulfide and dilute sulfuric acid as well as other gases associated with the wastewater collection.

5. **Physical Properties**:

	Hoop Direction	Axial Direction
a. Tensile Strength (pi)	18,000	5,000
b. Tensile Modulus (pi)	0.6×10^6	0.7×10^6
c. Flexural Strength (psi)	26,000	4,500
d. Flexural Modulus (psi)	1.4×10^6	0.7×10^6
e. Compressive (psi)	18,000	10,000

6. **Minimum Wall Thickness**: Shall be 0.48” nominal at all depths of the manholes.

E. TEST METHODS: All tests shall be performed as specified in A.S.T.M 3753 latest edition, section 8. Test method D-790 (see note 5) and test method D-695.

F. QUALITY CONTROL: Each completed manhole shall be examined for dimensional requirements, hardness, and workmanship. All required A.S.T.M 3753 testing shall be completed and records of all testing shall be kept and copies of test records shall be presented to customer upon formal written request within a reasonable time period.

G. CERTIFICATIONS: As a basis of acceptance the manufacturer shall provide a independent certification which consist of a copy of the manufacturer’s test report and accompanied by a copy of the test results that the manhole has been sampled, tested,

and inspected in accordance with the provisions of this specification and meets all requirements.

H. SHIPPING AND HANDLING: Do not drop or impact the fiberglass manhole. Fiberglass manhole may be lifted by inserting a 4" x 4" x 30" timber into the top of manhole with cable attached or by a sling or "choker" connection around center of manhole, lift as required. Use of chains or cables in contact with the manhole surface is prohibited.

I. CONCRETE:

1. **Fiberglass Bottom**: Manholes may have fiberglass bottoms that are a minimum of 6" below the OD of the pipe invert when concrete is used to form the invert. Manufactured fiberglass inverts and bench areas are allowed, or concrete may be used to form bench area and invert. Concrete is to be used on top of anti-flotation ring and around the reducer section as required for buoyancy.

2. **Concrete Bottom**: Lower manhole into wet concrete until it rests at the proper elevation, with a minimum of 4 inches of fiberglass manhole inserted into the wet concrete below flow line, then move manhole to plumb. The concrete shall extend a minimum of one foot from the outside wall of the manhole and a minimum of 6 inches above incoming lines. On the inside concrete shall form the bench and invert area and rise a minimum of 4 inches above incoming lines. If required by Engineer concrete may be used around reducer section for buoyancy control.

BACKFILL:

1. **Backfill Material**: Unless shown otherwise on drawings and approved by the Engineer, sand, crushed stone, or crushed gravel shall be used for backfill around the manhole for a minimum distance of one foot from the outside surface and extending from the bottom of the excavation to the top of the reducer section. Suitable material chosen from the excavation may be used for the remainder of the backfill. The material chosen shall be free of large lumps or clods, which will not readily break down under compaction. This material will be subject to approval by Engineer.

2. **Backfill Procedure**: Backfill shall be placed in layers of not more than 12 loose measure inches and mechanically tamped to 95% Modified Proctor Density, unless otherwise approved by Engineer. Backfill shall be placed in such a manner as to prevent any wedging action against the fiberglass manhole structure.

K. MARKING and IDENTIFICATION: Each manhole shall be marked on the inside and outside with the following information:

Manufacturer's name or trademark
Manufacturer's factory location
Manufacturer's serial number
Total length

4. MANHOLE RINGS AND COVERS

A. Manhole rings and covers furnished for this project shall be pattern No. 300-24 as produced by Western Iron Works, Inc., 21 E. 6th St., San Angelo, Texas 76903-5493 or Bass and Hays Foundry, Inc., 238 South Bagdad Rd., Grand Prairie, Texas 75050, or approved equal.

B. WATER TIGHT MANHOLE COVERS

(1) Water tight manhole rings and covers furnished for this project shall be number R-1755-C as manufactured by Neenah Foundry Company, P.O. Box 729, Neenah, Wisconsin 54957, or approved equal.

(2) When watertight replacement sanitary sewer manhole rings and covers are called for on the plans and in the bid proposal they shall be Neenah Foundry Co. No. R-1755-C or approved equal.

No separate payment will be made for adjusting to grade of the replacement watertight manhole rings and covers. The contractor shall schedule this work to coincide with other manhole and water valve adjustments and any costs that might be involved shall be included in the price bid for replacement water tight manhole rings and covers.

(3) Manhole vents shall be used in conjunction with watertight rings and covers spaced every third manhole or as indicated on the plans. Vents shall be constructed as indicated on City design and construction standards.

C. Pressure type manhole rings and covers may be required for certain storm sewer applications. When pressure type manhole rings and covers are called for on the plans and/or bid schedule they shall be Western Iron Works Pattern #380-24P or approved equal. The manhole cover shall be sealed with an “O” ring gasket in a ring groove and shall be secured to the ring by six (6) five-eighths inch (5/8”) stainless steel bolts. The ring shall have six (6) one and one quarter inch (1-1/4”) bolt holes in the flanges for securing the ring to the concrete slab top on the manhole.

D. All manhole covers except grate type shall have two blind pick holes or pick bar cast into them. The blind pick holes or pick bars shall be placed on opposite sides of the cover.

E. All manhole covers except grate type shall have cast into their tops in letters 2 inches high minimum one of the following:

CITY OF MIDLAND
SANITARY SEWER
OR
CITY OF MIDLAND
STORM DRAIN

which ever is applicable.

2.08 GRANULAR MATERIALS

A. GRANULAR MATERIAL GRADATION CLASSIFICATIONS:

Granular materials furnished for foundation, bedding, encasement, backfill, or other purposes as may be specified, shall consist of any natural or synthetic mineral aggregate such as sharp grained sand, crushed gravel, crushed rock, crushed stone, or slag, and shall conform to the following specifications and/or gradation.

Note all materials used for these purposes shall be crushed and shall have at least two broken faces. Pea gravel will NOT be allowed.

	Foundation	Bedding	Encasement	Backfill
ASTM C33 Grade #57	x			
ASTM C33 Grade #67	x			
ASTM C33 Grade #8		x	x	
THD 1982 Item 302 Type D Grade 4		x	x	
THD 1982 Item 302 Type D Grade 5			x	
Crusher fines**			*x	x

*100 percent of crusher fines that are to be used within 12 inches of the top of pipe must pass the ¾" sieve.

** Approximate Gradation for Crusher Fines.

Sieve Size	% Passing
2 inch	100
# 4	35 - 100
# 10	20 - 100
# 40	5 - 35
#200	4 - 10

Crushed stone material proposed as an alternate for use on this project and not meeting the above specifications must be approved in writing at least 48 hours prior to the time scheduled for opening bids.

B. GRANULAR MATERIAL USE DESIGNATIONS:

Granular materials provided for Foundation, Bedding, Encasement, or Backfill use as required by the contract, either as part of the pipe item work unit or as a separate contract item, shall be classified as to use in accordance with the following:

MATERIAL USE DESIGNATION	ZONE DESIGNATION
Granular Foundation	Placed below the bottom of pipe grade as replacement for unsuitable or unstable soils, to achieve better foundation support.
Granular Bedding	Placed below the midpoint of the pipe prior to pipe installation, to facilitate proper shaping and achieve uniform pipe support. Also for Class B bedding where specified.
Granular Encasement	Placed below an elevation one half foot (6”) above the top of pipe, after pipe installation, for protection of the pipe and to assure proper filling of voids and thorough consolidation of backfill.

In each case above, unless otherwise indicated, the lower limits of any particular zone shall be the top surface of the next lower course as constructed. The upper limits of each zone are established to define variable needs for material gradation and compaction or void content, taking into consideration the sequence of construction and other conditions. The material use and zone designations described above shall only serve to fulfill the objectives and shall not be construed to restrict the use of any particular material in other zones where the gradation requirements are met.

PART 3 – EXECUTION

3.01 LOCATION OF WORK

A. The work will be located as shown on the plans.

B. It may be necessary for the Engineer to shift lines as reasonable amount to avoid an obstruction to the construction or to reduce right of way difficulties. The Contractor will not be allowed any additional compensation due to shift of lines. Additional compensation will be allowed only for lengthening of lines.

3.02 PROTECTION OF SURFACE STRUCTURES

A. All surface structures and features located outside the permissible excavation limits for underground installations, together with those within the construction areas which are indicated in the Plans as being saved, shall be properly protected against damage and shall not be disturbed or removed without approval by the Engineer.

B. Obstructions such as street signs, guard posts, mail boxes and other items of prefabricated construction may be temporarily removed during construction provided that essential service is maintained in a relocated setting as

approved by the Engineer and that non-essential items are properly stored for the duration of construction. Upon completion of the underground work, all such items shall be replaced in their proper setting. This removal, relocation and replacement shall be at the sole expense of the Contractor.

In the event of damage to any surface structures or improvements, either privately or publicly owned, in the absence of construction necessity, the Contractor will be required to replace or repair the damaged property to the satisfaction of the Engineer and without cost to the Owner.

3.03 INTERFERENCE OF UNDERGROUND STRUCTURES

A. When any underground structure interferes with the planned placement of the pipeline or appurtenances to such an extent that alterations in the work are necessary to eliminate the conflict or avoid endangering effects on either the existing or proposed facilities, the Contractor shall immediately notify the Engineer and the Owner of the affected structure. When any existing facilities are endangered by the Contractor's operations, he shall cease his operations at the site and take such precautions as may be necessary to protect the in place structures until a decision is made as to how the conflict will be resolved.

B. Without specific authorization from the Engineer, no essential utility service shall be disrupted, nor shall any change be made in either the existing structures or the planned installations to overcome the interference. Alterations in existing facilities will be allowed only to the extent that service will not be curtailed unavoidably and then only when the encroachment or relocation will satisfy all applicable regulations and conditions.

C. Wherever alterations are required as a result of unforeseen underground interference not due to any fault or negligence of the Contractor, the Engineer will issue a written order covering any additional or extra work involved and specifying the revised basis of payment, if any. Any alterations made strictly for the convenience of the Contractor shall be subject to prior approval and shall be at the Contractor's expense.

D. No extra compensation will be allowed for delays caused by the interference of underground structures.

3.04 SEPARATION BETWEEN SANITARY SEWERS AND WATER MAINS

A. Sanitary sewers and service lines shall be installed so that the separation between the sewer and water mains is not less than 9 feet in all directions. The 9 feet shall be measured between the nearest outside edges of the pipe.

B. When the required 9 foot minimum separation cannot be maintained and a sanitary sewer must be constructed parallel to a water main, the sanitary sewer shall be constructed of ductile iron or PVC pipe meeting AWWA specification or having NSF approval for potable water pipe, with a pressure rating of 100 psi for both the pipe and the joint. The sanitary sewer line shall

be installed in a separate trench and may be placed no closer than 2 feet vertically and 4 feet horizontally from the water main, with the separation being measured from the nearest outside walls of the pipes. The sanitary sewer shall be constructed lower than the water main.

C. When a sanitary sewer must cross a water main and the 9 feet required separation cannot be maintained, the sanitary sewer may be constructed with a minimum clear separation between the outside diameters of the two pipes of 6 inches if that part of the sanitary sewer within 9 feet of the water main is constructed of ductile iron pipe or PVC pipe meeting AWWA specifications, having a 150 psi pressure rating and equipped with pressure type joints. One length of the sewer pipe must be centered on the water main and where possible, the sanitary sewer should pass under the water line.

D. When the 9 foot required separation cannot be maintained and a sanitary sewer force main must be constructed parallel to a water main, the sanitary sewer force main shall be constructed of ductile iron or PVC pipe meeting AWWA specifications and having a pressure rating of 150 psi and equipped with pressure type joints. The force main must be constructed with a minimum vertical separation of 2 feet and a minimum horizontal separation of 4 feet measured between the outside diameters of the pipes. The force main must be constructed lower than water main.

Table I showing separation of water and sewer lines and construction materials allowed:

TABLE 1
SEPARATION OF WATER AND SEWER LINES

Condition	Location	Material		Separation (Min.)		Comments
		Water	Sewer	Vert.	Horiz.	
NEW WATER AND NEW SEWER SYSTEM						
New Water & New Sewer Gravity Sanitary Sewer Parallel to Water Main	Water above Sewer	Std.	CI DI PVC 150 PSI	2’	4’	Separate Trenches
Gravity Sanitary Sewer Crossing Water Main	Water above Sewer or Sewer above Water	Std	CI DI PVC. 150 PSI	6”	NA	Center one joint of sewer pipe on water main
Gravity Sewer Crossing Water Main	Water above Sewer	Std	ABS, Clay Conc. composite	2’	NA	Cement stabilize sand initial backfill zone each side of crossing. Center of sewer for 9 ft one joint of sewer pipe on water Main
NEW WATER AND EXISTING SANITARY SEWER						
New Water Parallel Existing Sewer	Water above Sewer	Std.	Clay, Conc. ABS CI DI PVC	2’	4’	If sewer shows no sign of leakage, then leave sewer alone. If Sewer shows signs of leakage, then repair or replace.
New Water Crossing Existing Sewer	Water above Sewer	Std	Clay, ABS Conc. composite	2”	NA	If sewer shows no sign of leakage, then leave sewer alone if sewer shows signs of leakage then repair or replace.
New Water Crossing Existing Sewer	Sewer above Water	Std	Clay, ABS Conc. composite	2’	NA	Replace existing sewer with one joint CI,DI,PVC-150 Centering over waterline
New Water Parallel to Existing Sewer	Sewer above Water	Std	Clay, ABS Conc. composite	2’	4’	Replace existing sewer with CI, DI, PVC – 150 PSI or Cement Stabilized sand back- fill initial Backfill none of sewer where parallel closer than 9 ft., or Encase the water in 150 PSI Pipe two nominal sizes larger.

EXISTING WATER AND NEW SANITARY SEWER						
New Sewer parallel Existing Water	Water above Sewer Or Sewer above Water	Std	CI DI PVC 150 PSI	2’	4’	Separate trenches
New Sewer crossing Existing Water	Water above Sewer or Sewer above water	Std	CI DI PVC 150 PSI	6”	NA	Center one joint of sewer pipe on water main.
New Sewer crossing Existing Water	Water Above Sewer	Std	Clay, ABS Conc. composite	2’	NA	Cement Stabilize sand initial backfill zone of sewer for 9 ft each side of crossing. Center one joint of sewer pipe on water main.

3.05 EXCAVATION

A. Excavation of every description and of whatever materials encountered shall be made to the alignment and depth shown on the plans or as directed by the Engineer. Excavation shall be made by open cut. Sides of trenches shall be kept as nearly vertical as possible and the trench shall be so braced, sheeted and drained that workmen may work safely and efficiently therein. The trenches shall be sufficiently straight between designated angle points to permit the pipe to be laid true to line in the approximate center of the trench.

B. The trench width may vary with and depend upon the depth of trench, the diameter of pipe to be laid and the nature of the material to be excavated; but in any case shall be of ample width to permit the pipe to be laid and jointed properly and the backfill to be placed and compacted properly. The minimum width of unsheeted trench shall be 18 inches. The maximum clear width of trench at the top of the pipe shall be not more than two (2) feet greater than the outside diameter of the pipe for pipes up to 33” diameter except by consent of the Engineer. Whenever, for any reason, the maximum trench width is exceeded, the Contractor shall provide, at his own expense, pipe of higher class and/or bedding adequate to sustain the increased soil load as calculated by the Engineer.

C. Trenches shall be undercut to provide for the class bedding specified and/or shown on the plans. Bell holes shall be excavated to insure the pipe resting for its entire length upon the bedding material. Where trenches are under-cut beyond the depth required for bedding the trench shall be brought to grade by using crushed aggregate as specified for foundation herein. The use of loose native soil will NOT be permitted for this purpose.

D. No pipe shall be laid in water. Where the ground water table is at or above trench bottom, the Contractor shall de-water the trench to permit the pipe to be laid on a solid foundation.

   Costs for de-watering by whatever method selected shall be considered incidental to the price bid per foot of pipe.

   The Contractor shall discharge pumps to the natural drainage channels, or if permitted, to other sewer or drains.

Where sewer pipelines are located in or across streambeds or drainage ditches, the Contractor shall divert the stream flow and de-water each section as the work progresses.

E. Temporary support, adequate protection and maintenance of all underground and surface utility structures, drains, sewers, and other obstructions encountered in the progress of the work shall be furnished by the Contractor at his own expense under the direction of the Engineer.

F. Whenever wet, soft or unstable soil, incapable of properly supporting the pipe, manholes or other structure is encountered in the trench, a further depth and/or width shall be excavated and refilled to trench bottom grade with gravel or other approved suitable material thoroughly compacted to assure a firm foundation for the pipe.

G. Rock, boulders and large stones shall be removed to provide a clearance of at least six (6) inches below the outside barrel of the pipes, valves, or fittings and to a clear width of six (6) inches on each side of all pipe and appurtenances for pipe 15 inches in diameter or less, and a clear width of nine (9) inches on each side of all pipe and appurtenances for pipe larger than 15 inches in diameter. Adequate clearance for properly joining pipe laid in rock trenches shall be provided at bell holes. The space between the rock at the bottom of the trench and the bottom of the pipe barrel shall be filled with compacted bedding material.

H. The Engineer shall be notified of any need for blasting to remove materials which cannot be broken up mechanically, and there shall be no blasting operations conducted until the Engineer's approval has been secured. Blasting operations will be allowed only when proper precautions are taken to protect life and property, and then shall be restricted as the Engineer directs. The Contractor shall assume full responsibility for any damage caused by blasting, regardless of the requirements for notification and approval. The Contractor shall secure any required permits for blasting and shall conduct blasting operations in conformance with all applicable State and local laws, regulations and ordinances.

I. In the event the Contractor desires to employ tunneling in locations other than as shown on the Plans in order to avoid replacement of sidewalks, etc., he shall do so only upon receipt of specific permission from the Engineer. Tunneling of this nature shall be considered incidental.

J. Excavated materials will be classified for reuse as being either suitable or unsuitable for backfill or other specified use.

3.06 SPECIAL SAFETY PROVISIONS

1. TRENCH SAFETY SYSTEMS

A. DESCRIPTION

This item shall govern for the Trench Safety Systems required for the construction of all trench excavation to be utilized in the project and including all additional excavation and backfill necessitated by the safety system. A trench shall be defined as a narrow excavation (in relation to its length) made below the surface of the ground. In general, the depth is greater than the width, but the width of a trench (measured at the bottom) is not greater than 15 feet. The depth is five feet or more. Trench Safety Systems include but are not limited to sloping, sheeting, trench boxes or trench shields, sheet piling, cribbing, bracing, shoring, de-watering or diversion of water to provide adequate drainage.

B. CONSTRUCTION METHODS

Trench safety systems shall be accomplished in accordance with the detailed specifications set out in the provisions of Excavation, Trench, and Shoring, Federal Occupational Safety and Health Administration (OSHA) Standards, 29CFR, Part 1926, Subpart P, as amended, including Proposed Rules published in the Federal Register (Vol. 52, No. 72) on Tuesday, October 31, 1989. The sections that are incorporated into these specifications by reference include Sections 1926-650 through 1926-652. Legislation that has been enacted by the Texas Legislature, being Tex. Rev. Civ. Stat. Ann. Arts. 1015q, 2368a.6 (Vernon Supp. 1988) with regard to Trench Safety Systems, is hereby incorporated, by reference into these specifications.

A reproduction of the OSHA Publication 2226 is attached for the convenience of the Contractor. The City assumes no responsibility for the accuracy of the reproduction or that it reflects current law. The Contractor is responsible for obtaining a copy of this section of the Federal Register for his use.

If the contractor elects to use a trench protective system that, in the Proposed Rules, requires “Design by a qualified person or a qualified engineer,” [For example see 1926.652 (b) (3) and 1926.652 (c) (4)], a “qualified person or qualified engineer” shall be a Professional Engineer registered in the State of Texas. The Contractor is responsible for obtaining boring and soil analysis as required for the planned design. The trench excavation is to be designed in conformance with OSHA standards and regulations.

C. TRENCH SAFETY PROGRAM

The Contractor shall submit a safety program specifically for the construction of trench excavation. The trench safety program shall be in accordance with OSHA standards governing the presence and activities of individuals working in and around trench excavation.

D. INSPECTION

The Contractor shall make daily inspections of the Trench Safety Systems to ensure that the systems meet OSHA requirements. Daily inspection is to be made by a "competent person" provided by the Contractor. If evidence of possible cave-ins, or slides, is apparent, all work in the trench shall cease until the necessary precautions have been taken by the Contractor to safeguard personnel entering the trench. It is the sole duty, responsibility and prerogative of the Contractor, not the owner or the Engineer, to determine the specific applicability of the designed trench safety systems to each field condition encountered on the project. The Contractor shall maintain a permanent record of daily inspections.

2. SAFETY RESTRICTIONS - work near high voltage lines

The following procedures will be followed regarding the subject item on this contract:

A. Warning signs painted yellow with black letters that are legible at twelve feet shall be placed inside and outside vehicles such as cranes, derricks, power shovels, drilling rigs, pile drivers, hoisting equipment or similar apparatus. The warning sign shall read as follows:

"WARNING - UNLAWFUL TO OPERATE THIS EQUIPMENT WITHIN SIX FEET OF HIGH VOLTAGE LINES."

B. All equipment except back hoes or dippers that may be operated within ten feet of high voltage lines shall have an insulating cage-type of guard about the boom or arm and insulator links on the lift hook connections.

C. When necessary to work within six feet of high voltage electric lines, notification shall be given the power company who will erect temporary mechanical barriers, de-energize the line, or raise or lower the line. The notifying department shall maintain an accurate log of all such calls to the Power Company, and shall record action taken in each case.

D. The Contractor is required to make arrangements with the Power Company for the temporary relocation or raising of high voltage lines at the Contractor's sole cost and expense.

3.07 PIPE LAYING

A. All gravity pipe shall be laid using approved grade boards, furnished and set by the Contractor at no additional cost to the Owner, according to the grade stakes established by the Engineer. The maximum spacing of grade boards shall be fifty (50) feet. No sewer shall be laid unless there is a minimum of three grade boards set to check the proper grade and alignment ahead. The Contractor shall provide and use a suitable grade rod to insure the proper grade of the pipe.

B. The Contractor may use the laser beam method of setting a line and grade for the sewer by using the laser beam coaxially through the center of the sewer being laid. The laser beam projector is to be rigidly mounted to its support platforms, with a two-point suspension, or equivalent, assuring that all ground and equipment vibrations are kept to an absolute minimum. The Contractor shall furnish all equipment including equipment necessary to control atmospheric conditions in the pipe to keep line and grade to acceptable standards of accuracy. Competent experienced people who have been properly trained to operate the equipment used must operate the laser beam system.

C. The Contractor shall stake check pegs at all manholes throughout the job. Check pegs midway between manholes and any other checkpoints deemed necessary to assure accuracy of the equipment shall be provided by the contractor.

D. Each piece of pipe and special fitting shall be carefully inspected before it is placed and no defective pipe shall be laid in the trench. Pipe laying shall proceed upgrade, starting at the lower end of the grade and with the bells uphill. No pipe shall be laid except in the presence of an inspector representing the Engineer. Any pipe laid except in the presence of an inspector representing the Engineer shall be subject, at the contractor's expense, to a television camera inspection and survey by the city. Trench bottoms found to be unsuitable for foundations after pipe laying operations have started shall be corrected and brought to exact line and grade with approved compacted granular material as specified for foundation in Item 2.07 A. of these specifications.

E. Pipe laying shall proceed up-grade with spigot or tongue ends pointing in the direction of flow. The spigot shall be centered in the bell, and pipe shoved into position, and brought into true alignment. It shall be secured there with bedding material carefully tamped under and on each side of it, excepting at bell holes. Care shall be taken to prevent dirt from entering the joint space.

F. Any defective or damaged pipe discovered after the line is laid or any gravity pipe, which has had its grade or joint, disturbed after laying shall be removed and replaced or relayed. The section of line in which such damaged or displaced section is discovered shall be retested after corrections are made.

G. Where excavation for buildings or other portions of the work have been carried below the line and grades of the pipe, thorough tamping of approved crushed stone backfill and the use of adequate bracing and blocking under the pipe will be required to insure against settling and shearing of the pipe. In areas where noted on plans, Portland cement stabilized material or concrete shall be used for backfill to provide adequate bracing for pipe and protection of structures.

H. All manhole connections for PVC or other Polymer based pipe shall be made using "A Lok Gaskets" or "Kor-N-Seal" boots or other approved water stop devices. Only Portland cement grout that expands upon curing or approved non-shrink grout will be incorporated into any manhole connection.

I. Connections to manholes for other types of pipe shall be in accord with the pipe manufacturers specifications and other applicable requirements of these specifications. The resulting joint shall meet the leakage test requirements of these specifications.

J. The exposed end of all pipes shall be fully protected with a stopper or bulkhead at the end of each day's work to prevent earth, debris, small animals, or other substances from entering the pipe. The interior of the sewer shall be carefully freed from all dirt, jointing compound, or superfluous material of every description as the work progresses.

3.08 CONNECTION AND ASSEMBLY OF JOINTS

1. JOINING PVC OR OTHER POLYMER BASED PIPE

A. The type of joint and the material to be used shall be as shown on the plans or specified herein. Factory cast compression joints shall be free of dirt and lubricated before inserting the barrel into the bell. After the spigot is centered in the bell, the pipe shall be shoved home solidly by using a wood block and bar. The Contractor shall keep the ends of the pipe closed to prevent dirt and other material from entering the pipe during placement. All joints must be water tight, and any leaks or defects discovered must be repaired immediately. Any pipe, which has been disturbed after being laid, must be taken up, the joint cleaned and properly relayed as directed by the Engineer.

Lubricant used shall be as recommended by the pipe manufacturer.

B. Field-cut pipe must be beveled for insertion into the gasketed bell or coupling. Bevels can be made with a hand or power tool. Bevels shall be made to pipe manufacturer's specifications. If pipe manufacturers specifications are not available the bevel may be made at 15 degrees to the longitudinal axis of the pipe through one half (l/2) the wall thickness.

C. After pipe has been cut and beveled, a new full insertion mark located as recommended by the pipe manufacture shall be made using a felt tip pen. The contractor may determine the location of the insertion mark by measuring the mark location on a factory marked joint of pipe if manufacturer's specifications are not available.

2. JOINTING CORRUGATED STEEL PIPE

A. Gaskets for corrugated steel pipe shall be "O" Ring or sleeve types. Sleeve gasket shall be carefully placed on one joint of pipe. When the pipe is aligned and brought end to end the gasket shall be carefully centered over the joint between the ends of the pipe. "O" ring gasket shall be installed in accordance with the manufacturer's recommendation.

B. When "O" ring gaskets are furnished a flat gasket shall be furnished and placed between the overlapping portions of the band. The gasket shall extend the full width of the band and shall be of sufficient depth to assure a watertight joint.

C. The coupling band shall be carefully centered over the joints and tightened to the pipe manufacturer specifications. Care shall be taken during the tightening process to assure a snug uniform fit for the entire circumference of the pipe.

3. PROTECTING AND COVERING JOINTS

A. The contractor shall keep the ends of the pipe closed during the time of construction to prevent the entry of dirt, debris, small animals and other foreign objects.

B. Joints shall not be covered until approved by Engineer or his representative. Connections, which are for future use, shall be properly capped.

3.09 CONNECTIONS TO EXISTING STRUCTURES

A. Where shown on the plans, the contractor shall connect the new sewer to existing manholes. If no stub out is present in the existing manhole for such connection, the contractor shall construct such connection by making a hole in the side of the existing manhole using a coring machine or other approved method and installing a “KOR N Seal” boot as manufactured by N.P.C. Systems, Inc. or other approved water tight manhole connector.

The contractor shall use caution in constructing the connection to the existing manhole. Damage to the manhole that, in the opinion of the Engineer, would impair the use and/or function of the manhole shall be just cause to require the contractor to reconstruct the manhole at contractor’s expense. Such damage shall include but not be limited to cracking of the manhole riser section, spalling around the connection significantly reducing manhole wall thickness or excessive oversize in the opening for the new connection requiring any filler other than the manhole connector and/or non-shrink grout specified.

The contractor shall make such changes in the invert of the manhole as may be necessary to provide a smooth flow of the water through the manhole. Any connection to existing structures required in the Plans shall be accomplished by the Contractor and shall be incidental item with no direct compensation being made unless listed as a pay item in the bid proposal.

B. If the work consists of the construction of a sewer that is to replace an existing sewer, all of the existing service lines shall be kept in operation and connected to the new line.

C. Connections shall be made to all existing sewer lines in the vicinity of the work by removing a section of the sewer for the existing line and inserting in the space a tee branch of proper size, or by the construction of a manhole, regulator chamber of other structure as shown on the Drawings.

D. Connections to building services shall be made in a neat and workman like manner. Clean out plugs shall be installed wherever feasible, by making the connections with a standard wye or tee-wye. When clean out plugs are installed they should be located as near the right of way line as practical.

3.10 BACKFILL OPERATIONS

1. GENERAL

A. All pipeline excavations shall be backfilled in a manner that will restore pre-existing conditions as the minimum requirement and fulfill all supplementary requirements indicated in the Plans and Specifications. The backfilling operations shall be started as soon as conditions will permit on each section of pipeline, so as to provide continuity in subsequent operations and restore normal public service as soon as practicable on a section-by-section basis. All operations shall be pursued diligently, with proper and adequate equipment, to assure acceptable results.

B. For this specification backfill is defined as any material placed in the trench above the bedding zone other than the pipe or conduit and appurtenance.

For flexible pipe the backfill between the bedding material and the crown of the pipe shall be crushed stone suitable for encasement as specified in article 2.07 of the specifications. When Portland cement stabilized backfill is used above the pipe zone; the crushed stone encasement shall extend to 1' above the crown of the pipe.

C. Depositing of the backfill shall be done so the shock of falling material will not injure the structure. Grading over and around all parts of the work shall be done as directed by the Engineer.

D. Whenever soil types which are determined by the Inspector to be undesirable for backfill are excavated from the trench, such material shall be hauled away and deposited at locations shown on the plans or as directed by the Engineer at no additional compensation.

E. Backfill materials placed in the pipe zone shall be carefully placed in relatively uniform depth layers spread over the full width and length of the trench section in a manner and/or sequence that will provide simultaneous support on both sides of the pipeline. Each layer shall be compacted effectively, by approved mechanical of hand methods, until there is no further visual evidence of increased consolidation. Above the pipe zone the backfill material shall be placed uniformly across and along the trench in depth suitable for the compaction method used and compacted to a minimum of the density specified for the material used and the trench location. Compaction of the in place layer shall be completed acceptably before placing material for a succeeding layer thereon.

The manner of placement, layer thickness, compaction equipment, and procedure effectiveness shall be subject to approval of the Engineer. Water jetting or flooding shall NOT be used to compact trench backfill.

F. Compaction of materials placed within the pipe bedding and encasement zones shall be accomplished with portable or hand equipment methods, so as to achieve thorough consolidation under and around the pipe and avoid damage to the pipe. Above the pipe zone, the use of heavy roller type compaction equipment shall be limited to safe pipe loading.

G. The maximum loose thickness of each backfill layer placed above the pipe zone shall be 12 inches, except that 16 inches will be permitted for Granular Materials placed above an elevation one foot above the top of pipe, and with the provision that, by authority of the Engineer and in consideration of the demonstrated capability of special type vibratory compactors, these maximums may be increased at his discretion. “Hydro tamps”, “vibra tamps” or other heavy compacting equipment shall not be used until the backfill has reached a depth of four (4) feet above the top of the pipe.

H. All surplus or waste materials remaining after completion of the backfilling operations shall be disposed of in an acceptable manner within 24 hours after completing the backfill work on each particular pipeline section. Disposal at any location within the project limits shall be as specified, or as approved by the Engineer; otherwise, disposal shall be accomplished outside the project limits at the Contractor’s discretion. The backfilling and surplus or waste disposal operations shall be a part of the work required under the pipeline installation items, not as work that may be delayed until final cleanup.

I. For the duration of the warranty period of the project, the Contractor shall assume full responsibility and expense for all backfill settlement and shall refill and restore the work as directed to maintain an acceptable surface condition. All additional materials required shall be furnished without additional cost to the Owner.

2. BACKFILL IN PUBLIC RIGHTS-OF-WAY AND OTHER AREAS WHERE SETTLEMENT IS CRITICAL

A. GENERAL REQUIREMENTS

(1). Backfill above the pipe zone in public rights-of-way and under paved parking lots, near structures or other utilities where settlement can cause damage shall be made using Portland cement stabilized backfill or crushed stone screenings (crusher fines).

The pipe zone is defined as that portion of the trench extending from the bottom of the trench to 12” above the crown of the pipe or conduit.

(2) Backfill around structures such as manholes, junction boxes, transformer boxes and valve boxes shall be made using Portland cement stabilized backfill material or crushed stone screening (crusher fines).

(3) The minimum depth of stabilized backfill or crusher fines shall be twelve (12”) inches.

When utilities are being constructed under existing paving, the stabilized backfill or crusher fines shall extend from top of the pipe zone to the top of the base course.
When utilities are being constructed under existing unpaved streets that are not scheduled for immediate pavement construction, the stabilized backfill or crusher fines shall extend from the top of the pipe zone to the existing roadway surface.

When utilities are being constructed in streets that are scheduled for immediate paving, the stabilized backfill or crusher fines shall extend from the top of the pipe zone to the bottom edge of the eight (8”) inches of subgrade, or, if the paving contractor has constructed a portion of the roadway prior to the construction of the utilities the backfill shall extend to the top of the course the contractor has finished, or the top of the base course, which ever is lower.

If the final course of asphaltic concrete has been placed, the street or alley surface shall not be cut for utility installation.

In streets where stabilized backfill is required only to the bottom of the subgrade course, the minimum depth of stabilized backfill may be reduced to six (6”) inches in which case the maximum depth of the “pipe zone” shall be limited to six (6”) inches above the top of the utility line or conduit.

B. BACKFILL MATERIALS

(1) Portland cement stabilized backfill shall consist of caliche base material, blow sand or native soil stabilized by the addition of Portland cement. Crushed stone or concrete aggregate shall NOT be used.

When Portland cement stabilized backfill is to be used, the contractor shall submit a mix design prepared by an approved commercial laboratory for approval before the trenching operation is begun. When native soil is to be used samples may be taken along the proposed route by boring or other approved means. Samples must be representative of the full trench depth.

The mix design shall be such that the minimum 7-day compressive strength is 150 psi when tested according to test method Tex 418-A.

The minimum cement content for Portland cement stabilized backfill shall be 1 sack per cubic yard.

Cement used in Portland cement stabilized backfill shall be Type I or Type II conforming to the requirements of ASTM Designation C150.

Caliche used for Portland cement stabilized backfill shall be crushed material conforming to Texas State Department of Highways and Transportation 1982 Standard Specifications for Construction of Highways, Streets and Bridges Item 248 Type F, Grade 2.

Blow sand used for Portland cement stabilized backfill shall be clean, free from organic matter, clay lumps, rock and other deleterious matter.

Native soil used for Portland cement stabilized backfill shall be clean, free of clods and organic matter, and free of rock in excess of 2”.

(2) Crushed stone screening (crusher fines) used for back fill shall be sharp grained particles of crushed stone conforming to the requirements of Article 2.07 of these specifications.

(3) Trencher excavated rock material shall be screened so that the largest diameter material is less than 2". The screened rock material used for backfill shall have sufficient moisture added so that the backfill will bind with the fines. The rock material backfill shall be tamped or compacted in two (2) foot lifts. A sheeps foot roller shall not be used unless there is two (2) feet or more compacted backfill above the pipe bedding.

C. BACKFILL CONSTRUCTION

(1) Portland cement stabilized caliche backfill or Portland cement stabilized native soil backfill may be constructed using either the "dry" method or the "wet" method.

(a) The dry method of stabilized backfill construction consists of dry mixing of the cement and caliche or soil to produce a homogenous mixture then adding and mixing sufficient water for proper compaction and hydration of the cement. The water content of the mixture will be approximately one to two percent above the optimum moisture for soil compaction. The mixing may be accomplished by using batch mixers or on the job site by "blade mixing" or other suitable method to produce the desired backfill material. The mixed material shall be placed in lifts of up to a maximum of 12 inches and compacted to ninety-five (95%) modified proctor densities by use of suitable compacting equipment.

(b) In the "wet" method of cement stabilized backfill construction, the materials shall be mixed in an approved concrete batching plant or mixer to the consistency of concrete and placed as concrete would be placed. The slump of the backfill material shall be such that all voids will be filled, approximately four (4") to six (6") inches. The backfill shall be consolidated by rodding or by the use of mechanical vibrators.

Portland cement stabilized blow sand backfill shall be mixed and placed by the "wet" method as described above.

Crushed stone screening (crusher fines) shall be wetted uniformly throughout with sufficient moisture to assure proper compaction before being placed in the trench. The moistened crushed stone screening (crusher fines) shall be placed in maximum lifts of twelve inches and consolidated using vibratory type compaction equipment except when it has been demonstrated that the compaction equipment employed will adequately compact deeper lifts in which case the maximum depth of a lift shall be limited by the capabilities of the equipment used.

Tests to determine the compacted density of the backfill shall be ordered by the Engineer if in his opinion the compaction is not adequate. Test showing a minimum compacted density of 90%-modified proctor will be deemed adequate.

3. BACKFILL OUTSIDE OF PUBLIC RIGHTS-OF-WAY WHERE SETTLEMENT IS NOT CRITICAL

A. In areas outside of public rights-of-way and in the absence of special work item requirements the backfilling shall be accomplished with the use of suitable materials selected from the excavated materials to the extent available and practical. Should the materials available from the trench section be unsuitable or insufficient, the required additional materials shall be furnished from outside sources at the Owners expense.

B. Suitable material shall be defined as a mineral soil reasonably free of foreign materials (rubbish, debris, etc.) frozen clumps, oversize stone, rock, concrete or bituminous chunks and other unsuitable materials, that may damage the pipe installation, prevent thorough compaction, or increase the risks of after settlement unnecessarily. Material selection shall be such as to make the best and fullest utilization of what is available, taking into consideration particular needs of different backfill zones. Material containing stone, rock, or chunks of any sort shall only be utilized where and to the extent there will be no detrimental effects.

C. The backfill material placed in this area shall be compacted by suitable means to a minimum density equal to the density of the undisturbed surrounding soil. City Engineer MUST approve water flooding as a means of compaction.

4. TRENCH BACKFILL BEHIND CURB AND GUTTER

A. When utilities are placed behind the curb in paved streets and other landscaped areas the backfill shall be the same as elsewhere in the right-of-way or other applicable location except that in grassed areas and in flower beds the top six (6”) inches of backfill shall be good quality top soil. When utilities are placed behind the curb in grassed or landscaped areas where no sidewalk is to be constructed and the edge of the trench is a minimum of 2 feet from the back of curb or where sidewalk is to be constructed and the minimum distance from both the back of curb and the edge of the sidewalk to the edge of the trench is 2 feet the contractor may elect to use suitable native soil for backfill. The native soil backfill shall be compacted to 95% modified proctor density to within 6” of the top of curb height. The top 6” of backfill shall be good topsoil and shall be compacted to the density of the adjacent soil.

B. Sidewalks shall be repaired by removing and replacing the complete section or sections that have been damaged. Strip patching through sidewalks will not be permitted.

The replacement sidewalk shall be of the same design and section as the walk removed and shall be of equal or better workmanship.

C. When utilities are placed in paved areas behind curbs the pavement shall be repaired as specified for street pavement.

D. Grassed areas and flowerbeds shall be restored as nearly as possible to the original condition. Care shall be taken to avoid damage to sprinkler systems.

Mail boxes and other appurtenance in the construction area. Any damage to said items shall be repaired immediately.

E. All repairs made behind the curb shall be to the satisfaction of the property owner responsible for their maintenance and/or to the satisfaction to the City Engineer.

3.11 INLET STRUCTURES AND LEADS AND CLEANOUTS FOR STORM SEWERS

A. Corrugated Galvanized Steel Slotted Drains for Nuisance water inlets only.

(1) Slotted drains shall be the sizes and lengths as shown on the plans and constructed at the locations as shown on the plans or at locations to be established on the job site.

(2) Slotted drains shall not be installed under asphalt pavement but shall have a section of concrete gutter constructed around it as shown on the detail drawings.

Slotted drains shall be protected from the entrance of debris, concrete or HMAC by closing the slot with one or two layers of heavy duct tape or similar material. In addition, the slot for slotted drain shall have a 2-½ inch or ¾ inch board attached to use as a guide for placing and edging the concrete.

Unless otherwise approved or directed by the Engineer the removal of tape and planking from the slotted drain should be accomplished as part of the final clean up.

B. Curb inlets, grate inlets and combination inlets

(1) General

Curb inlets, grate inlets and combination inlets may be pre-cast or cast-in-place at the contractor's option unless specifically shown otherwise on the plans and bid proposal.

(2) Pre-cast inlet boxes

(a) Construction and finish for pre-cast inlet boxes shall conform to details shown on the plans and all applicable requirements for pre-cast manholes.

(b) Tops for curb inlets and combination inlets may be cast in place or pre-cast. Extra care will be required in setting pre-cast tops to assure curb and gutter match.

(c) Pipe connections, bedding, setting and backfill for pre-cast inlets shall be in accord with the applicable requirements for pre-cast manholes article 3.12 of these specifications.

(3) Cast in place inlets

(a) Cast in place inlets shall be constructed of class "C" reinforced concrete as specified in item 1-B "Concrete for Structure" in these specifications.

(b) Forms for cast in place inlets shall be straight, clean and in good condition. Forms shall be properly cleaned and oiled before concrete is placed.

(c) Construction joints may be placed in cast in place inlets at locations shown on the plans. When construction joints are used, extra care will be required to assure that the joints are watertight.

(d) Cast in place inlets may be cast without outside forms if the soil conditions are such that true vertical walls can be cut and will stand during construction without sloughing or otherwise incorporation foreign materials into the concrete.

(e) When inlets are cast without outside forms, a plastic sheet lining may be required to prevent excessive loss of moisture from the concrete and/or to prevent incorporation of foreign material into the concrete.

A. Inlet Leads

(1) Inlet leads shall be constructed of corrugated steel pipe, PVC pipe or other material as called for on the plans and in the bid proposal.

(2) Construction of inlet leads shall be in accord with the applicable requirements for the type of pipe used.

(3) Junctions where two or more inlet leads are joined shall be made at clean outs or manholes.

B. Cleanouts

(1) Clean outs shall be constructed in accord with the plans and detail drawings.

(2) Construction and connections shall be in accord with the applicable specifications for construction of corrugated steel pipe manholes.

3.12 SANITARY SEWER SERVICES AND PLUGGED STUBS

A. Sanitary Sewer Services:

(1) On new sewer main construction all sewer laterals shall be constructed as part of the initial installation. Sewer wye fittings for sewer laterals in new construction shall be molded or fabricated with all gasketed connections. Four (4”) inch laterals shall be installed at all single-family residences and duplex. Laterals installed for apartment complexes, commercial and industrial areas shall be a minimum of six (6”) inches. Depth of laterals will be determined by depth of sewer main and applicable building codes. Laterals shall be installed using tee wyes or wyes and bends so that they will be at 90 degrees to the sewer main. Laterals shall extend to 3’ minimum beyond the property line of the served lot or tract. The contractor shall install sewer laterals according to the typical sewer lateral detail and the most current revisions of the Plumbing Code.

(2) Taps into existing lines shall use a gasketed fitting in conjunction with a full circle repair sleeve coupling, except that taps into existing ductile iron sewer may be made using the Genco Model DF sewer pipe saddle (The General Engineering Co., Frederic, MD Drawing No. R-3220-D dated 12/29/82) or approved equal.

(3) Cemented mitered connections without socket reinforcement shall not be permitted. The contractor will be permitted to use fittings, which are prefabricated, using pipe sections, molded saddles and PVC solvent cement, provided the solvent cement used in fabrication has cured for at least 24 hours prior to the installation. All solvent cement fittings shall e manufactured in the shop under controlled conditions.

(4) All caps and plugs shall be braced, staked, anchored, wired on or otherwise secured to the pipe to prevent leakage under maximum anticipated thrust from internal abnormal operating conditions or test pressures from water or air.

(5) It shall be the duty of the Contractor to keep a record of sewer service wye locations with respect to the nearest downstream manhole, but the Engineer will record ties on the end of all sewer services at the property line. When installing sewer services the Contractor shall, before backfilling, contact the Engineer or his representatives, and assist him in making ties to the end of the service in the open trench. At least two ties shall be made for each service, and if backfilling proceeds before such ties are made, the Contractor shall dig up the end of all such services, with no additional compensation, for the purpose of making ties. During backfilling the Contractor shall furnish and place a vertical steel post or 2 inch by 2 inch wooden stake set flush with finished ground surface, and extending down to the end of the sewer service, a nail shall be placed in the top of the stake to allow location of the service by metal finder.

(6) The main sewer service connection shall consist of installing an in-line wye section in the main sewer line at designated locations. Saddle wye installations will be permitted only when specifically called for. Orientation of service connection fittings shall be as shown in the standard drawings unless otherwise directed by the Engineer.

(7) Where the depth of cover over the main sewer invert is greater than 8 feet (or such other maximum as may be indicated), the service connection shall be extended outward then upward by use of bends to prevent excess loading on the sewer main in accordance with the details shown in the drawings.

(8) The Contractor shall provide the necessary wyes, tees and bends to bring the service to the proper place at the property line.

(9) Wherever service line connections to the main sewer are permitted or required to be made by the open cutout method in the absence of a built-in tee or wye fitting, the connection shall be made by using an approved type coring machine or by other approved methods producing a uniform, smooth circular cut-out as required for proper fit. The cutout discs shall be retrieved and shall not be allowed to remain within the main sewer pipe. The saddle tee shall be securely fastened to the main sewer pipe by means of epoxy resin or other approved adhesive. The entire connection fitting shall be encased in concrete to a minimum thickness of six inches and as may be shown in the standard drawings.

(10)Wherever service line connections to the main sewer are required to be made by means of built-in branch tee or wye fittings, the Contractor shall, in the absence of such fitting, remove a section of the main sewer pipe and replace it with the required branch tee wye or wye section connected by means of an approved sleeve coupling.

(11)Connections of service lines to the main sewer are required to be made by means of built-in branch tee or wye fittings, the Contractor shall, in the absence of such fitting, remove a section of the main sewer pipe and replace it with the required branch tee wye or wye section connected by means of an approved sleeve coupling.

(12)The end of all service connections shall be plugged with PVC plug and sealed with plastic joint material.

(13)Crushed stone bedding and backfill material, concrete encasement and protection, etc., for service line installation shall be the same as for the sewer lines.

(14)No service connections or laterals shall be covered until they have been inspected and located by the Engineer.

B. INSTALLATION OF PLUGGED STUBS ON SANITARY SEWERS

Plugged pipe stubs for future connections to manholes and sewerage structures shall be installed where shown on the Drawings or directed by the Engineer. The pipe stubs shall be installed in accordance with the specifications and details shown on the Drawings for connecting the type of pipe used to manholes.

3.13 MANHOLES

1. General

The manholes shall be constructed at the locations shown on the plans or as directed by the Engineer and in accordance with the details shown on the plans and as specified herein. After the excavation has been completed, the subgrade for the manhole base shall be graded and leveled. A crushed stone foundation having a minimum thickness of 6 inches shall then be placed on the subgrade. The crushed stone foundation shall be leveled and consolidated before the section of the manhole is placed. Pre-cast base sections shall sit in place level and plumb and to the lines and grade as shown on the plans. Cast in place bases shall be placed around the existing sewer line in accord with the plans and detail sheet. When pre-cast manhole bases are used, riser construction may proceed when the base is set on line and grade. When cast in place manhole bases are used, riser construction may proceed when the base has set sufficiently to support the weight of the riser.

Manholes shall be of the type and material shown on the plans and called for in the bid proposal and shall conform to these specifications.

All lift holes shall be filled with approved non shrink grout and bituminous material before final acceptance. Use of bituminous material or other flowable material alone to plug lift holes will not be permitted. Voids in the invert around the sewer pipe on the

inside wall of the manhole shall be grouted with cement rich grout, to conform to the rest of the wash, in accordance with the standard manhole details.

The backfill around the manhole shall be done in accordance with the details shown on the plans and trench backfill specifications.

The Contractor shall take whatever precautions necessary to protect the manholes that are under construction. At the end of the day or at such time as the Contractor deems necessary, all manholes not completed shall be covered, sealed, plugged, etc. to prevent the inflow of storm water or other objectionable material, and to prevent animals and humans from getting into the manhole.

2. PRE-CAST CONCRETE

A. Pre-cast tub bottom sections of manholes shall be set on a crushed stone foundation or bedding according to the details shown on the plans. Care shall be exercised to assure true alignment and grade for the pipe openings.

The invert of the manhole shall be constructed of cement rich grout and shall be formed to true lines; grades and curvature to assure smooth flow through the manhole. The invert shall have a steel trowel finish.

Joints for pre-cast concrete manhole riser sections shall be made Watertight by use of bitumastic or rubber sealers or “O” ring gaskets. Both sides of the tongue and groove joint shall be painted with a bitumastic primer before assembly.

The bitumastic or rubber sealer shall be clean and pliable and shall deform under the pressure of joint closure to assure a complete water tight seal. Care shall be exercised to assure proper alignment of the joint. The walls of the completed manhole shall be straight and vertical.

B. Pre-cast eccentric cone sections and precast slab manhole tops with eccentrically located manway shall be set with the manway adjacent to the up stream side of the manhole. The joints between the cone or slab top and the manhole riser shall be sealed in the same manner as the joints between the riser section. Care shall be taken in placing the cone and or slab tops to assure the manhole ring and cover can be set to match the finished paving.

C. Pre-cast grade rings will be used, when required, to bring the manhole ring and cover up to the finished grade. Grade rings may be set using cement rich grout or bitumastic seal and such as Ram-Nek or approved equal. When cement rich grout is used, care shall be taken that the space between the cone or slab top and the first grade ring and between the grade rings are completely filled without voids.

When bitumastic sealer is used the joints shall be constructed in the same manner as the joints between the riser sections.

When pre-cast manholes with PVC or other approved polymer lining are called for on the plans and bid proposal and are furnished under this contract they shall be constructed as other pre-cast concrete manholes.

In addition the joints in the lining shall be sealed by hot air welding, use of epoxy coating, or other approved means.

3. CAST IN PLACE MANHOLE BASES

A. Cast in place manhole bases shall be used only where shown on the plans or as directed by the Engineer and shall be constructed in accord with the details shown on the plans.

B. Special care shall be taken in casting the surfaces that will mate with the first risersection to assure a smooth even fit and a watertight joint.

C. The first riser section to be used with cast in place manhole bases shall be castwithout tongue or groove. The joint between the riser section and the cast in place base shall be sealed with a bitumastic or rubber sealant in the same manner as the joints in the pre-cast riser sections.

D. Care shall be taken in forming the invert of the manhole around existing sewers to assure adequate opening for the insertion of a “go – no go” mandrel or other testing equipment and cleaning tools.

4. MANHOLE RING AND COVER

A. The tops of the manhole frame and cover (ring) shall be built to the grade shown on the plans. The cast iron frame shall be firmly embedded in mortar.

B. When pressure type manhole rings and cover are specified on storm sewer manholes they shall be bolted to the concrete slab top using the “L” bolts cast into the slab for this purpose. The joint between the ring and the concrete slab top shall be made watertight using a bitumastic or rubber seal and conforming to the requirements of these specifications.

5. CORRUGATED STEEL MANHOLES

A. Corrugated steel manholes shall be constructed in accord with the details shown on the plans and in accord with the applicable requirements for the construction of corrugated steel pipe sewers.

B. Care shall be taken during the placing of backfill around corrugated steel pipe manholes to maintain the horizontal and vertical alignment of the manhole.

C. Since full contact of the flat top slab with the cement stabilized backfill is critical the backfill shall be finished smooth and to the proper grade. A thin layer of cement rich grout shall be placed on the cement stabilized backfill immediately prior to placing the concrete slab top. The grout shall be sufficient t fill all voids between the backfill and the slab and of a consistency to be forced into the voids under the weight of the slab.

3.14 TESTING GRAVITY SEWER MAINS AND MANHOLES

A. Upon completion of the sewer construction including all wyes and service laterals and before any house drains or services are connected, all sewers shall be cleaned and lamped. All runs of sewer between manholes shall be straight and true. Leakage tests shall be made to determine the amount of ground water infiltration into the sewers. Infiltration tests shall be made when groundwater level is 18 inches or more above the top of the outside of the pipe. Measurement will be taken by means of a weir placed in the lines. The maximum allowable rate of leakage shall be 25 gallons per inch diameter per mile of pipe per 24 hours, for any section of pipe with a maximum total leakage of 200 gallons per mile per 24 hours for sanitary sewers with the exception that the maximum leakage for storm drains shall be 200 gallons per inch of diameter per mile per 24 hours with a total maximum leakage of 6,000 gallons per mile per 24 hours.

When the groundwater is not at sufficient height for infiltration testing the Contractor shall use exfiltration to test the sewer lines.

B. In lieu of the infiltration or exfiltration tests the Contractor may perform air tests on the sewers.

C. If the infiltration, exfiltration, or air tests fail to meet requirements specified herein, the Engineer reserves the right to request television work to be done to locate leaks. The Contractor shall furnish all materials and equipment necessary to accomplish all infiltration, exfiltration, air or television testing.

The Contractor shall receive no additional compensation for this testing or inspection work or for repairs of corrective work required to be done to the sewers. The exfiltration tests shall be used in areas where no ground water is present.

D. Test Procedure Hydrostatic (Exfiltration)

(1) The test section shall be bulk headed and the pipe subject to a hydrostatic pressure produced by a head of water at a depth of three (3) feet above the invert of the sewer at the upper manhole under test. In areas where ground water exists, this head of water shall be three feet above the existing water table.

(2) This head of water shall be maintained for a period of one hour during which it is presumed that full absorption of the concrete manhole body has taken place and thereafter for a further period of one (1) hour for the actual test of leakage. Fiber glass manholes are exempt from the one hour absorption requirement. During this one (1) hour test period, the measured maximum allowable rate of exfiltration for any section of sewer shall be the same as allowed for the infiltration test.

E. TEST PROCEDURE AIR

(1) Where the Contractor elects to air test, he shall perform these tests with equipment similar to Air-Loc equipment manufactured by Cherne Industrial, Inc. Hopkins, Minnesota.

(2) The air test shall be made when the sewer is clean. The line shall be plugged at each manhole with pneumatic balls. Low pressure air shall be introduced into the plugged line until the internal air pressure reaches 4.0 psig greater than the average

back pressure of any ground water pressure that may submerge the pipe. At least two (2) minutes shall be allowed for the air temperature to stabilize before readings are taken and the timing started.

(3) When testing pipes 14 inches and less in diameter between consecutive manholes, the portion being tested shall pass if it does not lose air at a rate to cause the pressure to drop from 4.0 to 3.0 psig (greater than the average back pressure of any groundwater that may submerge the pipe) in less time than listed as calculated from Table 1.

When testing pipes greater than 15 inches in diameter between consecutive manholes the portion being tested shall pass if it does not lose air at a rate to cause the pressure to drop from 3.5 psig 3.0 psig (greater than the average back pressure of any groundwater that may submerge the pipe) in less time than that shown in or calculated from Table II.

TABLE I
Specification Time Required for a 1.0 PSIG Pressure Drop for Size and Length of Pipe indicated for Q = 0.0015

Specification Time for Length (L) Shown (min: sec)											
1	2	3	4 (xL)	100 ft.	150 ft.	200 ft.	250 ft.	300 ft.	350 ft.	400 ft.	450 ft.
4	3:46	597	.380	3:46	3:46	3:46	3:46	3:46	3:46	3:46	3:46
6	5:40	398	.854	5:40	5:40	5:40	5:40	5:40	5:40	5:42	5:42
8	7:34	298	1.520	7:34	7:34	7:34	7:34:	7:36	8:52	10:08	11:24
10	9:26	239	2.374	9:26	9:26	9:26	9:53	11:52	13:51	15:49	17:48
12	11:20	199	3.418	11:20	11:20	11:24	14:15	17:05	19:56	22:47	25:38
15	14:10	159	5.342	14:10	14:10	17:48	22:15	26:42	31:09	35:36	40:04
18	17:00	133	7.692	17:00	19:13	25:38	32:03	38:27	44:52	51:16	57:41
21	19:50	114	10.470	19:50	26:10	34:54	43:37	52:21	61:00	69:48	78:31
24	22:40	99	13.674	22:47	34:11	45:34	56:58	68:22	79:46	91:10	102:33
27	25:30	88	17.306	28:51	43:16	57:41	72:07	86:32	100:57	115:22	129:48
30	28:20	80	21.366	35:37	53:25	71:13	89:02	106:50	124:38	142:26	160:15
33	31:10	72	25.852	43:05	64:38	86:10	107:43	129:16	150:43	172:21	193:53
36	34:00	66	30.768	51:17	75:55	102.34	128:12	153:50	179:29	205:07	230:46

1. Pipe Diameter (in.)
Minimum Time (min:sec)
Length for Minimum Time (ft.)
Time for Longer Length (sec)

NOTE: When using column 4 multiply the number in column 4 opposite the pipe diameter by the length of pipe of that diameter and sum the times for the various pipe size in the run being tested. Computations shall include lengths for service connection laterals.

Table II
Specification Time Required for 0.5 PSIG Pressure Drop for Size and Length of Pipe Indicated for Q + 0.0015

Specification Time for Length (L) Shown (min: sec)											
1	2	3	4 (xL)	100 ft.	150 ft.	200 ft.	250 ft.	300 ft.	350 ft.	400 ft.	450 ft.
4	1:53	597	.190	1:53	1:53	1:53	1:53	1:53	1:53	1:53	1:53
6	2:50	398	.427	2:50	2:50	2:50	2:50	2:50	2:50	2:51	3:12
8	3:47	298	.760	3:47	3:47	3:47	3:47	3:48	4:26	5:04	5:42
10	4:43	239	1.187	4:43	4:43	4:43	4:57	5:56	6:55	7;54	8:54
12	5:40	199	1.709	5:40	5:40	5:40	7:08	8:33	9:58	11:24	12:50
15	7:05	159	2.671	7:05	7:05	8:54	11:08	13:21	15:35	17:48	20:02
18	8:30	133	3.846	8:30	9:37	12:49	16:01	19:14	22:26	25:38	28:51
21	9:55	114	5.235	9:55	13:05	17:27	21:49	26:11	30:32	34:54	39:16
24	11:20	99	6.837	11:24	17:57	22:48	28:30	34:11	39:53	45:35	51:17
27	12:45	88	8.653	14:25	21:38	28:51	36:04	43:16	50:30	57:42	46:54

30 33 36	14:10 15:35 17:00	80 72 66	10.683 12.926 15:384	17:48 21:33 25:39	26:43 32:19 38:28	35:37 43:56 51:17	44:31 53:52 64:06	53:25 64:38 75:55	62:19 75:24 89:44	71:13 86:10 102:34	80:07 96:57 115:23

1 Pipe Diameter (in.)
2 Minimum Time (min:sec)
3 Length for Minimum Time (ft.)
4 Time for Longer Length (sec)

NOTE: When using column 4 multiply the number in column 4 opposite the pipe diameter by the length of pipe of that diameter and sum the times for the various pipe size in the run being tested. Computations shall include lengths for service connection laterals. All service plugs shall be secured in place to prevent displacement during testing operation.

F: DEFLECTION TEST

Deflection tests shall be performed on all flexible pipe, the tests shall be conducted after the backfill has been in place at least 30 days. No pipe shall exceed a deflection of 5 percent. The deflection tests shall be run using a Go-No-Go mandrel having a diameter equal to 95 percent of the inside diameter of the pipe. The tests shall be performed without mechanical pulling device, any pipe not meeting the deflection test shall be excavated and re-bedded at no cost to the owner.

The Contractor at no additional cost to the owner shall furnish the Go-No-GO Mandrel.

Upon completion of all tests, the Contractor shall provide personnel to remove each manhole cover in the presence of the Engineer's representative for inspection and depth measurement.

G. TESTING SANITARY SEWER MANHOLES

All sanitary sewer manholes shall be tested for water tightness by one of the following methods.

Manholes, except those in streets scheduled for immediate paving, shall be complete, having all adjusting rings and cover rings in place and shall be backfilled prior to testing.

Manholes in streets scheduled for immediate paving shall be complete as described above except those acceptance tests shall be made at the top of the cone section.

(1.) Vacuum Test

a. General

This item will govern the testing of all sanitary sewer manholes. All connections to manholes including drop connections shall be in place before testing.

b. Equipment

Equipment for vacuum testing manholes shall be:
MANHOLE VACUUM TESTER as manufactured by:

P.A. Glazier, Inc.
P.O. Box 1002
Worcester, MA. 01613

Or

THE CHERNE AIR-LOC MANHOLE TESTER as manufactured by:

Cherne Industries, Inc.
5700 Lincoln Dr.
Minneapolis, MN 55436-1695

Or approved equal.

c. Preparation for Testing

All connections to the manhole; except plugged stubs for future line extensions, shall be plugged using suitable pneumatic plugs. Line plugs shall be placed at a point outside of the manhole wall (approximately 8” to 10” into the sewer pipe). Drop connections shall be plugged at a point up stream from the drop.
All plugs, pipe connections and plugged stub outs shall be adequately braced to prevent them being drawn into the manhole when vacuum is applied.

d. Testing

The contractor shall set the test equipment in place and operate it in accord with the manufacturer instructions. A copy of these instructions shall be kept on the job site and shall be available to the inspector when tests are performed. When equipment is properly set up a vacuum of 10” of mercury (Hg) shall be drawn and the vacuum line valve closed. After the vacuum pump is shut off the hose shall be disconnected before the test is started.

Note: Vacuum must be at 10” Hg when test is started. The contractor may wish to draw up to 10.5” Hg vacuum and then bleed back to 10” Hg before starting the test. The test shall pass when the minimum time for the vacuum to drop from 10” Hg to 9” Hg is greater than the time shown in the following table:

TABLE 1: Minimum test times for various manhole diameters.

	DIAMETER		
Depth Feet	48”	60”	72”
8’	0:20	0:26	0:33
10’	0:25	0:33	0:41
12’	0:30	0:39	0:49
14’	0:35	0:46	0:57
16’	0:40	0:52	1:05
18’	0:45	0:59	1:13
20’	0:50	1:05	1:21
* ADD	0:05	0:06.5	0:08

Any manhole that fails the test shall be repaired and retested until it passes the test.

e. Contractors Optional Test

The contractor, at his option may wish to test manholes before they are backfilled to assure himself that the manhole is sound.
Manholes that fail the test prior to being backfilled may be repaired under vacuum by coating the area of the leak with a liquid quick setting grout allowing the grout to be drawn into the opening until the leak is stopped.

Manholes will not be accepted on the bases of this test.

f. Fiberglass Manholes

Fiberglass manholes may be tested in the same manner as concrete manholes except that all repairs to the fiberglass body of the manhole shall be made using materials furnished by the manufacturer. Repairs shall be made in accord with the manufacturer instructions.

g. No separate payment will be made for vacuum testing of manholes, but the cost shall be considered incidental to furnishing and construction of manholes as bid in the bid proposal.

2. HYDROSTATIC TESTING

a. General

This item shall govern the hydrostatic testing of manholes and may be used as an alternative to vacuum testing by the contractor.

All connections to manholes including drop connections shall be in place prior to testing manholes.

b. Testing

All connections to the manhole, except plugged stubs installed for future line extensions, shall be plugged upstream from the drop.

Plugs in pipe connections must be placed outside the manhole wall (approximately 8” to 10” into the pipe).

The manhole shall then be filled to the top of the cast iron ring (or top of the cone section for manholes in streets scheduled for immediate paving) and allowed to stand for a minimum of one hour to allow for absorption by the components of the manhole. The inspector may extend the absorption period if it appears that the manhole has not reached a stable state.

The manhole shall then be refilled to the top of the ring (or cone) and allowed to stand for up to 24 hours.

The manhole shall be checked at the end of 4 hours and will be deemed to have passed if no perceptible loss has occurred – if loss has occurred the manhole will be checked after the 24 hour period and will be considered to have passed if loss does not exceed the following schedule

Depth Ft.	Loss Inches
0 - 10’	.2
10 – 20’	.4
20 - 30’	.6

c. No separate payment will be made for Hydrostatic Testing of manholes but the cost shall be considered as incidental to furnishing and constructing manholes as bid in the bid proposal.

H. TELEVISING NEW SEWER LINES

It is the city’s intention to televise all new sanitary sewer lines for record purposes.

Immediately after the contractor completes all testing of sanitary sewer lines and manholes he shall leave all manholes accessible for televising and make allowances for the city’s camera crews working on the project site.

The contractor at his own expense before final acceptance must correct any defects discovered during the televising of sanitary sewers.

3.15 RESTORATION

A. Whenever any surface improvements such as pavement, curbing, pedestrian walks, fencing, or turf have been removed, damaged or otherwise disturbed by the Contractor’s operations, they shall be repaired or replaced to the Engineers satisfaction, to restore the improvement in kind and structure to the pre-existing condition. Each item of restoration work shall be done as soon as practicable after completion of installation and backfilling operations on each section of pipeline.

B. In absence of specific payment provisions, as separate Contract Items, the restoration work shall be compensated for as part of the work required under those Contract Items, which necessitated the destruction and replacement or repair, and there will be no separate payment therefor. If separate pay items are provided for restoration work, only that portion of the repair or reconstruction, which was necessitated by the contract, will be measured for payment. Any improvements removed or damaged unnecessarily shall be replaced or repaired at the Contractor’s expense.

C. Turf restoration shall be accomplished by sod replacement except where seeding is specifically allowed or required.

Caliche or gravel surfaced streets and driveway shall be restored to their original condition by salvaging and replacing the pre-existing caliche or gravel. If the Contractor does not salvage sufficient material during excavation operation, he will be required to furnish material to restore the surface to the depth of the original section. This caliche or gravel restoration shall be considered a part of excavation and backfill and no extra compensation will be made.

E. Bituminous and concrete surfaced streets and driveways will be restored to equal or better condition than existed prior to sewer construction. Measurement will be made of the actual quantities required to be replaced by the sewer construction and paid for at the price bid in the appropriate bid items in the proposal.

No measurement or payment will be made for work done outside the lines considered necessary for sewer construction. The Contractor will be required to replace damage outside these lines at his own expense.

F. Reconstruction of caliche base courses and concrete or bituminous surface courses shall be in substantial compliance with all applicable City of Midland Specifications pertaining to the item being restored.

3.16 CLEANUP

After completing each section of the sewer line, the Contractor shall remove all debris, construction materials, and equipment from the site of the work, grade and smooth over the surface on both sides of the line and leave the entire right-of-way in a clean, neat, and serviceable condition. No separate compensation shall be made for clean up.

3.17 PAYMENT

A. General

Payment in accordance with the following items, at the unit price bid for the work, shall constitute full and complete payment for the entire project including all incidental terms necessary for the complete and successful prosecution of the work in accordance with the intent of the plans and specifications.

Materials and work required to complete the project for which there is no bid item in the bid proposal shall be considered as incidental and the cost shall be included in the prices bid for the various items in the bid proposal.

Where payment is to be made on a unit price basis, it shall be made on the actual measured quantities as constructed in the work.

B. Sewer Pipe in Place

Unit prices bid shall cover furnishing and installation of pipe and jointing materials, including tests and all other necessary work and material to install the pipe complete in place at the depth specified. The unit of work shall be the lineal foot of the various types and sizes as shown in the proposal form. The pipe installation shall be measured

along the centerline of the sewer from center to center of manholes with no deduction in footage for manholes, wye branches, riser bases or other structure.

C. Foundation Corrections Materials

Payment for foundation correction materials shall be made at the unit price bid per cubic yard for material furnished and placed to pro vide adequate pipe base in unstable soil. The unit price shall include extra excavation below pipe grade, the material, placing and tamping.

Additional material required to backfill excess depth of excavation caused by neglect or error on the part of the Contractor or wet conditions, shall be furnished and placed at his own expense.

Removal of Street Surfacing

The Contractor shall receive no extra compensation for the removal of street surfacing including cutting of a straight edge.

E. Trench Safety Systems, Sheeting and Shoring

Measurement: Trench Safety Systems shall be measured by the linear foot of “Trench Safety Systems”: Payment for work prescribed under this item shall be full compensation for the Trench Safety Systems including any Engineering and/or consulting fees and any additional excavation and backfill required, for furnishing, placing, maintaining and removing all shoring, sheeting, or bracing; for de-watering or diversion of water; for all jacking and jack removal; and for all other labor, materials, tools, equipment and incidentals necessary to complete the work.

F. Manholes

Payment will be made for the various types of manholes at the unit prices bid for the various types of manholes 0 to 6’ deep which price shall include excavation, furnishing and installing all materials pumping where necessary, and backfilling and all incidentals for the complete manhole in place. Measurement for manholes over 6 feet in depth shall be made of the depth of manhole in excess of six (6) feet. Manholes will be measured from the invert to the top of the casting as set.

Payment will be made for the manhole depth in excess of 6 feet at the vertical foot price bid in the bid proposal for extra depth of manhole over 6 feet for each type of manhole furnished.

G. Drop Connections to Manholes

Payment shall be made for drop connections to manhole for each drop connection made as counted in the field at the price bid in the proposal.

Said payment shall be complete compensation for furnishing all materials and fittings and making all connections to the manhole including 2’ of vertical depth as measured from the invert of the incoming line to the invert of the manhole.

H. Drop Section for Manholes

Drop sections shall be paid for on a vertical footage basis as measured from the invert of the incoming line to the invert of the manhole less 2 feet and shall be paid for at the price bid per vertical foot for the various size drop connections in the bid proposal.

The price bid per vertical foot includes all fittings, granular material, if used and concrete and shall be full compensation for the complete in service drop connection.

I. Service Lines

Service lines will be measured from centerline of the sewer main to the plug end and paid for at the unit price bid per linear foot of each type of pipe as specified and as shown on the typical details.

J. Barricading and Traffic Control

The lump sum price bid in the bid proposal shall be full compensation for furnishing flag persons when required and all barricades, signs and other barricading and traffic control devices and for furnishing barricading plans and erecting and maintaining all such devices and signs as required for the duration of the period.

Updated
08/07

MIDLAND
Engineering Services

ADDENDUM #01
Project Number D23-02

TO ALL BIDDERS ON THE SUBJECT BID: Peggy-Sue Drainage Improvements

ADDENDUM #01

DATE: September 13, 2024

1. Q/A and Clarification
2. Revised Bid Items
3. Non-Mandatory Pre-Bid Meeting Agenda
4. Non-Mandatory Pre-Bid Meeting Attendance

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

All other terms and conditions shall remain the same.

DUFRANE CONSTRUCTION LLC

Company Name

Bidder Authorized Signature

Dusty McFaturff

Please Print Above Name

9/18/2024

Date

432-523-2600

Phone

Peggy-Sue Drainage Improvements
Project Number D23-02

Q/A and Clarification

During the Pre-Bid Meeting, the following questions were raised by one or more bidders. Below is a list of the questions along with the answers and clarifications.

Clarification: All addendum acknowledgement forms must be included with the bid for the bid to be considered complete. Bidders have sole responsibility for making sure they have and acknowledge all addendums provided for this project bid.

Clarification: Contractors are allowed to submit bids for this project either through the City's digital process using Bonfire, or as a hard-copy submittal. All deadlines and requirements for valid versus non-responsive bid submittals listed in the Project Manual apply to either bid submittal scenario.

Clarification: The Bid Items section of the Project Manual has been revised. The revised Bid Items section now correctly numbers the Miscellaneous Items from 1 – 4, and the revised Bid Item has been attached to this Addendum 01 and will also replace the version currently located in the City's Bonfire.

Bidders who plan to submit a digital bid submittal are solely responsible for making sure the Bonfire version of the Bid Item section has been updated before they complete their bids and submit them through the City's digital process.

Bidders who plan to provide hard-copy bid submittals are to remove all previous versions of the Bid Items section in their entirety from the original Project Manual and replace them with the attached revised Bid Items section.

Clarification: Contractor must be willing to sign contract as is.

Clarification: Check that all insurance forms are in order when submitting bids.

Clarification: Check that all conflict of interest forms are completed if applicable.

Clarification: Contractor must fill out all bid items in the Proposal for the bid to be considered complete.

Clarification: Contractor is responsible for all construction staking.

Clarification: Contractor is responsible for all traffic control during this project.

Clarification: Contractor is responsible for all construction testing.

Clarification: Contractor is responsible for notifying all adjacent properties of any planned service interruptions no less than two (2) business days in advance of any such interruptions.

Service interruptions are to be kept as short as is reasonably possible. This requirement does not apply in emergency situations.

Clarification: Contractor is responsible for maintaining access to all adjacent properties at all times, barring those times when actual construction activity necessary to complete the work is taking place in front of driveway approaches or similar points of access. When such work is not occurring then access must be restored by means of traffic rated steel plates or other equivalent means until such time as the work is completed.

Clarification: Contractor is responsible for removing all temporary erosion control measures at the completion of the project.

Clarification: All invoice submittals are to be itemized and are to match the Proposal item listed.

Clarification: There is a one (1) calendar year warranty period on this project.

Clarification: It is recommended that Bidders use the USPS mailing address rather than the physical City Hall address for bid submittals that are mailed in as the physical address has experienced issues on occasion in the past. The USPS mailing address is unchanged from what is listed in the original bid packet and the pre-bid teleconference meeting agenda.

Clarification: This project site is located on City of Midland property that is Federally protected. Therefore, the Contractor will be able to access the site and daisy-chain through the gate after coordinating access with City of Midland Staff, but the access gate to the property *cannot* be left open for any reason.

Question: How does the Contractor know that you got their bid submittal in Bonfire?
Answer: An email is sent out once the bid is submitted through Bonfire, and the Bonfire software won't allow a bid submittal to be made until all the steps on its checklist have been completed.

Question: Not a fan of Bonfire, like Procore better. What can the City see when a bid is submitted?
Answer: Acknowledged. The City cannot see any of the bid submittal's content in Bonfire until after the deadline for submittals passes and bids are able to be opened, and bids cannot be submitted through Bonfire without first completing all of the steps that the Bonfire submittal process required. For hard-copy submittals, the practice still follows the traditional submittal approach of requiring that physical bid submittals be sealed when submitted, and the sealed envelope/packaging isn't opened until after the deadline at the Bid Opening.

Question: What is the latest that a bid can be submitted through Bonfire?
Answer: 2:00 PM on September 18, 2024, which is the deadline for bid submittals for this project.

Question: What is the earliest that a bid can be opened through Bonfire?

Answer: 2:00 PM on September 18, 2024, which is the deadline for bid submittals for this project.

Question: The numbering for the Miscellaneous Bid Items appears to be wrong? Is there a missing bid item here?
Answer: The numbering for the Miscellaneous Bid Items has been corrected as described in the third Clarification listed above in this Addendum 01. These were no missing bid items.

Question: Need a button in Bonfire to fill out or address the Conflict of Interest Form.
Answer: Bidders must download the Conflict of Interest, complete the form, and attach on the requested documents where it states Conflict of Interest (this is flagged as a required document in Bonfire).

Question: No permits are needed for the work crew?
Answer: Correct.

Question: Where is the construction entrance to be located?
Answer: At the main gate to access the City property at this project site.

Question: Can you get a dump truck around the entire site?
Answer: Yes, but there is a low spot that may need to be filled to enable vehicle access. This should be included in the overall project bid and is considered subsidiary to the other bid items already listed for this project.

Question: What is the garden building?
Answer: It is a water electrical/pump house.

Question: There are a lot of rattlesnakes on this job site. Safety concern.
Answer: Additional safety measures that the Contractor feels are necessary to safely operate on this project site should be included as part of the Bid Items, Miscellaneous Items, Job Site Safety bid item cost, and are considered to be within the scope of this bid item for the purposes of this project bid.

Question: Still billing out Job Site Safety?
Answer: Yes, as described in the Bid Items and Pay Notes sections of the Project Manual.

Question: What is the purpose of this project?
Answer: The purpose of this project is to re-direct the existing drainage flow from the City property to the east rather than to the south to help mitigate the impact to the adjacent Bynum School property, which is experiencing some drainage related issues. The drainage condition for runoff leaving the City's property already existing prior to the Bynum School property's development, but when the issue with the adjacent property was raised the City determined that this was a reasonable measure that could be taken to reduce the impact of the City's property to its neighbor.

Question: What are the little squares on the drawing?

Answer: They are part of the line style in the construction drawing set that represents the existing fence line that runs around the perimeter of the City's property.

Question: Is there any permanent seeding on this project?
Answer: No. Permanent stabilization measures will be handled separately immediately after this project is completed.

Question: So there's no warranty on this project?
Answer: The City's standard one (1) calendar year warranty does apply to this project as stated in the Project Manual and this Addendum 01. Damage due to weathering or other erosion after the construction is completed and accepted by the City will not be part of this warranty and the Contractor will not be required to address those issues under the warranty, but the Contractor is still responsible for proper installation of the project itself and maintaining the installation during the project's construction until final acceptance by the City, and failures determined to be from failures of construction would still be covered by the warranty and be the Contractor's responsibility to address. That said, this is just an earth berm without permanent stabilization included in the scope, so as long as the final product at the project's completion meets the correct dimensions, elevations, compactions, etc., there are not many plausible scenarios that would trigger the warranty requirements in this case.

Question: Testing will all be on the Contractor?
Answer: Yes.

Question: The Misc Bid Items on the Proposal are mis-numbered 1,3,4,5, or is there an item missing?
Answer: The numbering for the Miscellaneous Bid Items has been corrected as described in the third Clarification listed above in this Addendum 01. These were no missing bid items.

Question: Are bidders required to turn in a Conflict of Interest Questionnaire? If so, you will need to add a button in Bonfire for us to upload it.
Answer: Bidders must download the Conflict of Interest, complete the form, and attach on the requested documents where it states Conflict of Interest (this is flagged as a required document in Bonfire).

Question: The General Conditions #52 says the Owner will pay for Testing, but Special Provision #17 says the Contractor is to pay. Which is correct?
Answer: The Contractor is responsible for all construction testing. Per the Project Manual's Special Provisions section, sub-section 2. Order Of Precedence, part 1:

"The Special Provisions take precedence over the General Conditions in this bid packet anywhere these two sections are not in agreement."

Question: Demolition item #2 is for roadway excavation of 12" or less. There doesn't appear to be any excavation on the plans. What is the intent for this item?

Answer: This items covers any material removal, clearing and grubbing, or similar activity that might be required up to a maximum depth of 12-inches to prepare the project site location for the placement of the earth berm.

Question: Will the contractor be required to install permanent seeding on the berm after completion?

Answer: No. Permanent stabilization will be handled separately immediately after this project is completed.

BID ITEMS

(See Proposal sheet for additional information.)

Project Name: Peggy-Sue Drainage Improvements
Project Number: D23-02

Miscellaneous Items

Item No.	Description	Quantity	Unit	Pay Note	Unit Price	Total Amount
1)	Mobilization, furnished, installed, complete and in place.	2	MO	M1	$_____	$_____
2)	Erosion/Sediment Control, furnished, installed, complete and in place.	2	MO	M2	$_____	$_____
3)	Traffic Control, furnished, installed, complete and in place.	2	MO	M3	$_____	$_____
4)	Job Site Safety, furnished, installed, complete and in place.	2	MO	M4	$_____	$_____
Total Miscellaneous Items 1 - 4		$_____				

Demolition Items

Item No.	Description	Quantity	Unit	Pay Note	Unit Price	Total Amount
1)	Preparation of Right-of-Way, furnished, installed, complete and in place.	0.50	ACRE	D1	$_____	$_____
2)	Unclassified Roadway Excavation (Depth ≤ 12”), complete and in place.	2433	SY	D2	$_____	$_____
Total Demolition Items 1 - 2		$_____				

Grading Items

Item No.	Description	Quantity	Unit	Pay Note	Unit Price	Total Amount
1)	Subgrade Preparation (Depth ≤ 6”), furnished, installed, complete and in place.	2433	SY	G1	$_____	$_____
2)	Unclassified Embankment (Density Controlled), furnished, installed, complete and in place.	1100	CY	G2	$_____	$_____
Total Paving Items 1 - 2		$_____				

Price For:	
1. Miscellaneous Items	$_____
2. Demolition Items	$_____
3. Grading Items	$_____
Total Price	$_____

Peggy-Sue Drainage Improvements
Non-Mandatory Pre-Bid Meeting Agenda
Project No. D23-02
September 11, 2024

Discussion Items

1. Sign-In Sheet

2. Personnel Overview
   - Gabe McClelland – Director Engineering Services
   - Bobby Wojciechowski – Assistant Director Engineering Services
   - Josh Ferguson – Assistant City Engineer
   - Katherine Lopez – Graduate Engineer
   - Carl Craigo – Utilities Director
   - Rex Swearinger – Water & Wastewater Operations Superintendent, utility coordination
   - Taha Sakrani – City Traffic Engineer
   - Troy Clabaugh – Traffic Operations Superintendent
   - Jesse Trejo – Construction Manager, construction management & inspections
   - Andy Navarro – Franchise Utility Coordinator
   - Kirby Jones – Project Manager
   - Natalie Burgard – Executive Assistant, document processing
   - Erika Martinez – Purchasing Manager, conduct bid process & bid opening

3. Project Overview and Scope
   - This project will include removal and replacement of existing and proposed earthwork and appurtenances.
   - In general, this project involves constructing an earth berm.

4. Bid Process
   - Pre-Bid meeting attendance is non-mandatory to bid on this project.
   - ATTENTION: All questions submitted before or after the Non-Mandatory Pre-Bid Meeting must be submitted via email to the following email address:

     kjones@midlandtexas.gov

   - Addendum distributed by email the Friday afternoon following the Pre-Bid Meeting.
     - The deadline to ask or send questions for the addendum is this Friday, September 13, 2024 at Noon.
     - Questions asked after the Noon deadline will be directed to the information already provided in the bid documents or included in the Addendum.
   - ATTENTION: Bidders are to submit bids either digitally, by mail, or in person.

     If bidders choose to submit bids digitally, then they must do so through the City of Midland's Bonfire software submittal process.

     If bidders choose to mail their bid packets in, then they are to mail the bid packet to one of the addresses listed below:

USPS Mailing Address:
City of Midland, Texas
Attn: City Secretary's Office
P.O. Box 1152
Midland, TX 79702

– OR –

Physical Address for mail carriers other than USPS:
City of Midland, Texas
Attn: City Secretary's Office
300 North Loraine St., Suite 330
Midland, TX 79701

If bid packets are delivered in person then bidders must drop the bid packets off at the first-floor front desk of City Hall before the bid opening deadline.

- **Bid Opening is Wednesday, September 18, 2024 at 2:00 PM** in the City Hall Council Chamber located on the 1st Floor of Midland's City Hall.
  - The Bid Opening will be open to the public.
  - No late bids will be accepted.
  - Bidders must be willing to sign the contract as is.
  - Bidders must complete the conflict of interest forms if applicable.
  - Bidders must fill out all bid items in the Proposal. If bid items are left blank then the bid will be considered non-responsive.
  - Bidders have sole responsibility for making sure they have and acknowledge all addendums provided. If all acknowledgement forms are not included with the bid packet submittal then the bid will be considered non-responsive.

5. Notice to Proceed
   - Date of Notice to Proceed to be determined at the Pre-Construction Meeting.
   - Pre-Construction Meeting date will be set after the project bid is awarded.

6. Payment
   - Invoices should be submitted on or before the 1st day of each month and cover work completed up to the 25th day of the preceding month.
   - Invoice submittals are to be itemized and match the bid items listed in the bid packet Proposal.
   - Payment based on portion of work completed only. No payment for material delivery.
   - 5% retainage until project completion, acceptance, and final payment.
   - Recommended that invoices state "Invoice Due Upon Receipt", or have a due date that is two (2) weeks after the date the invoice is submitted.

7. Project Schedule
   - City Inspector must be notified of all work occurring and be able to perform inspections on any construction or installation that occurs.
   - Typically work times are Monday – Friday from 8:00 AM – 5:00 PM. No work earlier than 7:00 AM or later than 8:00 PM without City permission unless for emergency conditions.
   - Work is not to occur on Sundays or legal holidays unless required for emergency situations.
   - Work is not to occur on Saturdays unless requested by Contractor in writing at least 48-hours in advance and approved by the City Engineer.

8. Project Specifics
   - Comply with all OSHA and other applicable safety requirements and regulations at all times.
   - Construction staking is solely the responsibility of the Contractor.
   - Construction testing is solely the responsibility of the Contractor.
   - Contractor is responsible for all Erosion Control for this project.
     - The winning contractor must submit all TCEQ documentation etc., large or small site notice for linear projects. Please read all requirements in the Construction General Permit regarding linear projects and proper documentation. This is to be

submitted to the City of Midland at least 2 days before ground is disturbed for small sites or 7 days before ground is disturbed for large sites.
        - Contractor is required to place erosion control BMPs as needed and to regularly maintain any BMPs placed. Project site is to be kept reasonably clean, and any piles of spoils, backfill material, etc. are to include sand bag BMPs or similar temporary erosion protection emplacements at all times.
        - Contractor is required to remove all temporary BMPs placed at the end of the project. This is considered subsidiary to the overall project.
    - Contractor is responsible for all Traffic Control for this project.
        - Contractor is responsible for coordinating with the City.
        - Contractor is responsible for maintaining access to all adjacent properties during this project.
            - Contractor is responsible for notifying affected property owners at least two (2) business days in advance of any planned access interruptions.
            - Contractor is directed to use steel plates or other means to enable access to adjacent properties when work is not actively occurring at an otherwise blocked point of access so long as this does not conflict with the approved traffic control plan.
        - Contractor is responsible for coordinating with City Transportation to have any traffic control signs removed or relocated as needed by the City.
        - Contractor is to take particular care when working in the vicinity of the following sites, and to take every precaution to protect the public and secure the project site when working in or around these locations.
            - (Site description & physical location.)
    - Contractor is responsible for maintaining service to adjacent lots during this project.
        - Contractor mist notify affected properties at least two (2) business days prior to any planned service interruption.
    - Material stored on the project site must be properly stored and protected from damage and weathering.
        - There is to be no storage of equipment or material on the existing Peggy-Sue berm wall or the Bynum School property.
    - There is a one (1) calendar year warranty period on this project. This includes all infrastructure installed.

9. Additional Information, Clarifications, and Corrections
    - Bidders are directed to bid the item quantities listed in the Bid Packet's Proposal.
    - Contractor is remined that this project is located in an urban environment. Structures, trees, and overhead lines are common, and contractor is to provide proper equipment to complete all work required for this project in an urban environment.

10. Any Additional Questions

Please direct all questions or comments following the Pre-Bid Meeting to Kirby Jones with the City of Midland.

Engineering Services

Josh Ferguson
Phone: (432) 685-7290
Email: jferguson@midlandtexas.gov

Kirby Jones
Phone: (432) 685-7289
Email: kjones@midlandtexas.gov

Non-Mandatory Pre-Bid Meeting Attendance

D23-02

Peggy-Sue Drainage Improvements

Date: 09-11-2024; 3:00PM

PACKET 10.214

October 22, 2024

☑	Name *(Please Print)*	Company Name *(Please Print)*	Phone Number	Fax Number	Email
✓	Josh Ferguson	City of Midland	(432) 685-7290		jferguson@midlandtexas.gov
	Jesse Ramirez	Reece Albert, Inc.	432-570-0481		jesser@reecealbert,inc.com
	Mike Hester	" " "	" " "		MikeH@REECEALBERT.com
	Cody Chaney	Jones Bros.	432 349-3607		C.Chaney@jonesdp.com
	Kylee McClendon	Boler	432.694.0660		Kylee@boler.net
	Greg Boler	Boler	432.694.0660		Greg@boler.net
	John Darnell	ONYX	432-638-8437		john@onyxcontractors.com
	JESSE TREJO	COM	432-685-7405		JTREJO@MIDLANDTEXAS.GOV
	Katherine Lopez	COM	[illegible]		~~[illegible]~~ klopez@midlandtexas.gov
	Carl Craig	com	685 7260		Ccraig@midlandtexas.gov
	Carolina Jimenez	Com	432-685-7418		cjimenez@midlandtexas.gov
	Kirby Jones	COM	432-685-7287		Kjones@MidlandTexas.gov
	Bobby W.	COM			

Notice of Delegated Authority

The City Council of the City of Midland has delegated to the City Manager, Deputy City Manager, Assistant City Managers, Director of Engineering Services, Director of Utilities, and Director of Capital Improvement Projects the Council's authority to determine the method of purchase that provides the best value for the City for procurements related to capital improvement projects. This delegated authority is limited to procurements related to capital improvement projects and does not apply to procurements of professional services or to procurements for which such delegation is prohibited by law.

PEGGY-SUE DRAINAGE IMPROVEMENTS
PUBLIC IMPROVEMENTS
PROJECT NUMBER: D23-02
JUNE 2024

01

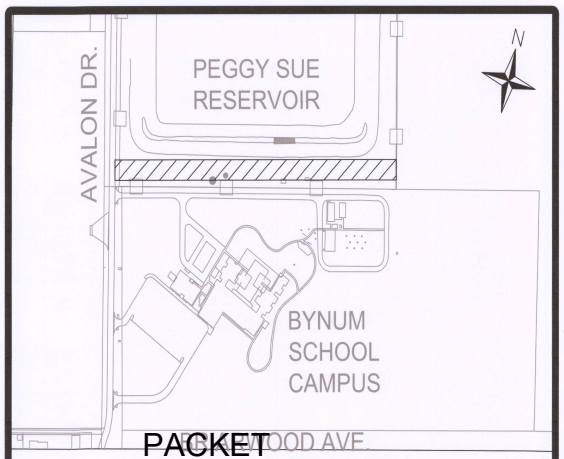
MAYOR

LORI BLONG

COUNCIL MEMBERS

SCOTT DUFFORD	DISTRICT 1
JOHN NORMAN	DISTRICT 2
JACK LADD	DISTRICT 3
AMY STRETCHER BURKES	DISTRICT 4
ROBIN POOLE	AT LARGE
ERIC DAVIDSON	AT LARGE

01



PROJECT VICINITY MAP
(NOT TO SCALE)

CITY MANAGER
TOMMY GONZALEZ

UTILITIES DIRECTOR
CARL CRAIGO, P.E.

PROJECT ENGINEER
JOSHUA C. FERGUSON, P.E.
OFFICE: (432) 685-7290 EMAIL: jferguson@midlandtexas.gov

CITY OF MIDLAND, 300 N. LORAINE ST., MIDLAND, TX 79702

SHEET INDEX	
SHEET	DESCRIPTION
C-01	COVER
C-02	GENERAL NOTES
C-03	EXISTING CONDITIONS
C-04	EROSION CONTROL PLAN
C-05	MASTER LAYOUT
C-06	GRADING PLAN SHEET 1 OF 5
C-07	GRADING PLAN SHEET 2 OF 5
C-08	GRADING PLAN SHEET 3 OF 5
C-09	GRADING PLAN SHEET 4 OF 5
C-10	GRADING PLAN SHEET 5 OF 5
C-11	DETAILS

PACKET

10.216

October 22, 2024

811 Know what's below. Call before you dig.

Drawn By	J. FERGUSON						
Checked By	J. FERGUSON						
Approved By	C. CRAIGO						
Vert. Scale	N / A						
Horz. Scale	N / A						
Job No.	D23-02	01	06/27/24	JCF	Added Council Name		
Date	JUNE 2024	Rev. No.	Date	By	Description		

MIDLAND Be the Energy!

PEGGY-SUE DRAINAGE IMPROVEMENTS

COVER

STATE OF TEXAS JUN 27 2024 JOSHUA C. FERGUSON 117692 LICENSED PROFESSIONAL ENGINEER

SHEET C-01
01 OF 11

File: P:\Engineering Services\Engineering Projects\2023\D23-02 Peggy-Sue Drng\03 DWGS\3.1 DWG\Plans\C-01 Cover.dwg Jun 27, 2024 - 10:53am jferguson

GENERAL NOTES:

i) THIS DESIGN IS FOR PUBLIC DRAINAGE IMPROVEMENTS AT SITE LOCATED AT SOUTH END OF PEGGY-SUE FACILITY NORTH OF BYNUM SCHOOL. GENERALLY LOCATED 0.66-MILES NORTH OF BRIARWOOD AVENUE AND IMMEDIATELY EAST OF AVALON DRIVE.

ii) ALL CONSTRUCTION IS TO COMPLY WITH CITY OF MIDLAND STANDARDS AND SPECIFICATIONS WHEREVER APPLICABLE. ALL OTHER STANDARDS AND REQUIREMENTS ARE TO COMPLY WITH ALL APPLICABLE FEDERAL AND STATE REGULATIONS, REQUIREMENTS, AND STANDARDS. WHEREVER CITY OF MIDLAND STANDARDS AND FEDERAL OR STATE REQUIREMENTS DIFFER THE MORE RESTRICTIVE STANDARD, REQUIREMENT, OR REGULATION WILL GOVERN.

iii) ALL BEARINGS, DIMENSIONS, AND COORDINATES SHOWN IN THIS CONSTRUCTION DRAWING SET ARE RELATED TO TEXAS STATE PLANE COORDINATE SYSTEM, TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM 1983. ALL ELEVATIONS ARE RELATED TO NORTH AMERICAN VERTICAL DATUM 1988.

iv) EXISTING ELEVATIONS AND TOPOGRAPHIC FEATURES SHOWN IN THIS CONSTRUCTION DRAWING SET HAVE BEEN LOCATED USING SITE INSPECTIONS AND SURVEYS. CONTRACTOR IS RESPONSIBLE FOR VERIFYING THIS INFORMATION PRIOR TO CONSTRUCTION AND NOTIFYING ENGINEER OF ANY CONFLICTS BETWEEN EXISTING CONDITIONS AND PROJECT DESIGN.

v) EXISTING UTILITIES, INFRASTRUCTURE, AND OTHER OBJECTS INDICATED IN THIS CONSTRUCTION DRAWING SET HAVE BEEN LOCATED USING CITY OF MIDLAND RECORDS, SITE INSPECTIONS, SURVEYS, AND ONE CALL MARKINGS. CONTRACTOR IS RESPONSIBLE FOR VERIFYING THIS INFORMATION PRIOR TO CONSTRUCTION AND NOTIFYING ENGINEER OF ANY CONFLICTS BETWEEN EXISTING CONDITIONS AND PROJECT DESIGN.

vi) CONTRACTOR IS TO TAKE ALL NECESSARY PRECAUTIONS TO PROTECT ALL EXISTING FACILITIES THAT ARE ENCOUNTERED REGARDLESS OF WHETHER OR NOT THEY APPEAR IN THIS CONSTRUCTION DRAWING SET.

vii) ANY ISSUES, CONFLICTS, OR DISCREPANCIES ENCOUNTERED IN FIELD THAT CONFLICT WITH THIS CONSTRUCTION DRAWING SET ARE TO BE BROUGHT TO ATTENTION OF PROJECT ENGINEER PRIOR TO MAKING ANY DESIGN CHANGES IN FIELD.

viii) TRAFFIC CONTROL FOR THIS PROJECT WILL BE CONTRACTOR'S RESPONSIBILITY. CONTRACTOR MUST SUBMIT TRAFFIC CONTROL PLAN, IN ACCORDANCE WITH TMUTCD, TO CITY OF MIDLAND FOR REVIEW AND APPROVAL NO LESS THAN TWO (2) BUSINESS DAYS BEFORE CONTRACTOR BEGINS ANY CONSTRUCTION ACTIVITY.

ix) CONTRACTOR IS TO NOTIFY ALL AFFECTED PROPERTIES AT LEAST FORTY-EIGHT (48) HOURS IN ADVANCE OF ANY KNOWN OR PLANNED INTERRUPTION OF SERVICE OR ACCESS DUE TO ANY CONSTRUCTION ACTIVITY PERFORMED BY CONTRACTOR.

x) MATERIAL STORAGE IS TO BE PLACED IN WORK ZONE IDENTIFIED IN APPROVED TRAFFIC CONTROL PLAN.

xi) OSHA REQUIREMENTS AND ALL OTHER APPLICABLE FEDERAL, STATE, OR CITY OF MIDLAND SAFETY REQUIREMENTS ARE TO BE FOLLOWED AND COMPLIED WITH AT ALL TIMES.

xj) CONTRACTOR MUST COMPLY WITH ALL STAKING AND TESTING REQUIREMENTS AS DESCRIBED IN PROJECT BID PACKET.

xiv) CONTRACTOR IS REMINDED THAT THIS PROJECT IS LOCATED IN AN URBAN ENVIRONMENT. TREES AND OVERHEAD LINES ARE COMMON, AND CONTRACTOR IS TO PROVIDE PROPER EQUIPMENT TO COMPLETE ALL REQUIRED WORK FOR THIS PROJECT IN AN URBAN ENVIRONMENT.

xv) THERE IS TO BE NO MATERIAL STORAGE WITHIN AVALON DRIVE RIGHT-OF-WAY, OR BYNUM SCHOOL PROPERTY AREA. MATERIAL STORAGE IS TO BE PLACED IN (LOCATION DESCRIPTION) WORK ZONE APPROVED BY TRAFFIC CONTROL PLAN.

xvi) PEGGY-SUE FACILITY IS A SECURE CITY OF MIDLAND FACILITY. CONTRACTOR WILL BE REQUIRED TO COORDINATE WITH CITY OF MIDLAND STAFF FOR ACCESS, AND ALL SECURITY GATES ARE TO REMAIN SECURED EXCEPT WHEN VEHICLE TRAFFIC IS ACTIVELY PASSING THROUGH. ALL EXISTING FENCING MUST REMAIN IN PLACE UNLESS PERMISSION IS FIRST OBTAINED BY CONTRACTOR IN WRITING FROM CITY OF MIDLAND'S UTILITY DIRECTOR.

DEMOLITION NOTES:

A. CONTRACTOR IS TO NOTIFY PROJECT ENGINEER OF ANY ADDITIONAL DEMOLITION THAT MAY BE NEEDED AND RECEIVE WRITTEN CONFIRMATION THAT SUCH DEMOLITION IS APPROVED PRIOR TO ANY ADDITIONAL DEMOLITION TAKING PLACE.

B. CONTRACTOR IS TO TAKE CARE NOT TO DAMAGE OR REMOVE ANY EXISTING INFRASTRUCTURE OR PROPERTY, PUBLIC OR PRIVATE, THAT IS NOT INDICATED BY THIS CONSTRUCTION DRAWING SET. ANY SUCH DAMAGE OR REMOVAL MUST BE REPLACED OR REPAIRED BY CONTRACTOR AT THEIR SOLE EXPENSE TO EQUAL OR BETTER CONDITION.

CONSTRUCTION NOTES:

1. EXISTING BENCHMARK LOCATED AT BRIARWOOD AVENUE AND HOLIDAY HILL ROAD INTERSECTION. BENCHMARK IS CONCRETE NOTCH LOCATED AT EDGE OF CONCRETE FILLET AT NORTHWEST CORNER OF INTERSECTION BENCHMARK ELEVATION IS 2849.03 BASED ON NGVD29. CONVERSION FACTOR TO NAVD88 FOR MIDLAND, TEXAS IS TYPICALLY +1.22'.

2. CONTRACTOR IS TO MATCH DESIGN GRADES AND ELEVATIONS SHOWN ON THIS CONSTRUCTION DRAWING SET.

3. CONTRACTOR IS TO MATCH EXISTING GRADES AT ALL LOCATIONS INDICATED, INCLUDING FOR ALL GRADE DAYLIGHTING, REGARDLESS OF GRADE ELEVATIONS INDICATED IN CONSTRUCTION DRAWING SET.

4. NOTIFY CITY INSPECTOR OF ALL FRANCHISE UTILITY OR PRIVATE INFRASTRUCTURE ISSUES AND COORDINATE WITH BOTH CITY AND FRANCHISE UTILITY OR PRIVATE INFRASTRUCTURE OWNER.

EROSION CONTROL NOTES:

a. PERMANENT STABILIZATION OF PROJECT SITE WILL BE ADDRESSED SEPARATELY AFTER THIS PROJECT.

b. CONTRACTOR IS TO REMOVE ALL TEMPORARY EROSION CONTROL BMPS AT PROJECT'S COMPLETION. THIS IS CONSIDERED SUBSIDIARY TO THIS PROJECT.

LEGEND

---- #### ----	CONTOUR
----□----	EXISTING FENCE
– X – X – X –	SILT FENCE
	EXISTING EASEMENT
---- #.#. ----	EXISTING PIPE
	EXISTING CONCRETE
	EXISTING TREE

Know what's below. Call before you dig.

Drawn By	J. FERGUSON
Checked By	J. FERGUSON
Approved By	C. CRAIGO
Vert. Scale	N / A
Horz. Scale	N / A
Job No.	D23-02
Date	DECEMBER 2023

Rev. No.	Date	By	Description

MIDLAND Be the Energy!

PEGGY-SUE DRAINAGE IMPROVEMENTS

GENERAL NOTES

STATE OF TEXAS · FERGUSON · 2024 · JOSHUA C. FERGUSON · 117692 · LICENSED PROFESSIONAL ENGINEER

SHEET C-02

02 OF 11

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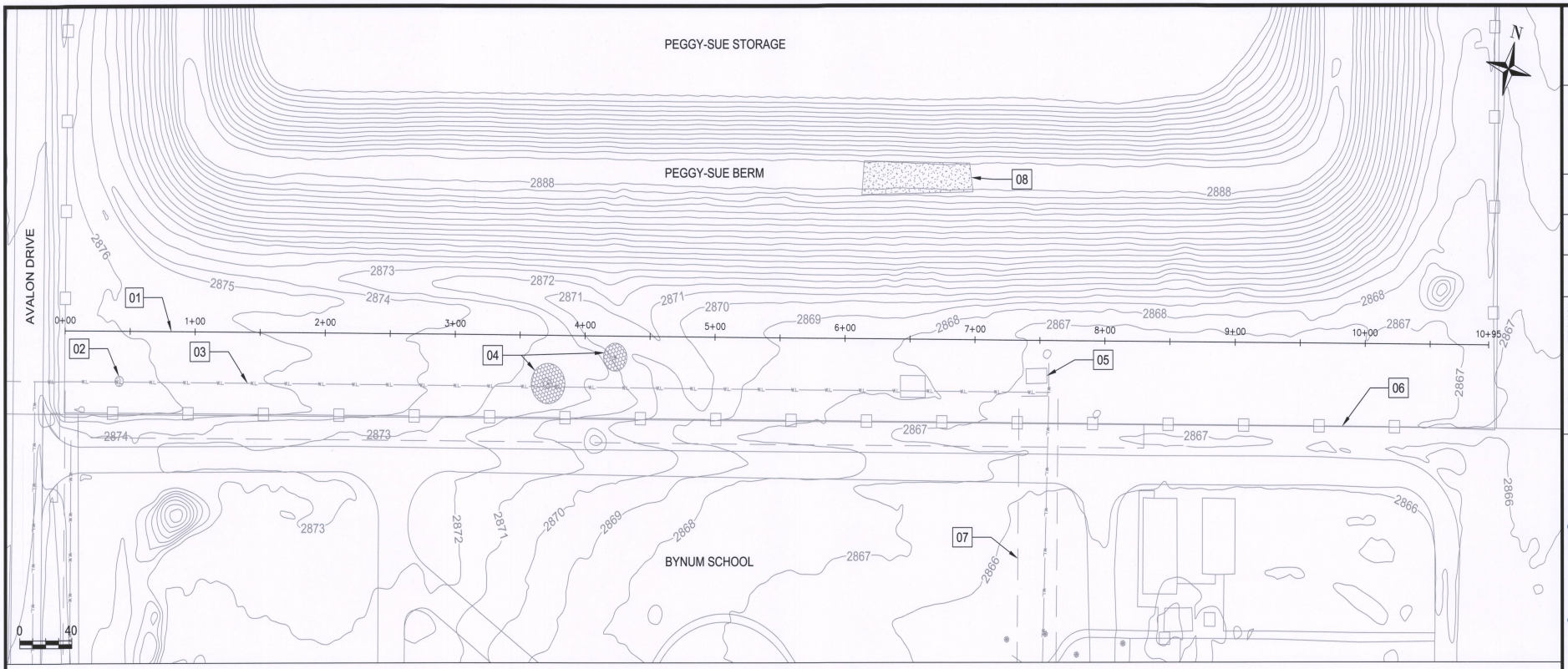

EXISTING CONDITION NOTES:

A. EXISTING CONDITIONS ARE SHOWN BASED ON AVAILABLE CITY OF MIDLAND GIS DATA, CITY OF MIDLAND LIDAR CONTOUR DATA, SURVEY DATA, AND SITE VISITS. CONTRACTOR IS TO FIELD VERIFY ALL EXISTING CONDITIONS AND NOTIFY ENGINEER OF ANY DISCREPANCIES.

B. CONTRACTOR IS TO TAKE ALL NECESSARY STEPS AND PRECAUTIONS TO ENSURE SAFETY OF BOTH PUBLIC AND CONTRACTOR'S WORKERS WHEN ANY TRENCHING OR OTHER WORK IS TAKING PLACE NEAR OVERHEAD ELECTRIC, POWER, OR PHONE LINES.

C. ALL EXISTING TREES ARE TO REMAIN AND ARE TO BE UNDISTURBED DURING CONSTRUCTION ACTIVITY. CONTRACTOR IS TO NOTIFY ENGINEER OF ANY ISSUES OR CONFLICTS WITH EXISTING TREES AND WAIT FOR DIRECTION FROM ENGINEER PRIOR TO PERFORMING ANY ACTIVITY THAT MIGHT HARM A TREE.

D. EXISTING FENCE LINE AT SOUTH END OF PEGGY-SUE FACILITY IS ON PROPERTY LINE BOUNDARY BETWEEN PEGGY-SUE FACILITY AND BYNUM SCHOOL CAMPUS.

KEYED NOTES:

01 PROPOSED BERM CENTERLINE ALIGNMENT

02 EXISTING WATER VAULT

03 EXISTING WATER MAIN

04 EXISTING TREES TO REMAIN

05 EXISTING WATER SHED TO REMAIN

06 EXISTING FENCE TO REMAIN

07 EXISTING WATER EASEMENT

08 EXISTING CONCRETE SLAB TO REMAIN

811 Know what's below. Call before you dig.

Description	By	Date	Rev. No.

Drawn By	J. FERGUSON
Checked By	J. FERGUSON
Approved By	C. CRAIGO
Vert. Scale	N / A
Horz. Scale	1 : 40
Job No.	D23-02
Date	DECEMBER 2023

MIDLAND Be the Energy!

PEGGY-SUE DRAINAGE IMPROVEMENTS

EXISTING CONDITIONS

STATE OF TEXAS FIRM 2429 JOSHUA C. FERGUSON 117692 LICENSED PROFESSIONAL ENGINEER

SHEET C-03

03 OF 11

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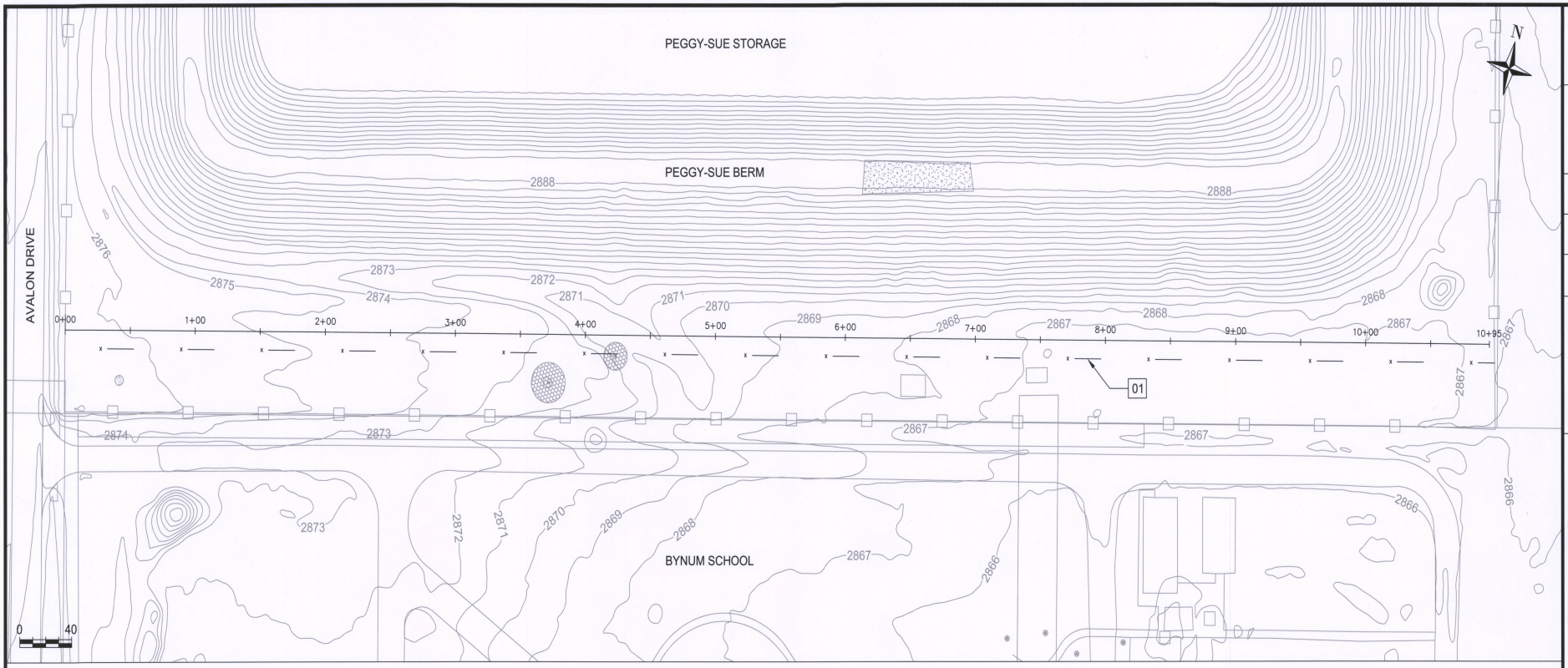


EROSION CONTROL NOTES:

A. INSTALL EROSION CONTROL MEASURES PRIOR TO BEGINNING ANY CONSTRUCTION ACTIVITY ON PROJECT SITE.

B. CONTRACTOR IS TO MAINTAIN EROSION CONTROL AT ALL TIMES. REPAIRS TO EXISTING EROSION CONTROL MEASURES ARE TO BE MADE IMMEDIATELY UPON DISCOVERY THAT SUCH REPAIRS ARE NEEDED. ALL EROSION CONTROL MEASURES AT PROJECT SITE ARE TO BE INSPECTED IMMEDIATELY FOLLOWING ANY STORM EVENT.

C. CONTRACTOR IS TO MAINTAIN A REASONABLY CLEAN PROJECT SITE AT ALL TIMES. ANY SEDIMENT, DEBRIS, ETC. OUTSIDE PROJECT SITE ARE TO BE REMOVED PROMPTLY.

D. ANY ON-SITE STORAGE OF SPOILS, MATERIALS, OR EQUIPMENT ARE TO BE LOCATED WITHIN WORK ZONE AREA.

E. CONTRACTOR HAS SOLE RESPONSIBILITY FOR VEGETATING OR STABILIZING TO EXISTING OR BETTER CONDITION ANY AREAS DISTURBED BY CONSTRUCTION ACTIVITY LOCATED OUTSIDE DESIGNATED PROJECT SITE OR APPROVED WORK ZONE AT CONSTRUCTOR'S SOLE EXPENSE.

F. IMPLEMENT SUPPLEMENTAL EROSION CONTROL MEASURES AS NEEDED DURING STORM EVENTS. ADDITIONAL EROSION CONTROL MEASURES MAY BE REQUIRED AT SOLE DISCRETION OF ENGINEER IF AT ANY TIME ENGINEER BELIEVES EXISTING EROSION CONTROL MEASURES ARE INSUFFICIENT FOR NEEDS OF PROJECT SITE.

G. CONTRACTOR IS REQUIRED AT A MINIMUM TO REMOVE AND DISPOSE OF ACCUMULATED SILT, SEDIMENT, OR OTHER DEBRIS FROM EROSION CONTROLS WHEN SILT, SEDIMENT, OR OTHER DEBRIS HAVE REACHED A HEIGHT EQUAL TO HALF THAT OF EROSION CONTROLS PLACED OR IMPEDE THEIR EFFECTIVENESS.

H. CONTRACTOR IS TO REMOVE ALL TEMPORARY EROSION CONTROL MEASURES FROM PROJECT SITE UPON COMPLETION OF CONSTRUCTION ACTIVITY ONCE PROJECT SITE IS STABILIZED. THIS IS CONSIDERED SUBSIDIARY TO THIS PROJECT SCOPE.

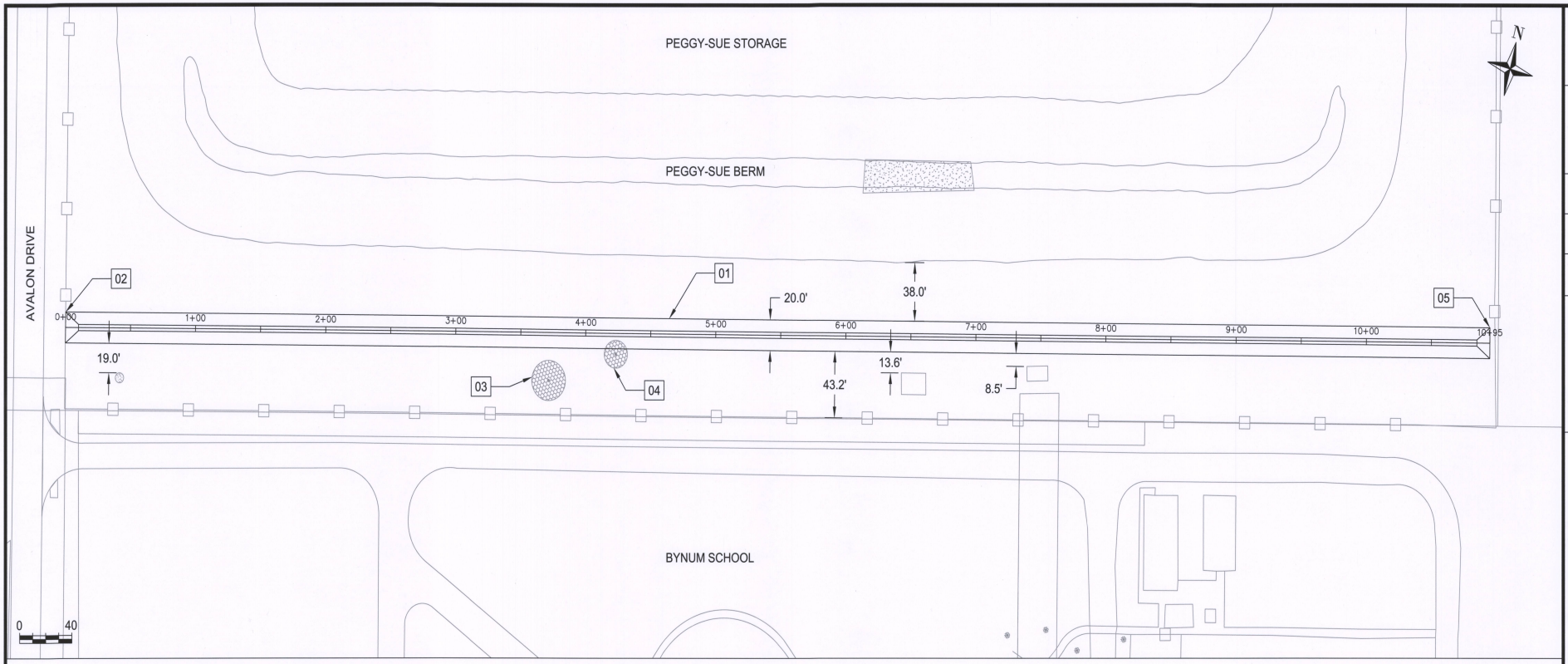
I. DAMAGED TO ADJACENT PROPERTY OR TO RECEIVING WATERS CAUSED BY IMPROPERLY INSTALLED OR POORLY MAINTAINED EROSION CONTROL MEASURES ARE SOLE RESPONSIBILITY OF CONTRACTOR.

KEYED NOTES:

01 SILT FENCE

PACKET 10.219 October 22, 2024

811 Know what's below. Call before you dig.



CONSTRUCTION NOTES:

A. PROOF ROLL EXISTING SURFACE WITH MINIMUM TWENTY-FIVE (25) TON PNEUMATIC ROLLER PRIOR TO ANY EARTHWORK BEING PLACED. EXCAVATE ANY SOFT MATERIAL AND SCARIFY EXCAVATED AREA PLUS SUFFICIENT DISTANCE BEYOND TO ENSURE PROPER MIXING AND BONDING.

B. PLACE BERM MATERIAL IN MAXIMUM 6" LIFTS.

C. MATCH EXISTING SURFACE ELEVATIONS AT ALL TIE-IN LOCATIONS FOR BERM STRUCTURE.

D. CONTRACTOR IS TO PROVIDE PADDING OR OTHER PROTECTION FOR EXISTING TREES NEXT TO BERM ONLY IF NEEDED TO AVOID DAMAGING THEM DURING CONSTRUCTION.

KEYED NOTES:

01 PROPOSED EARTH BERM

02 BEGIN JUST EAST (INSIDE) EXISTING FENCE ON WEST PROPERTY BOUNDARY.

03 EXISTING TREE APPROXIMATELY 21.0' FROM EDGE OF BERM. TREE IS TO REMAIN.

04 EXISTING TREE APPROXIMATELY 3.5' FROM EDGE OF BERM. TREE IS TO REMAIN.

05 END APPROXIMATELY 4.0' WEST OF EXISTING FENCE ON EAST PROPERTY BOUNDARY.

811 Know what's below. Call before you dig.

Description	By	Date	Rev. No.

Drawn By	J. FERGUSON
Checked By	J. FERGUSON
Approved By	C. CRAIGO
Vert. Scale	N / A
Horz. Scale	1 : 40
Job No.	D23-02
Date	DECEMBER 2023

MIDLAND Be the Energy!

PEGGY-SUE DRAINAGE IMPROVEMENTS

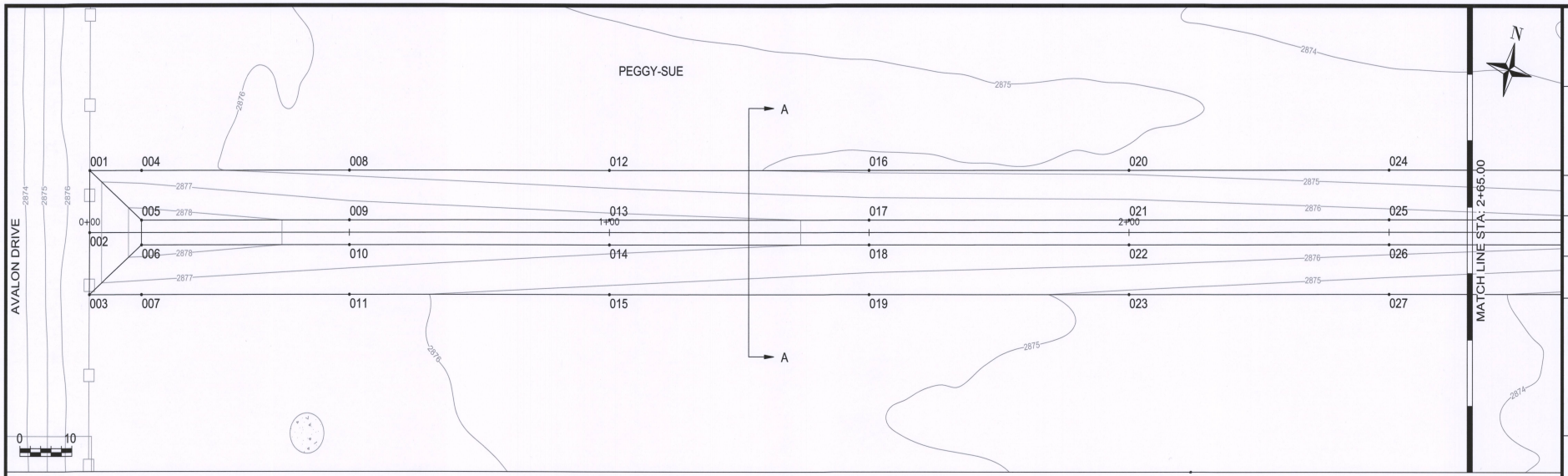
MASTER LAYOUT

STATE OF TEXAS FERGUSON 2024 JOSHUA C. FERGUSON 117692 LICENSED PROFESSIONAL ENGINEER

SHEET C-05

05 OF 11

File: P:\Engineering Services\Engineering Projects\2023\023-02 Peggy-Sue Drng\03 DWGS\3.1 DWG\Plans\C-05 Master Plan.dwg Dec 21, 2023 - 4:57pm jferguson



GRADING NOTES:

A. SEE SHEET C-11, PAGE 11 OF 11, FOR SECTION A-A DETAIL.

B. PROOF ROLL EXISTING SURFACE WITH MINIMUM TWENTY-FIVE (25) TON PNEUMATIC ROLLER PRIOR TO ANY EARTHWORK BEING PLACED. EXCAVATE ANY SOFT MATERIAL AND SCARIFY EXCAVATED AREA PLUS SUFFICIENT DISTANCE BEYOND TO ENSURE PROPER MIXING AND BONDING.

C. BERM EMBANKMENT MATERIAL IS TO BE NATURAL MATERIAL OR APPROVE EQUAL FREE OF ROOTS, ROCKS IN EXCESS OF THREE INCHES (3") ACROSS, DEBRIS, AND OTHER OBJECTIONABLE MATERIAL.

D. PLACE BERM EMBANKMENT MATERIAL IN 6" HORIZONTAL LIFTS AT MAXIMUM 90% COMPACTED DRY DENSITY.

E. MATCH EXISTING SURFACE GRADES AT BERM EDGES REGARDLESS OF ELEVATIONS CALLED FOR IN CONSTRUCTION DRAWING SET.

GRADE POINT TABLE

POINT	DESCRIPTION	NORTHING	EASTING	ELEVATION
001	EG	10707360.6785	1723597.9313	2876.55
002	EG	10707350.9816	1723600.3751	2876.55
003	EG	10707341.2847	1723602.8190	2876.55
004	EG	10707363.1523	1723607.5775	2876.48
005	FG	10707355.4031	1723609.5648	2878.48
006	FG	10707351.5285	1723610.5585	2878.48
007	EG	10707343.7792	1723612.5458	2876.47
008	EG	10707373.0890	1723646.3236	2875.77
009	FG	10707365.3397	1723648.3110	2877.77
010	FG	10707361.4651	1723649.3046	2877.77
011	EG	10707353.7159	1723651.2920	2876.13
012	EG	10707385.5098	1723694.7563	2875.28
013	FG	10707377.7605	1723696.7436	2877.28
014	FG	10707373.8859	1723697.7373	2877.28
015	EG	10707366.1367	1723699.7246	2875.71
016	EG	10707397.9306	1723743.1890	2874.90
017	FG	10707390.1814	1723745.1763	2876.90
018	FG	10707386.3067	1723746.1700	2876.90
019	EG	10707378.5575	1723748.1573	2875.29
020	EG	10707410.3514	1723791.6217	2874.83
021	FG	10707402.6022	1723793.6090	2876.83
022	FG	10707398.7276	1723794.6026	2876.83
023	EG	10707390.9783	1723796.5900	2874.82
024	EG	10707422.7722	1723840.0543	2874.44
025	FG	10707415.0230	1723842.0416	2876.44
026	FG	10707411.1484	1723843.0353	2876.44
027	EG	10707403.3992	1723845.0226	2874.26

GRADE TABLE LEGEND

EG EXISTING GRADE

FG FINISH GRADE

PACKET 10.221 October 22, 2024

Description	By	Date	Rev. No.

Drawn By	J. FERGUSON
Checked By	J. FERGUSON
Approved By	C. CRAIGO
Vert. Scale	N / A
Horz. Scale	1 : 40
Job No.	D23-02
Date	DECEMBER 2023

Know what's below. Call before you dig.

MIDLAND Be the Energy!

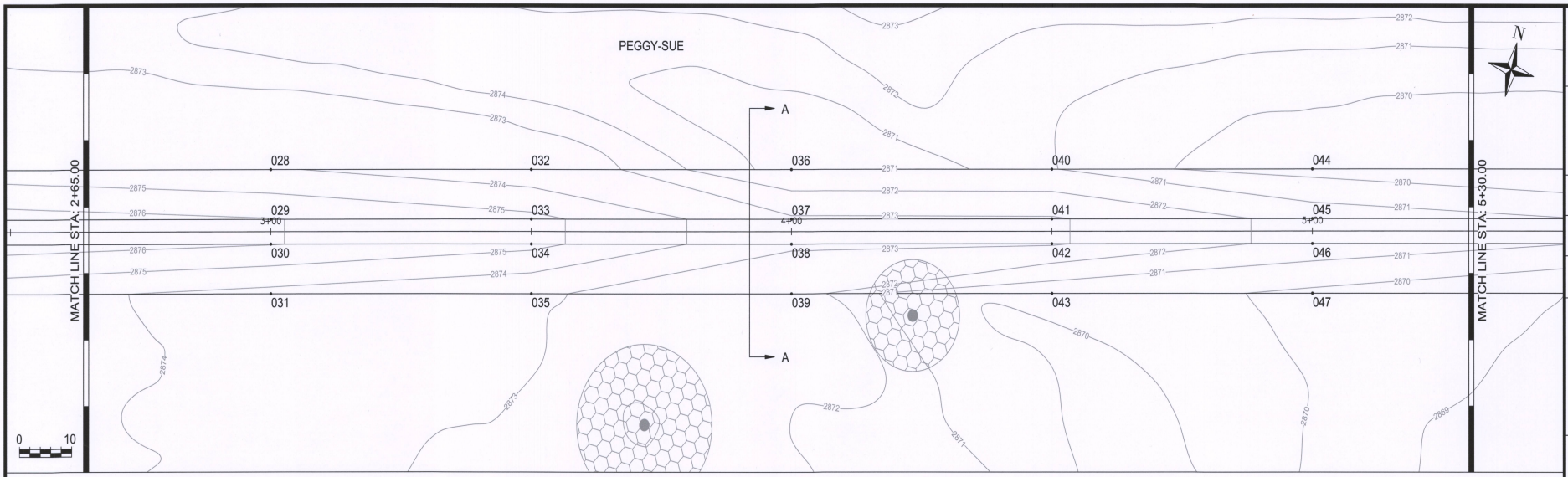
PEGGY-SUE DRAINAGE IMPROVEMENTS

GRADING PLAN
SHEET 1 OF 5

STATE OF TEXAS FEB 3rd 2014 JOSHUA C. FERGUSON 117692 LICENSED PROFESSIONAL ENGINEER

SHEET C-06
06 OF 11

File: P:\Engineering Services\Engineering Projects\2023\D23-02 Peggy-Sue Drng\03 DWGS\3.1 DWGS\Plans\C-06 Grading Plan.dwg Dec 22, 2023 - 8:58am jferguson



GRADING NOTES:

A. SEE SHEET C-11, PAGE 11 OF 11, FOR SECTION A-A DETAIL.

B. PROOF ROLL EXISTING SURFACE WITH MINIMUM TWENTY-FIVE (25) TON PNEUMATIC ROLLER PRIOR TO ANY EARTHWORK BEING PLACED. EXCAVATE ANY SOFT MATERIAL AND SCARIFY EXCAVATED AREA PLUS SUFFICIENT DISTANCE BEYOND TO ENSURE PROPER MIXING AND BONDING.

C. BERM EMBANKMENT MATERIAL IS TO BE NATURAL MATERIAL OR APPROVE EQUAL FREE OF ROOTS, ROCKS IN EXCESS OF THREE INCHES (3") ACROSS, DEBRIS, AND OTHER OBJECTIONABLE MATERIAL.

D. PLACE BERM EMBANKMENT MATERIAL IN 6" HORIZONTAL LIFTS AT MAXIMUM 90% COMPACTED DRY DENSITY.

E. MATCH EXISTING SURFACE GRADES AT BERM EDGES REGARDLESS OF ELEVATIONS CALLED FOR IN CONSTRUCTION DRAWING SET.

GRADE POINT TABLE

POINT	DESCRIPTION	NORTHING	EASTING	ELEVATION
028	EG	10707435.1930	1723888.4870	2874.04
029	FG	10707427.4438	1723890.4743	2876.04
030	FG	10707423.5692	1723891.4680	2876.04
031	EG	10707415.8200	1723893.4553	2873.68
032	EG	10707447.6139	1723936.9197	2873.28
033	FG	10707439.8646	1723938.9070	2875.28
034	FG	10707435.9900	1723939.9006	2875.28
035	EG	10707428.2408	1723941.8880	2873.08
036	EG	10707460.0347	1723985.3523	2871.14
037	FG	10707452.2855	1723987.3397	2873.14
038	FG	10707448.4108	1723988.3333	2873.14
039	EG	10707440.6616	1723990.3206	2872.13
040	EG	10707472.4555	1724033.7850	2871.10
041	FG	10707464.7063	1724035.7723	2873.10
042	FG	10707460.8317	1724036.7660	2873.10
043	EG	10707453.0824	1724038.7533	2870.30
044	EG	10707484.8763	1724082.2177	2869.66
045	FG	10707477.1271	1724084.2050	2871.66
046	FG	10707473.2525	1724085.1987	2871.66
047	EG	10707465.5033	1724087.1860	2869.79

GRADE TABLE LEGEND

EG EXISTING GRADE

FG FINISH GRADE

PACKET 10,222 October 22, 2024

811 Know what's below. Call before you dig.

Description	By	Date	Rev. No.

Drawn By	J. FERGUSON
Checked By	J. FERGUSON
Approved By	C. CRAIGO
Vert. Scale	N / A
Horz. Scale	1 : 40
Job No.	D23-02
Date	DECEMBER 2023

MIDLAND Be the Energy!

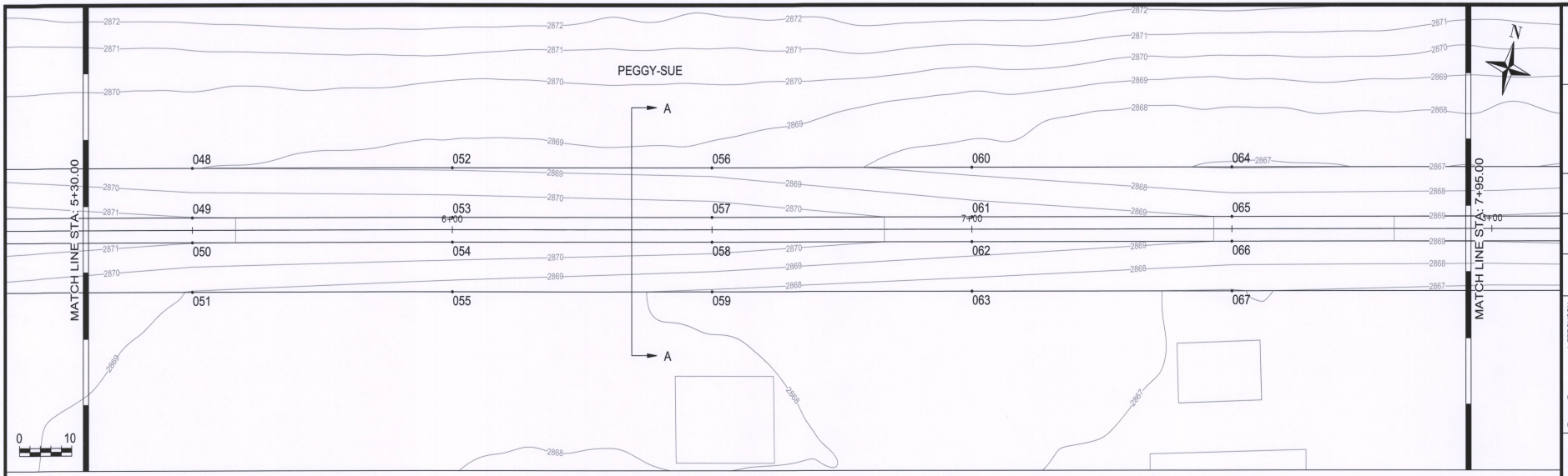
PEGGY-SUE DRAINAGE IMPROVEMENTS

GRADING PLAN
SHEET 2 OF 5

STATE OF TEXAS
JOSHUA C. FERGUSON
117692
LICENSED
PROFESSIONAL ENGINEER
FEB 20, 2024

SHEET C-07
07 OF 11

File: P:\Engineering Services\Engineering Projects\2023\D23-02 Peggy-Sue Drng\03 DWGS\3.1 DWG\Plans\C-07 Grading Plan.dwg Dec 22, 2023 - 9:12am jferguson



GRADING NOTES:

A. SEE SHEET C-11, PAGE 11 OF 11, FOR SECTION A-A DETAIL.

B. PROOF ROLL EXISTING SURFACE WITH MINIMUM TWENTY-FIVE (25) TON PNEUMATIC ROLLER PRIOR TO ANY EARTHWORK BEING PLACED. EXCAVATE ANY SOFT MATERIAL AND SCARIFY EXCAVATED AREA PLUS SUFFICIENT DISTANCE BEYOND TO ENSURE PROPER MIXING AND BONDING.

C. BERM EMBANKMENT MATERIAL IS TO BE NATURAL MATERIAL OR APPROVE EQUAL FREE OF ROOTS, ROCKS IN EXCESS OF THREE INCHES (3") ACROSS, DEBRIS, AND OTHER OBJECTIONABLE MATERIAL.

D. PLACE BERM EMBANKMENT MATERIAL IN 6" HORIZONTAL LIFTS AT MAXIMUM 90% COMPACTED DRY DENSITY.

E. MATCH EXISTING SURFACE GRADES AT BERM EDGES REGARDLESS OF ELEVATIONS CALLED FOR IN CONSTRUCTION DRAWING SET.

GRADE POINT TABLE

POINT	DESCRIPTION	NORTHING	EASTING	ELEVATION
048	EG	10707497.2971	1724130.6503	2869.02
049	FG	10707489.5479	1724132.6377	2871.02
050	FG	10707485.6733	1724133.6313	2871.02
051	EG	10707477.9241	1724135.6186	2868.95
052	EG	10707509.7180	1724179.0830	2868.90
053	FG	10707501.9687	1724181.0703	2870.90
054	FG	10707498.0941	1724182.0640	2870.90
055	EG	10707490.3449	1724184.0513	2868.42
056	EG	10707522.1388	1724227.5157	2868.65
057	FG	10707514.3896	1724229.5030	2870.65
058	FG	10707510.5149	1724230.4967	2870.65
059	EG	10707502.7657	1724232.4840	2867.87
060	EG	10707534.5596	1724275.9483	2867.67
061	FG	10707526.8104	1724277.9357	2869.67
062	FG	10707522.9358	1724278.9293	2869.67
063	EG	10707515.1865	1724280.9167	2867.37
064	EG	10707546.9804	1724324.3810	2866.95
065	FG	10707539.2312	1724326.3683	2868.95
066	FG	10707535.3566	1724327.3620	2868.95
067	EG	10707527.6074	1724329.3493	2866.95

GRADE TABLE LEGEND

EG EXISTING GRADE

FG FINISH GRADE

PACKET 10.223 October 22, 2024

Know what's below. Call before you dig.

Description	By	Date	Rev. No.

Drawn By	J. FERGUSON
Checked By	J. FERGUSON
Approved By	C. CRAIGO
Vert. Scale	N / A
Horz. Scale	1 : 40
Job No.	D23-02
Date	DECEMBER 2023

MIDLAND Be the Energy!

PEGGY-SUE DRAINAGE IMPROVEMENTS

GRADING PLAN
SHEET 3 OF 5

STATE OF TEXAS
FEB 2024
JOSHUA C. FERGUSON
117692
LICENSED
PROFESSIONAL ENGINEER

SHEET C-08
08 OF 11

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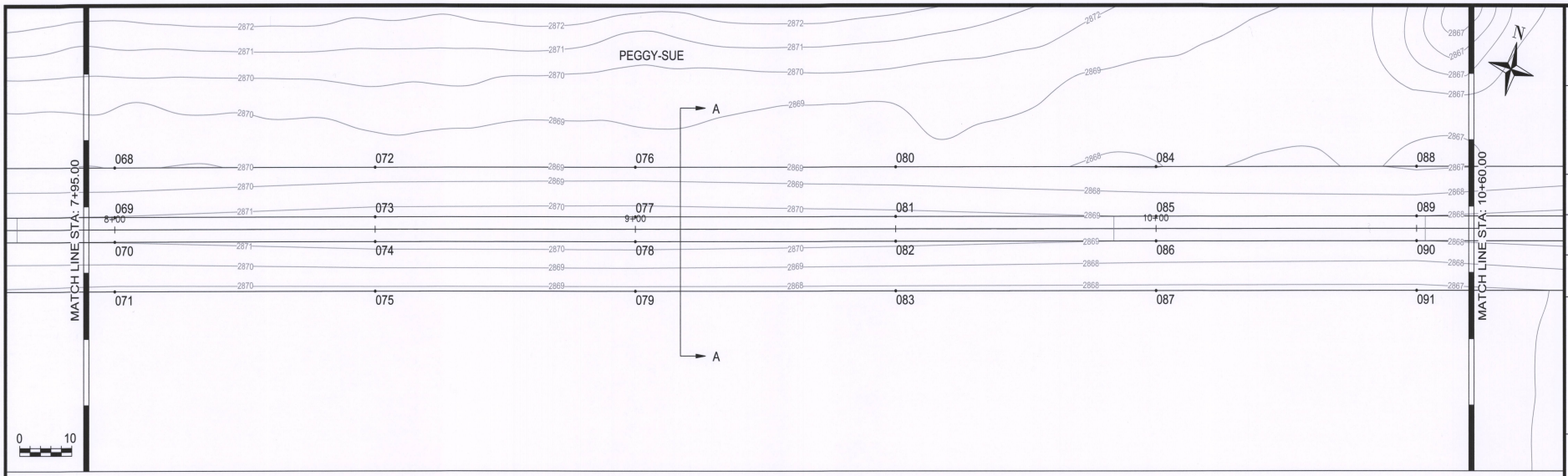


GRADING NOTES:

A. SEE SHEET C-11, PAGE 11 OF 11, FOR SECTION A-A DETAIL.

B. PROOF ROLL EXISTING SURFACE WITH MINIMUM TWENTY-FIVE (25) TON PNEUMATIC ROLLER PRIOR TO ANY EARTHWORK BEING PLACED. EXCAVATE ANY SOFT MATERIAL AND SCARIFY EXCAVATED AREA PLUS SUFFICIENT DISTANCE BEYOND TO ENSURE PROPER MIXING AND BONDING.

C. BERM EMBANKMENT MATERIAL IS TO BE NATURAL MATERIAL OR APPROVE EQUAL FREE OF ROOTS, ROCKS IN EXCESS OF THREE INCHES (3") ACROSS, DEBRIS, AND OTHER OBJECTIONABLE MATERIAL.

D. PLACE BERM EMBANKMENT MATERIAL IN 6" HORIZONTAL LIFTS AT MAXIMUM 90% COMPACTED DRY DENSITY.

E. MATCH EXISTING SURFACE GRADES AT BERM EDGES REGARDLESS OF ELEVATIONS CALLED FOR IN CONSTRUCTION DRAWING SET.

GRADE POINT TABLE

POINT	DESCRIPTION	NORTHING	EASTING	ELEVATION
068	EG	10707559.4012	1724372.8137	2867.03
069	FG	10707551.6520	1724374.8010	2869.03
070	FG	10707547.7774	1724375.7947	2869.03
071	EG	10707540.0282	1724377.7820	2866.75
072	EG	10707571.8221	1724421.2463	2867.40
073	FG	10707564.0728	1724423.2337	2869.40
074	FG	10707560.1982	1724424.2273	2869.40
075	EG	10707552.4490	1724426.2147	2866.75
076	EG	10707584.2429	1724469.6790	2867.45
077	FG	10707576.4936	1724471.6663	2869.45
078	FG	10707572.6190	1724472.6600	2869.45
079	EG	10707564.8898	1724474.6473	2866.75
080	EG	10707596.6637	1724518.1117	2867.26
081	FG	10707588.9145	1724520.0990	2869.26
082	FG	10707585.0399	1724521.0927	2869.26
083	EG	10707577.2906	1724523.0800	2866.75
084	EG	10707609.0845	1724566.5443	2866.95
085	FG	10707601.3353	1724568.5317	2868.95
086	FG	10707597.4607	1724569.5253	2868.85
087	EG	10707589.7114	1724571.5127	2866.75
088	EG	10707621.5053	1724614.9770	2866.85
089	FG	10707613.7561	1724616.9643	2868.85
090	FG	10707609.8815	1724617.9580	2868.85
091	EG	10707602.1323	1724619.9453	2866.75

GRADE TABLE LEGEND

EG EXISTING GRADE

FG FINISH GRADE

PACKET 10.224 October 22, 2024

811 Know what's below. Call before you dig.

Description	By	Date	Rev. No.	

Drawn By	J. FERGUSON
Checked By	J. FERGUSON
Approved By	C. CRAIGO
Vert. Scale	N / A
Horz. Scale	1 : 10
Job No.	D23-02
Date	DECEMBER 2023

MIDLAND Be the Energy!

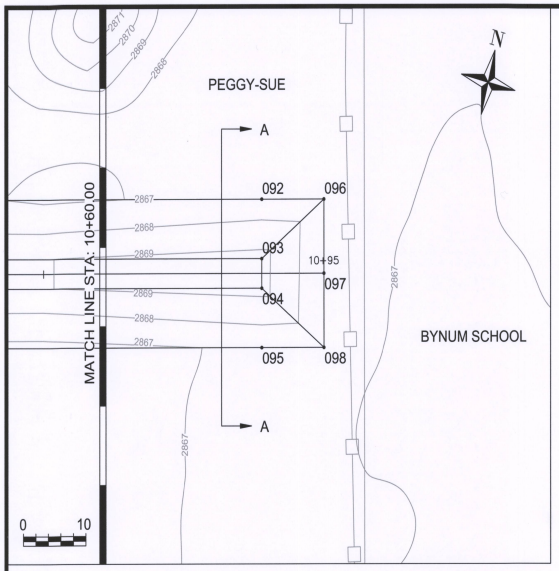
PEGGY-SUE DRAINAGE IMPROVEMENTS

GRADING PLAN
SHEET 4 OF 5

STATE OF TEXAS
FERGUSON
JOSHUA C. FERGUSON
117692
LICENSED
PROFESSIONAL ENGINEER

SHEET C-09
09 OF 11

File: P:\Engineering Services\Engineering Projects\2023\D23-02 Peggy-Sue Dmg\03 DWGS\3.1 DWG\Plans\C-09 Grading Plan.dwg Dec 22, 2023 - 10:04am jferguson



GRADING NOTES:

A. SEE SHEET C-11, PAGE 11 OF 11, FOR SECTION A-A DETAIL.

B. PROOF ROLL EXISTING SURFACE WITH MINIMUM TWENTY-FIVE (25) TON PNEUMATIC ROLLER PRIOR TO ANY EARTHWORK BEING PLACED. EXCAVATE ANY SOFT MATERIAL AND SCARIFY EXCAVATED AREA PLUS SUFFICIENT DISTANCE BEYOND TO ENSURE PROPER MIXING AND BONDING.

C. BERM EMBANKMENT MATERIAL IS TO BE NATURAL MATERIAL OR APPROVE EQUAL FREE OF ROOTS, ROCKS IN EXCESS OF THREE INCHES (3") ACROSS, DEBRIS, AND OTHER OBJECTIONABLE MATERIAL.

D. PLACE BERM EMBANKMENT MATERIAL IN 6" HORIZONTAL LIFTS AT MAXIMUM 90% COMPACTED DRY DENSITY.

E. MATCH EXISTING SURFACE GRADES AT BERM EDGES REGARDLESS OF ELEVATIONS CALLED FOR IN CONSTRUCTION DRAWING SET.

GRADE POINT TABLE

POINT	DESCRIPTION	NORTHING	EASTING	ELEVATION
092	EG	10707630.1999	1724648.8799	2867.30
093	FG	10707622.4507	1724650.8672	2869.30
094	FG	10707618.5761	1724651.8609	2869.30
095	EG	10707610.8268	1724653.8482	2867.20
096	EG	10707632.6841	1724658.5664	2867.20
097	EG	10707622.9975	1724661.0506	2867.15
098	EG	10707613.3110	1724663.5347	2867.10

GRADE TABLE LEGEND

EG EXISTING GRADE

FG FINISH GRADE

PACKET

10.225

October 22, 2024

811 Know what's below. Call before you dig.

Drawn By	J. FERGUSON				
Checked By	J. FERGUSON				
Approved By	C. CRAIGO				
Vert. Scale	N / A				
Horz. Scale	1 : 10				
Job No.	D23-02	Rev. No.	Date	By	Description
Date	DECEMBER 2023				

MIDLAND Be the Energy!

PEGGY-SUE DRAINAGE IMPROVEMENTS

GRADING PLAN
SHEET 5 OF 5

STATE OF TEXAS
JOSHUA C. FERGUSON
117692
LICENSED
PROFESSIONAL ENGINEER

SHEET C-10
10 OF 11

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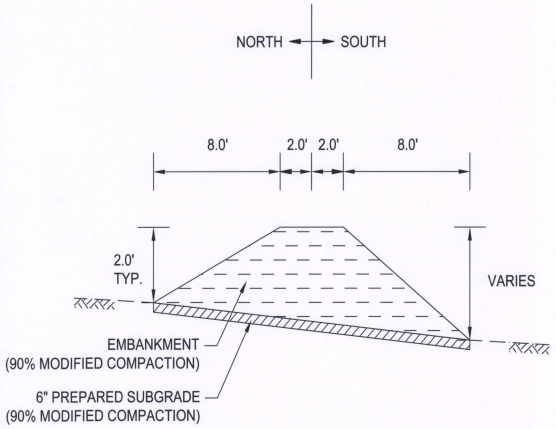
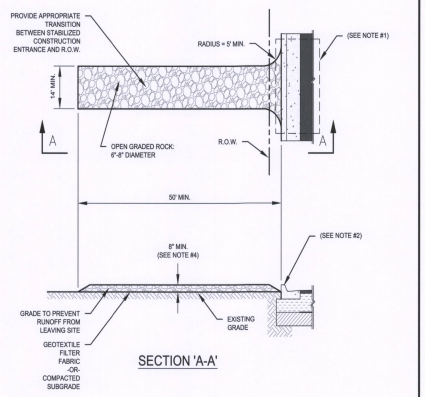


NOT TO SCALE

NOTES:

1. EARTH BERM MATERIAL TO BE NATURAL MATERIAL OR APPROVE EQUAL FREE OF ROOTS, ROCKS IN EXCESS OF 3", DEBRIS, AND OTHER OBJECTIONABLE MATERIAL.
2. EARTH BERM TO BE PLACED IN HORIZONTAL LIFTS NO THICKER THAN 6".
3. MATERIALS AND CONSTRUCTION METHODS TO CONFORM TO THIS CITY OF MIDLAND STANDARDS AND SPECIFICATIONS.
4. CONSTRUCT AS SHOWN UNLESS OTHERWISE APPROVED IN WRITING BY THE CITY ENGINEER.

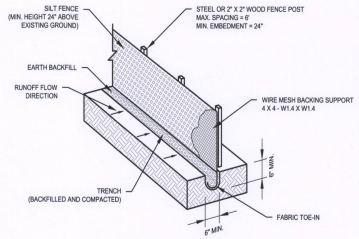


SECTION 'A-A'

NOTES:

1. IF CURB DOES NOT EXIST OR IF EXISTING CURB IS REMOVED DURING CONSTRUCTION THEN STABILIZED CONSTRUCTION ENTRANCE IS TO EXTEND TO THE EDGE OF PAVEMENT.
2. IF CURB IS LEFT IN PLACE DURING CONSTRUCTION THEN INSTALL TEMPORARY CURB PROTECTION AS PER CITY DETAIL 713.
3. LENGTH SHALL BE AS SHOWN ON THE CONSTRUCTION DRAWINGS, BUT NOT LESS THAN FIFTY (50) FEET.
4. THICKNESS OF OPEN GRADED ROCK TO BE NO LESS THAN EIGHT (8) INCHES.
5. WIDTH SHALL BE NO LESS THAN FOURTEEN (14) FEET OR THE FULL WIDTH OF ALL POINTS OF INGRESS OR EGRESS, WHICHEVER IS WIDER.
6. STABILIZED CONSTRUCTION ENTRANCE TO BE REMOVED UPON COMPLETION OF CONSTRUCTION.
7. MATERIALS AND CONSTRUCTION METHODS TO CONFORM TO CITY OF MIDLAND STANDARDS AND SPECIFICATIONS
8. CONSTRUCT AS SHOWN UNLESS OTHERWISE APPROVED IN WRITING BY THE CITY ENGINEER.

DRAWN: DPM	CHECKED: JCF	APPROVED: MCC	
MIDLAND Engineering Services	EFFECTIVE DATE: 10/01/2018	SCALE: NTS	DETAIL:
STABILIZED CONSTRUCTION ENTRANCE OPTION 1			701



NOTES:

1. THIS DETAIL IS TO BE USED FOR SHEET FLOW CONDITIONS ONLY. DO NOT USE SILT FENCE FOR POINT FLOW OR CONCENTRATED FLOW CONDITIONS.
2. INSTALL STEEL OR WOOD POSTS, WHICH SUPPORT THE SILT FENCE, WITH A SLIGHT ANGLE TOWARD THE ANTICIPATED RUNOFF SOURCE. POSTS MUST BE EMBEDDED A MINIMUM OF ONE (1) FOOT.
3. TRENCH THE TOE OF THE SILT FENCE IN WITH A SPADE OR MECHANICAL TRENCHER, SO THAT THE DOWNSLOPE FACE OF THE TRENCH IS FLAT AND PERPENDICULAR TO THE LINE OF FLOW. WHERE THE FENCE CANNOT BE TRENCHED IN (E.G.PAVEMENT), WEIGHT DOWN FABRIC FLAP WITH WASHED GRAVEL ON UPHILL SIDE TO PREVENT FLOW UNDER FENCE.
4. THE TRENCH MUST BE A MINIMUM OF SIX (6) INCHES DEEP AND SIX (6) INCHES WIDE TO ALLOW FOR THE SILT FENCE FABRIC TO BE LAID IN THE GROUND AND BACKFILLED WITH COMPACTED MATERIAL.
5. SECURELY FASTEN SILT FENCE TO EACH STEEL SUPPORT POST OR TO WOVEN WIRE, WHICH IN TURN IS TO BE ATTACHED TO THE STEEL OR WOOD FENCE POST. INCLUDE A SIX (6) INCH DOUBLE OVERLAP, SECURELY FASTENED, WHERE ENDS OF FABRIC MEET.
6. REMOVE SILT FENCE WHEN THE SITE IS COMPLETELY STABILIZED SO AS NOT TO BLOCK OR IMPEDE STORM FLOW OR DRAINAGE.
7. REMOVE ACCUMULATED SILT WHEN IT REACHES A DEPTH OF SIX (6) INCHES. DISPOSE OF THE SILT ONSITE IN AN APPROVED LOCATION AND IN SUCH A MANNER AS TO NOT CONTRIBUTE TO ADDITIONAL SILTATION.
8. MATERIALS AND CONSTRUCTION METHODS TO CONFORM TO CITY OF MIDLAND STANDARDS AND SPECIFICATIONS.
9. CONSTRUCT AS SHOWN UNLESS OTHERWISE APPROVED IN WRITING BY THE CITY ENGINEER.

DRAWN: DPM	CHECKED: JCF	APPROVED: MCC	
MIDLAND Engineering Services	EFFECTIVE DATE: 10/01/2018	SCALE: NTS	DETAIL:
SILT FENCE			706

811 Know what's below. Call before you dig.

Description	By	Date	Rev. No.

Drawn By	J. FERGUSON
Checked By	J. FERGUSON
Approved By	C. CRAIGO
Vert. Scale	N / A
Horz. Scale	N / A
Job No.	D23-02
Date	DECEMBER 2023

MIDLAND Be the Energy!

PEGGY-SUE DRAINAGE IMPROVEMENTS

DETAILS

STATE OF TEXAS JOSHUA C. FERGUSON 117692 LICENSED PROFESSIONAL ENGINEER

SHEET C-11
11 OF 11

File: P:\Engineering Services\Engineering Projects\2023\023-02 Peggy-Sue Drng\03 DWGS\3.1 DWGS\Plans\C-11 Details.dwg Dec 21, 2023 - 4:17pm jferguson

City Council Meeting

Item Number: 11

Meeting Date: October 22, 2024

To: City Council / City Manager

From: Justine Ruff, Director

Subject: **MOTION AUTHORIZING THE EXECUTION OF A 2025 ROUTINE AIRPORT MAINTENANCE PROGRAM AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION, WHICH PROVIDES FOR THE CITY OF MIDLAND'S RECEIPT OF CERTAIN GRANT FUNDING TO BE UTILIZED ON CERTAIN AIRSIDE AND LANDSIDE IMPROVEMENTS AND GENERAL MAINTENANCE COSTS AT MIDLAND AIRPARK AIRPORT; APPROPRIATING $100,000.00 FROM THE AIRPORT OPERATING FUND (500500) CURRENT YEAR FEDERAL UNAPPROPRIATED FUND BALANCE TO A PROJECT ESTABLISHED BY THE CITY OF MIDLAND FINANCE DEPARTMENT; AND APPROPRIATING $11,111.11 FROM THE AIRPORT OPERATING FUND (500500) UNAPPROPRIATED FUND BALANCE TO A PROJECT ESTABLISHED BY THE CITY OF MIDLAND FINANCE DEPARTMENT (DISTRICT 1) (AIRPORTS) (TRANSPARENT & CONSISTENT COMMUNICATION)**

Purpose:
Motion authorizing the execution of a 2025 Routine Maintenance Program (RAMP) Agreement between the City of Midland, Texas and Texas Department of Transportation (TxDOT).

Recommended City Council Action:

Approve

Strategic Priority:

(Transparent & Consistent Communication)

Fiscal Impact:

$11,111.11 - Airport Funds
$100,000.00 - TxDOT RAMP Funds

Appropriations Language:
That the sum of $100,000.00 is hereby appropriated from the Airport Operating Fund (500500) Current Year Federal Unappropriated Fund Balance and transferred to a project for stated purpose.

That the sum of $11,111.11 is hereby appropriated from the Airport Operating Fund (500500) Unappropriated Fund Balance and transferred to a project for stated purpose.

Discussion:

The RAMP Grant, in the amount of $111,111.11, can be used on “lower cost” airside and landside improvements. In the past, the Department of Airports has used the Grant for the cost of the AWOS (Automated Weather Observing System) maintenance at Midland Airpark and grubbing the airfield. The RAMP Grant can also be used for various general maintenance items at Airpark including pavement crack sealing, pavement markings, drainage maintenance, mesquite tree eradication, repair and maintenance of Airport lighting, etc. at a 90/10 match for TxDOT and the Department of Airports. Work shall be accomplished by August 31, 2025, unless otherwise approved by the State.

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City Manager’s Office

TEXAS DEPARTMENT OF TRANSPORTATION
GRANT FOR ROUTINE AIRPORT MAINTENANCE PROGRAM

(State Assisted Airport Routine Maintenance)

TxDOT Project ID: M2506MDLN

Part I - Identification of the Project

TO: The City of Midland, Texas

FROM: The State of Texas, acting through the Texas Department of Transportation

This Grant is made between the Texas Department of Transportation, (hereinafter referred to as the "State"), on behalf of the State of Texas, and the City of Midland, Texas, (hereinafter referred to as the "Sponsor").

This Grant Agreement is entered into between the State and Sponsor shown above, under the authority granted and in compliance with the provisions of the Transportation Code Chapter 21.

The project is for **airport maintenance** at the MIDLAND - MIDLAND AIRPARK Airport.

Part II - Offer of Financial Assistance

1. For the purposes of this Grant, the annual routine maintenance project cost, Amount A, is estimated as found on Attachment A, Scope of Services, attached hereto and made a part of this grant agreement.

   State financial assistance granted will be used solely and exclusively for airport maintenance and other incidental items as approved by the State. Actual work to be performed under this agreement is found on Attachment A, Scope of Services. State financial assistance, Amount B, will be for ninety percent (90%) of the eligible project costs for this project or $100,000.00, whichever is less, per fiscal year and subject to availability of state appropriations.

   Scope of Services, Attachment A, of this Grant, may be amended, subject to availability of state funds, to include additional approved airport maintenance work. Scope amendments require submittal of an Amended Scope of Services, Attachment A.

   Services will not be accomplished by the State until receipt of Sponsor's share of project costs.

   Only work items as described in Attachment A, Scope of Services of this Grant are reimbursable under this grant.

   Work shall be accomplished by August 31, 2025, unless otherwise approved by the State.

2. The State shall determine fair and eligible project costs for work scope. Sponsor's share of estimated project costs, Amount C, shall be as found on Attachment A and any amendments.

It is mutually understood and agreed that if, during the term of this agreement, the State determines that there is an overrun in the estimated annual routine maintenance costs, the State may increase the grant to cover the amount of the overrun within the above stated percentages and subject to the maximum amount of state funding.

The State will not authorize expenditures in excess of the dollar amounts identified in this Agreement and any amendments, without the consent of the Sponsor.

3. Sponsor, by accepting this Grant certifies and, upon request, shall furnish proof to the State that it has sufficient funds to meet its share of the costs. The Sponsor grants to the State the right to audit any books and records of the Sponsor to verify expended funds.

Upon execution of this Agreement and written demand by the State, the Sponsor's financial obligation (Amount C) shall be due in cash and payable in full to the State. State may request the Sponsor's financial obligation in partial payments. Should the Sponsor fail to pay their obligation, either in whole or in part, within 30 days of written demand, the State may exercise its rights under Paragraph V-3. Likewise, should the State be unwilling or unable to pay its obligation in a timely manner, the failure to pay shall be considered a breach and the Sponsor may exercise any rights and remedies it has at law or equity.

The State shall reimburse or credit the Sponsor, at the financial closure of the project, any excess funds provided by the Sponsor which exceed Sponsor's share (Amount C).

4. The Sponsor specifically agrees that it shall pay any project costs which exceed the amount of financial participation agreed to by the State. It is further agreed that the Sponsor will reimburse the State for any payment or payments made by the State which are in excess of the percentage of financial assistance (Amount B) as stated in Paragraph II-1.

5. Scope of Services may be accomplished by State contracts or through local contracts of the Sponsor as determined appropriate by the State. All locally contracted work must be approved by the State for scope and reasonable cost. Reimbursement requests for locally contracted work shall be submitted on forms provided by the State and shall include copies of the invoices for materials or services. Payment shall be made for no more than 90% of allowable charges.

The State will not participate in funding for force account work conducted by the Sponsor.

6. This Grant shall terminate upon completion of the scope of services.

Part III - Additional Requirements for Certain Equipment

1. Certain purchase, installation, and subscription costs for eligible air traffic and operations monitoring equipment ("Equipment") are reimbursable as provided in this Part. If Grantee is seeking reimbursement for eligible Equipment costs, it must be shown in Attachment A.

2. For eligible Equipment, the State will reimburse 90% of the initial cost to purchase and install, not to exceed $3,000.00, and 90% of the annual subscription fee for subsequent years, not to exceed $3,000.00 per year.

3. Notwithstanding Section 2, for the one year prior to a master plan or airport layout plan update, TxDOT will reimburse up to 90% of the eligible costs, not to exceed $5,400.00.

4. Eligibility Requirements

   A. The Equipment must include the following items, at a minimum;

      1. Triangulation

      2. Noise abatement

      3. Aircraft tracking data for 30 days

      4. Identification of pavement utilization by airplane design group for the entire airport

      5. Equal effectiveness at both towered and non-towered airports

      6. Tracking of military and government aircraft, including FAA blocked aircraft

   B. In order for costs to be eligible for RAMP reimbursement:

      1. The Sponsor must maintain and operate the Equipment for 3 years.

      2. On at least a quarterly basis, the Sponsor must provide to the State all data produced and collected by the Equipment.

      3. To be eligible for reimbursement of the annual subscription fee after the first year, the Sponsor must participate in the Routine Airport Maintenance Program, have an executed Grant Agreement for that year, and comply with all grant requirements.

C. The State may conduct on-site or off-site monitoring reviews of the Equipment during the initial required 3-year term, and during any years Sponsor seeks reimbursement of subscription costs. The Sponsor shall fully cooperate with the State and provide any required documentation. The Sponsor shall grant full access to the Equipment to the State or its authorized designee for the purpose of determining compliance, including, but not limited to:

1. Whether the Equipment, and its operation and maintenance, are consistent with the requirements set forth in the Grant Agreement and this First Amendment;

2. Whether the Sponsor is making timely progress with installation of the Equipment, and whether its management, financial management and control systems, procurement systems and methods, and overall performance are in conformance with the requirements set forth in the Grant Agreement and this First Amendment, and are fully and accurately reflected in reports submitted to the State.

D. Failure to maintain compliance with these requirements may result in the Sponsor having to repay grant funds to the State.

Part IV - Sponsor Responsibilities

1. In accepting this Grant, if applicable, the Sponsor guarantees that:

a. it will, in the operation of the facility, comply with all applicable state and federal laws, rules, regulations, procedures, covenants and assurances required by the State in connection with this Grant; and

b. the Airport or navigational facility which is the subject of this Grant shall be controlled by the Sponsor for a period of at least 20 years; and

c. consistent with safety and security requirements, it shall make the airport or air navigational facility available to all types, kinds and classes of aeronautical use without discrimination between such types, kinds and classes and shall provide adequate public access during the period of this Grant; and

d. it shall not grant or permit anyone to exercise an exclusive right for the conduct of aeronautical activity on or about an airport landing area. Aeronautical activities include, but are not limited to scheduled airline flights, charter flights, flight instruction, aircraft sales, rental and repair, sale of aviation petroleum products and aerial applications. The landing area consists of runways or landing strips, taxiways, parking aprons, roads, airport lighting and navigational aids; and

e. through the fence access shall be reviewed and approved by the State; and

f. it shall not permit non-aeronautical use of airport facilities, unless noted on an approved Airport Layout Plan, without prior approval of the State/FAA. This includes but is not limited to: the process of land disposal, any changes to the aeronautical or non-aeronautical land uses of the airport, land's deeded use from non-aeronautical to aeronautical, requests of concurrent use of land, interim use of land, approval of a release from obligations from the State/FAA, any of which will require 18 months, or longer; and

g. the Sponsor shall submit to the State annual statements of airport revenues and expenses when requested; and

h. all fees collected for the use of the airport shall be reasonable and nondiscriminatory. The proceeds from such fees shall be used solely for the development, operation and maintenance of the airport or navigational facility; and

i. an Airport Fund shall be established by resolution, order or ordinance in the treasury of the Sponsor, or evidence of the prior creation of an existing airport fund or a properly executed copy of the resolution, order, or ordinance creating such a fund, shall be submitted to the State. The fund may be an account as part of another fund, but must be accounted for in such a manner that all revenues, expenses, retained earnings, and balances in the account are discernible from other types of moneys identified in the fund as a whole. All fees, charges, rents, and money from any source derived from airport operations must be deposited in the Airport Fund and shall not be diverted to the general revenue fund or another revenue fund of the Sponsor. All expenditures from the Airport Fund shall be solely for airport purposes. Sponsor shall be ineligible for a subsequent grant or loan by the State unless, prior to such subsequent grant or loan, Sponsor has complied with the requirements of this subparagraph; and

j. the Sponsor shall operate runway lighting at least at low intensity from sunset to sunrise; and

k. insofar as it is reasonable and within its power, Sponsor shall adopt and enforce zoning regulations to restrict the height of structures and use of land adjacent to or in the immediate vicinity of the airport to heights and activities compatible with normal airport operations as provided in Tex. Loc. Govt. Code Ann. Sections 241.001 et seq. (Vernon and Vernon Supp.). Sponsor shall also acquire and retain aviation easements or other property interests in or rights to use of land or airspace, unless sponsor can show that acquisition and retention of such interest will be impractical or will result in undue hardship to Sponsor. Sponsor shall be ineligible for a subsequent grant or loan by the State unless Sponsor has, prior to subsequent approval of a grant or loan, adopted and passed an airport hazard zoning ordinance or order approved by the State.

l. mowing services will not be eligible for state financial assistance. Sponsor will be responsible for 100% of any mowing services.

2. The Sponsor, to the extent of its legal authority to do so, shall save harmless the State, the State's agents, employees or contractors from all claims and liability due to activities of the Sponsor, the Sponsor's agents or employees performed under this agreement. The Sponsor, to the extent of its legal authority to do so, shall also save harmless the State, the State's agents, employees or contractors from any and all expenses, including attorney fees which might be incurred by the State in litigation or otherwise resisting claim or liabilities which might be imposed on the State as the result of those activities by the Sponsor, the Sponsor's agents or employees.

3. The Sponsor's acceptance of this Offer and ratification and adoption of this Grant shall be evidenced by execution of this Grant by the Sponsor. The Grant shall comprise a contract, constituting the obligations and rights of the State of Texas and the Sponsor with respect to the accomplishment of the project and the operation and maintenance of the airport.

   If it becomes unreasonable or impractical to complete the project, the State may void this agreement and release the Sponsor from any further obligation of project costs.

4. Upon entering into this Grant, Sponsor agrees to name an individual, as the Sponsor's Authorized Representative, who shall be the State's contact with regard to this project. The Representative shall receive all correspondence and documents associated with this grant and shall make or shall acquire approvals and disapprovals for this grant as required on behalf of the Sponsor, and coordinate schedule for work items as required.

5. By the acceptance of grant funds for the maintenance of eligible airport buildings, the Sponsor certifies that the buildings are owned by the Sponsor. The buildings may be leased but if the lease agreement specifies that the lessee is responsible for the upkeep and repairs of the building no state funds shall be used for that purpose.

6. Sponsor shall request reimbursement of eligible project costs on forms provided by the State. All reimbursement requests are required to include a copy of the invoices for the materials or services. The reimbursement request will be submitted no more than once a month.

7. The Sponsor's acceptance of this Agreement shall comprise a Grant Agreement, as provided by the Transportation Code, Chapter 21, constituting the contractual obligations and rights of the State of Texas and the Sponsor with respect to the accomplishment of the airport maintenance and compliance with the assurances and conditions as provided. Such Grant Agreement shall become effective upon the State's written Notice to Proceed issued following execution of this agreement.

PART V - Nomination of the Agent

1. The Sponsor designates the State as the party to receive and disburse all funds used, or to be used, in payment of the costs of the project, or in reimbursement to either of the parties for costs incurred.

2. The State shall, for all purposes in connection with the project identified above, be the Agent of the Sponsor. The Sponsor grants the State a power of attorney to act as its agent to perform the following services:

a. accept, receive, and deposit with the State any and all project funds granted, allowed, and paid or made available by the Sponsor, the State of Texas, or any other entity;

b. enter into contracts as necessary for execution of scope of services;

c. if State enters into a contract as Agent: exercise supervision and direction of the project work as the State reasonably finds appropriate. Where there is an irreconcilable conflict or difference of opinion, judgment, order or direction between the State and the Sponsor or any service provider, the State shall issue a written order which shall prevail and be controlling;

d. receive, review, approve and pay invoices and payment requests for services and materials supplied in accordance with the State approved contracts;

e. obtain an audit as may be required by state regulations; the State Auditor may conduct an audit or investigation of any entity receiving funds from TxDOT directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

f. reimburse sponsor for approved contract maintenance costs no more than once a month.

PART VI - Recitals

1. This Grant is executed for the sole benefit of the contracting parties and is not intended or executed for the direct or incidental benefit of any third party.

2. It is the intent of this grant to not supplant local funds normally utilized for airport maintenance, and that any state financial assistance offered under this grant be in addition to those local funds normally dedicated for airport maintenance.

3. This Grant is subject to the applicable provisions of the Transportation Code, Chapters 21 and 22, and the Airport Zoning Act, Tex. Loc. Govt. Code Ann. Sections 241.001 et seq. (Vernon and Vernon Supp.). Failure to comply with the terms of this Grant or with the rules and statutes shall be considered a breach of this contract and will allow the State to pursue the remedies for breach as stated below.

a. Of primary importance to the State is compliance with the terms and conditions of this Grant. If, however, after all reasonable attempts to require compliance have failed, the State finds that the Sponsor is unwilling and/or unable to comply with any of the terms of this Grant, the State, may pursue any of the following remedies: (1) require a refund of any financial assistance money expended pursuant to this Grant, (2) deny Sponsor's future requests for aid, (3) request the Attorney General to bring suit seeking reimbursement of any financial assistance money expended on the project pursuant to this Grant, provided however, these remedies shall not limit the State's authority to enforce its rules, regulations or orders as otherwise provided by law, (4) declare this Grant null and void, or (5) any other remedy available at law or in equity.

b. Venue for resolution by a court of competent jurisdiction of any dispute arising under the terms of this Grant, or for enforcement of any of the provisions of this Grant, is specifically set by Grant of the parties in Travis County, Texas.

4. The State reserves the right to amend or withdraw this Grant at any time prior to acceptance by the Sponsor. The acceptance period cannot be greater than 30 days after issuance unless extended by the State.

5. This Grant constitutes the full and total understanding of the parties concerning their rights and responsibilities in regard to this project and shall not be modified, amended, rescinded or revoked unless such modification, amendment, rescission or revocation is agreed to by both parties in writing and executed by both parties.

6. All commitments by the Sponsor and the State are subject to constitutional and statutory limitations and restrictions binding upon the Sponsor and the State (including Sections 5 and 7 of Article 11 of the Texas Constitution, if applicable) and to the availability of funds which lawfully may be applied.

Part VII - Acceptances

Sponsor

The City of Midland, Texas, does ratify and adopt all statements, representations, warranties, covenants, agreements, and all terms and conditions of this Grant.

Executed this _____ day of _____, 20___.

The City of Midland, Texas

Sponsor

Sponsor Signature

Sponsor Title

Acceptance of the State

Executed by and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs and grants heretofore approved and authorized by the Texas Transportation Commission.

STATE OF TEXAS
TEXAS DEPARTMENT OF TRANSPORTATION

By: _____

Date: _____

Attachment A

Scope of Services
TxDOT Project ID: M2506MDLN

Eligible Scope Item:	Estimated Costs Amount A	State Share Amount B	Sponsor Share Amount C
GENERAL MAINTENANCE	$111,111.11	$100,000.00	$11,111.11
TOTAL	$111,111.11	$100,000.00	$11,111.11

Accepted by: The City of Midland, Texas

Signature

Title:

Date:

GENERAL MAINTENANCE: As needed, Sponsor may contract for services/purchase materials for routine maintenance/improvement of airport pavements, signage, drainage, AWOS systems, approach aids, lighting systems, utility infrastructure, fencing, herbicide/application, sponsor owned and operated fuel systems, hangars, terminal buildings and security systems; professional services for environmental compliance, approved project design. Special projects to be determined and added by amendment.

Airport Operations Counting Systems: The purchase and installation of specified air traffic and operations monitoring equipment ("Equipment") is eligible for reimbursement as provided in Part III

Only work items as described in Attachment A, Scope of Services of this Grant are reimbursable under this grant.

CERTIFICATION OF AIRPORT FUND

TxDOT Project ID: M2506MDLN

The City of Midland does certify that an Airport Fund has been established for the Sponsor, and that all fees, charges, rents, and money from any source derived from airport operations will be deposited for the benefit of the Airport Fund and will not be diverted for other general revenue fund expenditures or any other special fund of the Sponsor and that all expenditures from the Fund will be solely for airport purposes. The fund may be an account as part of another fund, but must be accounted for in such a manner that all revenues, expenses, retained earnings, and balances in the account are discernible from other types of moneys identified in the fund as a whole.

The City of Midland, Texas
(Sponsor)

By: _____

Title: _____

Date: _____

Certification of State Single Audit Requirements

I, _____ do certify that the City of Midland will comply with all requirements of the State
(Designated Representative)
of Texas Single Audit Act if the City of Midland spends or receives more than the threshold amount in any grant funding sources during the most recently audited fiscal year. And in following those requirements, the City of Midland will submit the report to the audit division of the Texas Department of Transportation. If your entity did not meet the threshold in grant receivables or expenditures, please submit a letter indicating that your entity is not required to have a State Single Audit performed for the most recent audited fiscal year.

_____
Signature

_____
Title

_____
Date

DESIGNATION OF SPONSOR'S AUTHORIZED REPRESENTATIVE

TxDOT Project ID: M2506MDLN

The City of Midland ,
designates,

(Name, Title)

as the Sponsor's authorized representative, who shall receive all correspondence and documents associated with this grant and who shall make or shall acquire approvals and disapprovals for this grant as required on behalf of the Sponsor.

The City of Midland, Texas
(Sponsor)

By: _____

Title: _____

Date: _____

DESIGNATED REPRESENTATIVE

Mailing Address: _____

_____

_____

Overnight Mailing Address: _____

_____

_____

Telephone/Fax Number: _____

_____

Email address: _____

City Council Meeting

Item Number: 12

Meeting Date: October 22, 2024

To: City Council / City Manager

From: Sara Harris,

Subject: MOTION APPROVING A PROMOTIONAL AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND MIDLAND HISPANIC CHAMBER OF COMMERCE, INC., TO ADVERTISE OR PUBLICIZE THE CITY OF MIDLAND FOR THE PURPOSE OF DEVELOPING NEW AND EXPANDED BUSINESS ENTERPRISES (DISTRICT: ALL) (CITY MANAGER) (STRONG ECONOMY WITH MORE QUALITY JOBS)

Purpose:

The Board of Directors of the Midland Development Corporation approved at a regular meeting on October 7, 2024 a resolution authorizing the execution of a promotional agreement with Midland Hispanic Chamber of Commerce, Inc., to advertise or publicize the City of Midland for the purpose of developing new and expanded business enterprises.

Recommended City Council Action:

Approve

Fiscal Impact:

$12,000.00

Strategic Priority:

(Strong Economy with More Quality Jobs)

Discussion:

The Midland Hispanic Chamber of Commerce will utilize the funds provided under the terms of the agreement for a micro grant program, granting $1,000.00 each month to a different Midland entrepreneur to grow and improve their businesses. The agreement is for one year

and $12,000.00 total from the MDC.

Morris Williams Jr.

City Manager's Office

City Council Meeting

Item Number: 13

Meeting Date: October 22, 2024

To: City Council / City Manager

From: Sara Harris,

Subject: MOTION APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION AND MOTRAN ALLIANCE, INC. (DISTRICT: ALL) (CITY MANAGER) (STRONG ECONOMY WITH MORE QUALITY JOBS)

Purpose:

The Board of Directors of the Midland Development Corporation approved at a regular meeting on October 7, 2024 a resolution authorizing the execution of an economic development agreement with MOTRAN Alliance, Inc.

Recommended City Council Action:

Approve

Fiscal Impact:

$142,500.00

Strategic Priority:

(Strong Economy with More Quality Jobs)

Discussion:

Commits $142,500.00 to MOTRAN for fiscal year 2025 to secure additional infrastructure funding for the area and aggressively pursue the development and improvement of transportation corridors connecting Midland with domestic and international markets. The 2025 amount is the same as the 2024 request. The MDC has been supporting MOTRAN financially since 2010.

City Manager's Office

City Council Meeting

Item Number: 14

Meeting Date: October 22, 2024

To: City Council / City Manager

From: Garrick Clayton, Oil and Gas Coordinator

Subject: **RESOLUTION APPROVING THE ISSUANCE OF PERMITS TO COG OPERATING, LLC ("OPERATOR") TO DRILL TEN OIL AND GAS WELLS LOCATED IN SECTION 11, BLOCK X, H.P. HILLIARD SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 1,630 FEET AND 1,810 FEET EAST OF NORTH A STREET AND 5,040 FEET NORTH OF MOCKINGBIRD LANE); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT (DISTRICT 1) (DEVELOPMENT SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)**

Purpose:

Resolution approving the issuance of permits to COG Operating, LLC ("Operator") for the drilling of the following oil and gas wells: MCC HZ UNIT #1106BH; MCC HZ UNIT #1106JH; MCC HZ UNIT #1107AH; MCC HZ UNIT #1107LH; MCC HZ UNIT #1107MH; MCC HZ UNIT #1108BH; MCC HZ UNIT #1109AH; MCC HZ UNIT #1109JH; MCC HZ UNIT #1109LH; and MCC HZ UNIT #1111MH; said wells being generally located between 1,630 feet and 1,810 feet east of north a street extension and 5,040 feet north of mockingbird lane. The required 30-day public comment has passed, and the Council may consider this request. No notices of objection received.

Recommended City Council Action:

Approve

Fiscal Impact:

There is no cost to the City to process this application.

Strategic Priority:

(Set the Standard for a Safe and Secure City)

Discussion:

The Oil and Gas Advisory Committee has reviewed the well sites in detail and recommends approval with consideration of a fourth, North facing sound barrier and an additional exhibit. COG Operating will be using 24 ft. tall sound walls on 3 of 4 sides of the location during drilling and fracing. In addition, a quiet type frac system that will utilize an electric frac fleet, with power generation equipment that will be staged on pad behind sound barriers. A closed loop system will be used for drilling operations so no reserve pits or cuttings will be kept on the property and the Tank Battery for these wells will be located in the county. COG Operating is requesting the following variances:

(1) requests to allow for twenty-four-hour fracing operations.
(2) requests variance to the Road Repair Agreement due to no city streets will be used.
(3) request a variance to the landscaping and irrigation due to no access to city water and the land is undeveloped.
(4) requests variance to remove drill cuttings from the location.

Attachments: Applications; Location maps; Exhibit - Drill site map, Exhibit – Flow Line Location.

City Manager's Office

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF PERMITS TO COG OPERATING, LLC ("OPERATOR") TO DRILL TEN OIL AND GAS WELLS LOCATED IN SECTION 11, BLOCK X, H.P. HILLIARD SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 1,630 FEET AND 1,810 FEET EAST OF NORTH A STREET AND 5,040 FEET NORTH OF MOCKINGBIRD LANE); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, "Police Regulations," Chapter 1, "General Offenses," of the City Code of Midland, Texas, so as to establish Section 23, "Oil and Gas Well Permits issued on or after January 1, 2010," which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted applications to the City of Midland to drill oil and gas wells on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance

with Section 6-1-23(H)(1) and a public hearing was held on September 10, 2024; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's applications to drill oil and gas wells on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny permits to Operator to drill oil and gas wells on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of permits to Operator to drill oil and gas wells on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute permits, on behalf of the City of Midland, that will allow Operator to drill the following oil and gas wells:

> MCC HZ UNIT #1106BH; MCC HZ UNIT #1106JH; MCC HZ UNIT #1107AH; MCC HZ UNIT #1107LH; MCC HZ UNIT #1107MH; MCC HZ UNIT #1108BH; MCC HZ UNIT #1109AH; MCC HZ UNIT #1109JH; MCC HZ UNIT #1109LH; and MCC HZ UNIT #1111MH;

located in Section 11, Block X, H.P. Hilliard Survey, City of Midland, Midland County, Texas. Said permits shall be in forms substantially similar to those attached hereto as Exhibits "A" through "J" and incorporated herein for all legal purposes.

SECTION THREE. That the requirement of a Road Repair Agreement between Operator and the City of Midland is hereby waived in regard to said permits.

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., 2024, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

_____
Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC, ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1106BH oil and gas well shall be 280 feet from the north line and 1,810 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey, County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. No road repair agreement is required because no City streets will be used to access the well site.
3. No landscaping or irrigation is required.
4. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "B"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1106JH oil and gas well shall be 280 feet from the north line and 1,790 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey, City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. No road repair agreement is required because no City streets will be used to access the well site.
3. No landscaping or irrigation is required.
4. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "C"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1107AH oil and gas well shall be 280 feet from the north line and 1,730 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey, City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. No road repair agreement is required because no City streets will be used to access the well site.
3. No landscaping or irrigation is required.
4. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "D"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1107LH oil and gas well shall be 280 feet from the north line and 1,770 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey, City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

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The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

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OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

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Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

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This permit shall constitute a written contract for purposes of insurance requirements.

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GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "E"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1107MH oil and gas well shall be 280 feet from the north line and 1,750 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey, City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. No road repair agreement is required because no City streets will be used to access the well site.
3. No landscaping or irrigation is required.
4. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "F"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1108BH oil and gas well shall be 280 feet from the north line and 1,710 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey, City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. No road repair agreement is required because no City streets will be used to access the well site.
3. No landscaping or irrigation is required.
4. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "G"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1109AH oil and gas well shall be 280 feet from the north line and 1,650 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey, City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. No road repair agreement is required because no City streets will be used to access the well site.
3. No landscaping or irrigation is required.
4. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "H"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1109JH oil and gas well shall be 280 feet from the north line and 1,670 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey, City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. No road repair agreement is required because no City streets will be used to access the well site.
3. No landscaping or irrigation is required.
4. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "I"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1109LH oil and gas well shall be 280 feet from the north line and 1,690 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey**,** City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. No road repair agreement is required because no City streets will be used to access the well site.
3. No landscaping or irrigation is required.
4. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "J"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1111MH oil and gas well shall be 280 feet from the north line and 1,630 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey**,** City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. No road repair agreement is required because no City streets will be used to access the well site.
3. No landscaping or irrigation is required.
4. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "A"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC, ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1106BH oil and gas well shall be 280 feet from the north line and 1,810 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey, County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. No road repair agreement is required because no City streets will be used to access the well site.
3. No landscaping or irrigation is required.
4. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "B"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1106JH oil and gas well shall be 280 feet from the north line and 1,790 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey, City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. No road repair agreement is required because no City streets will be used to access the well site.
3. No landscaping or irrigation is required.
4. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "C"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1107AH oil and gas well shall be 280 feet from the north line and 1,730 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey, City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. No road repair agreement is required because no City streets will be used to access the well site.
3. No landscaping or irrigation is required.
4. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "D"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1107LH oil and gas well shall be 280 feet from the north line and 1,770 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey, City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. No road repair agreement is required because no City streets will be used to access the well site.
3. No landscaping or irrigation is required.
4. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "E"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1107MH oil and gas well shall be 280 feet from the north line and 1,750 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey, City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. No road repair agreement is required because no City streets will be used to access the well site.
3. No landscaping or irrigation is required.
4. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "F"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1108BH oil and gas well shall be 280 feet from the north line and 1,710 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey, City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. No road repair agreement is required because no City streets will be used to access the well site.
3. No landscaping or irrigation is required.
4. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "G"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1109AH oil and gas well shall be 280 feet from the north line and 1,650 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey, City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. No road repair agreement is required because no City streets will be used to access the well site.
3. No landscaping or irrigation is required.
4. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "H"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1109JH oil and gas well shall be 280 feet from the north line and 1,670 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey, City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. No road repair agreement is required because no City streets will be used to access the well site.
3. No landscaping or irrigation is required.
4. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "I"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1109LH oil and gas well shall be 280 feet from the north line and 1,690 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey**,** City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. No road repair agreement is required because no City streets will be used to access the well site.
3. No landscaping or irrigation is required.
4. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "J"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1111MH oil and gas well shall be 280 feet from the north line and 1,630 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey**,** City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

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2. No road repair agreement is required because no City streets will be used to access the well site.
3. No landscaping or irrigation is required.
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Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

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GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

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
6/3/2024	COG Operating LLC	600 W. Illinois Ave. Midland, TX 79701

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432) 685-4339
Rebecca L. Morris, Land Manager, Midland Basin	600 W. Illinois Ave. Midland, TX 79701	Rep. Fax
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 A:

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B:
Matt Wilson
600 W. Illinois Ave.
Midland, TX 79701
Office: (432) 253-4554
Cell: (432) 472-6978

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):***

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):
Matt Wilson, Midland Basin North Operations Manager for ConocoPhillips, Cell: (432) 472-6978
ConocoPhillips Global Security **– 24 Hour Emergency Hotline**: (281) 293-1748
ConocoPhillips Corporate Crisis **24 Hour Hotline**: (281) 293-3333
Midland Police Department: 911 or 432-685-7110
Midland Fire Department: 911
Ambulance: 911
Paramedics: 911

Other Permitted Wells in City ***(ATTACH 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 Title Opinion by~~ , ~~a licensed Texas Attorney/Title Commitment by Abstract Company/~~*a Take-off from* **Caroline Hoban** *, a Certified Petroleum Landman/~~an opinion letter from~~* , ~~a licensed Texas Attorney)~~ indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].**

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

Surface use: Open Pasture

Surface Ownership: See Exhibit "D"

ATTACHED AS EXHIBIT D **is (~~a Title Opinion by~~ , ~~a licensed Texas Attorney/a Take-off from~~ , ~~a Certified Petroleum Landman/~~*Current Tax Roll from Midland Central Appraisal District)* and 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: MCC HZ UNIT #1106BH

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:

Surface Hole Location: 280' FNL & 1810' FWL, Section 11, Block X, H.P. Hilliard 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 ~~**is the Road Repair Agreement**~~ **and** ***Letter of Credit/Certificate of Deposit/Surety Bond*** **in the amount of at least $25,000.** ***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 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 Electric

Description of water source to be used during Drilling:

Water source will be from off-site water wells or trucked if necessary.

Description of all electric lines to production facilities (reference exhibits as necessary)

ATTACHED AS EXHIBIT "N" **[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 *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].**

***ATTACHED AS EXHIBIT Q* are 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 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 Summary List of Variances**

***ATTACHED AS EXHIBIT W* is Acoustic Impact Study/Mitigation Plan**

CERTIFICATION OF APPLICATION

I, Rebecca L. Morris, Attorney-in-Fact of COG Operating LLC, hereby certify that the information contained in this application is true and correct to the best of my knowledge.

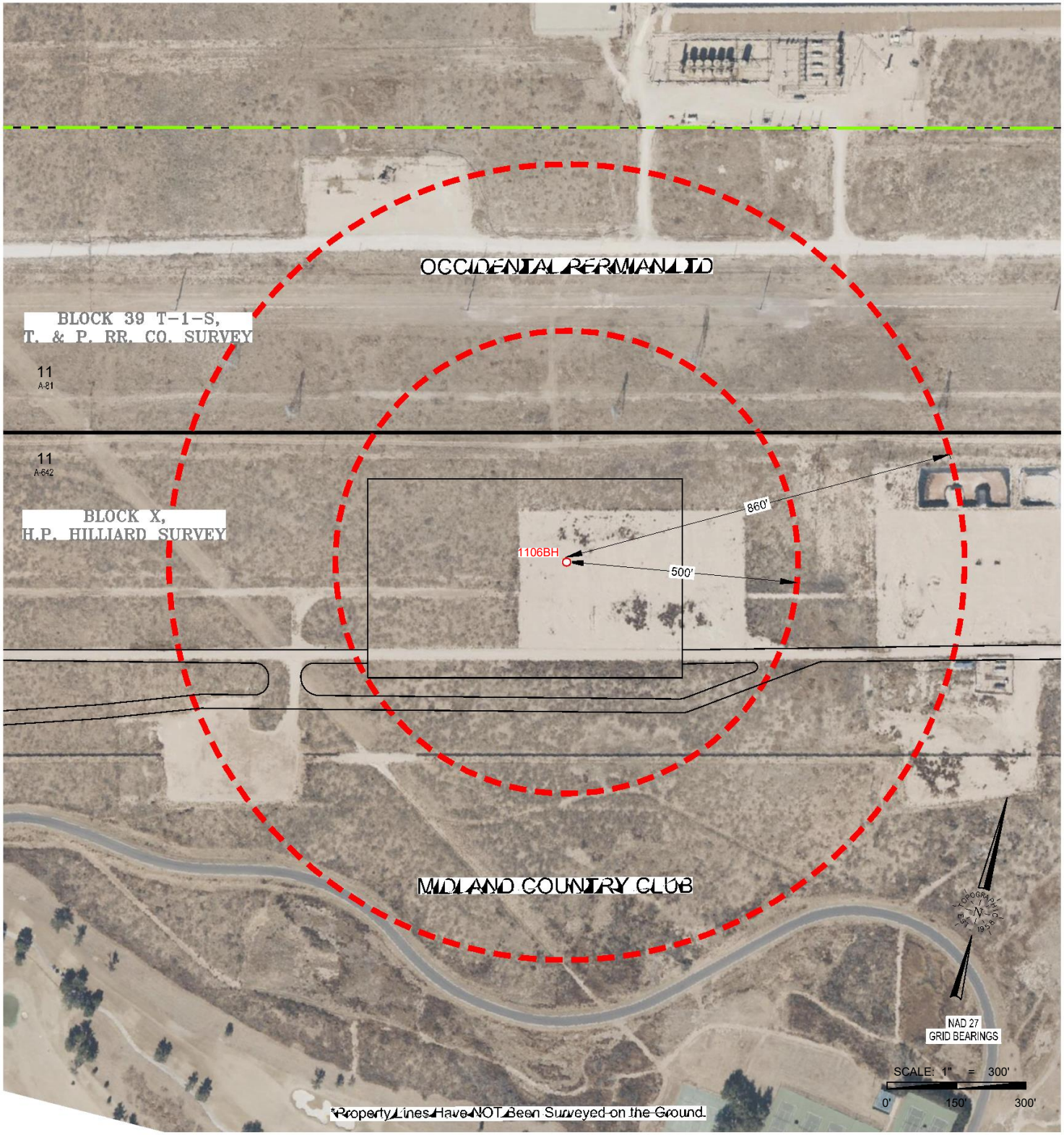
Rebecca L. Morris
Attorney-in-Fact
COG Operating LLC

STATE OF TEXAS §
COUNTY OF MIDLAND §

This instrument was acknowledged before me on this 27th day of June, 2024, by Rebecca L. Morris, Attorney-in-Fact of COG Operating LLC, a Delaware limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

JAMI HATFIELD
Notary Public, State of Texas
Comm. Expires 05-09-2026
Notary ID 131561095



TOPOGRAPHIC
LOYALTY INNOVATION LEGACY
2903 NORTH BIG SPRING • MIDLAND, TEXAS 79705
TELEPHONE: (432) 682-1653 OR (800) 767-1653 • FAX (432) 682-1743
TEXAS FIRM REGISTRATION NO. 10042500
WWW.TOPOGRAPHIC.COM

CD_MCC_HZ_UNIT_1106BH_RADIUS_REV2

CONCHO
OPERATOR: COG OPERATING LLC

MCC HZ UNIT 1106BH RADIUS MAP

LOCATION DESCRIPTION:

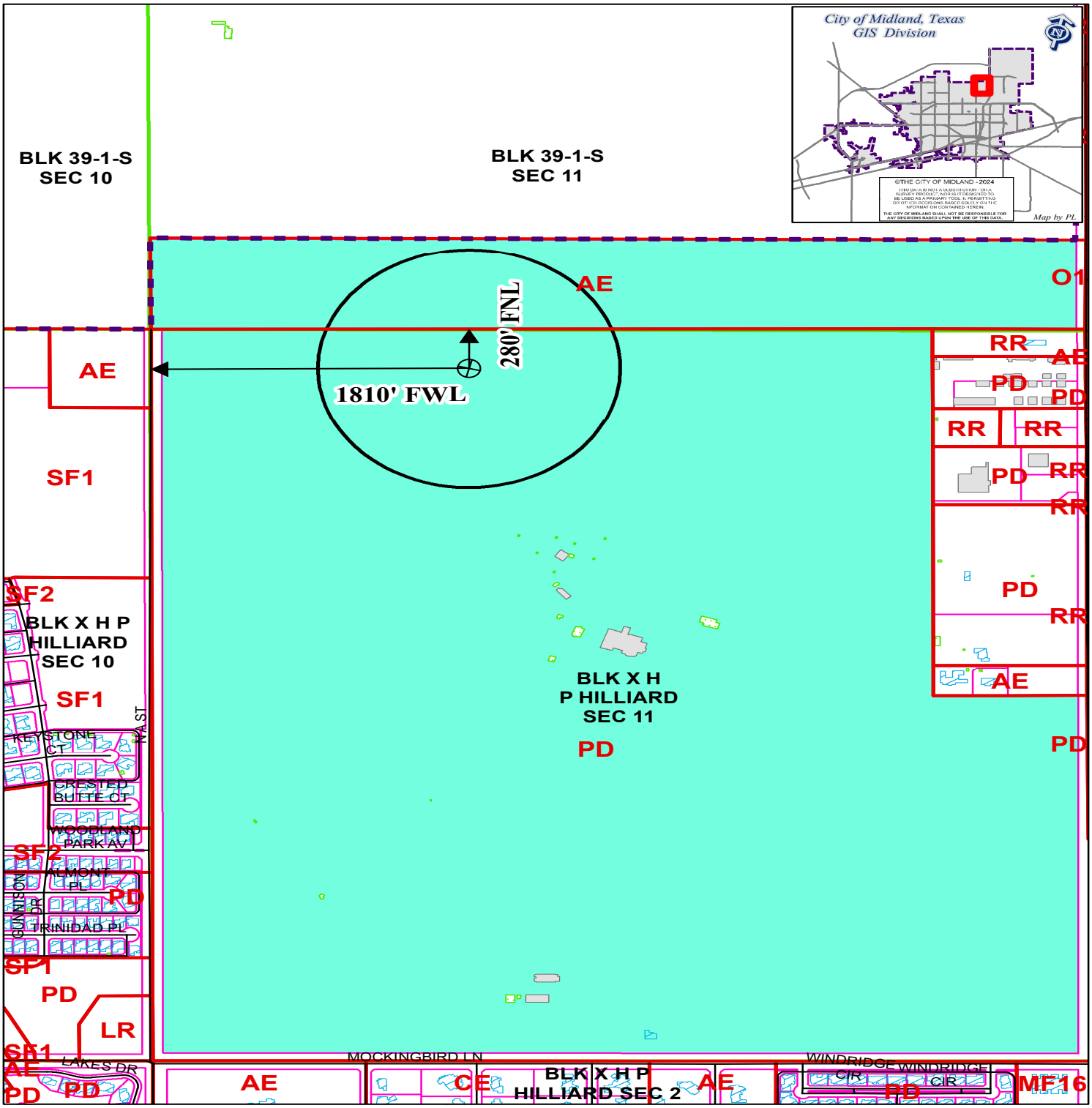
SECTION 11, BLOCK X, H.P. HILLIARD SURVEY
MIDLAND COUNTY, TEXAS

LEGEND

- City Limits
- Section Line
- Block Line
- Radius Line
- Lease Road
- Found Monument
- Calculated Corner

Surveyed: 04/24/24	Revision: BCL (2)	6/25/24	ORIGINAL DOC. SIZE: 8.5"x11"
COGO: 724-108888			Drawn By: EAH; 10/04/23

PACKET 14.90 October 22, 2024



LOCATION AND ZONING MAP

Oil - 061942 - 2024 **Scale: 1" = 800'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 280' FNL and 1,810' FWL, Section 11, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 1,810 feet east of North A Street and 5,040 feet south of Mockingbird Lane.

MCC HZ Unit #1106BH

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
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	CR1, CR2, CR3	COMMERCIAL 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

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
6/3/2024	COG Operating LLC	600 W. Illinois Ave. Midland, TX 79701

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432) 685-4339
Rebecca L. Morris, Land Manager, Midland Basin	600 W. Illinois Ave. Midland, TX 79701	Rep. Fax
Fee: $4,000.00 Rec'd Yes___ No_	**NOTE: All attachments need to bound and put in a binder before submitting.**	**Pages 1-4**

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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 ***(ATTACH 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 Title Opinion by***~~ **Caroline Hoban** ~~***, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from***~~ ***, a Certified Petroleum Landman/***~~***an opinion letter from***~~ ~~***, a licensed Texas Attorney)***~~ **indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].**

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

Surface use: Open Pasture

Surface Ownership: See Exhibit "D"

ATTACHED AS EXHIBIT D **is (**~~***a Title Opinion by***~~ ~~***, a licensed Texas Attorney/a Take-off from***~~ ~~***, a Certified Petroleum Landman***~~***/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: MCC HZ UNIT #1106JH

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:

Surface Hole Location: 280' FNL & 1790' FWL, Section 11, Block X, H.P. Hilliard Survey, Midland County, Texas

ATTACHED AS EXHIBIT G **is the Location Site Plan [See § J(9)].**

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Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: None

(2) Operations: Oncor Electric

Description of water source to be used during Drilling:

Water source will be from off-site water wells or trucked if necessary.

Description of all electric lines to production facilities (reference exhibits as necessary)

ATTACHED AS EXHIBIT "N" **[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)]**

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***ATTACHED AS EXHIBIT V* is Summary List of Variances**

***ATTACHED AS EXHIBIT W* is Acoustic Impact Study/Mitigation Plan**

CERTIFICATION OF APPLICATION

I, Rebecca L. Morris, Attorney-in-Fact of COG Operating LLC, hereby certify that the information contained in this application is true and correct to the best of my knowledge.

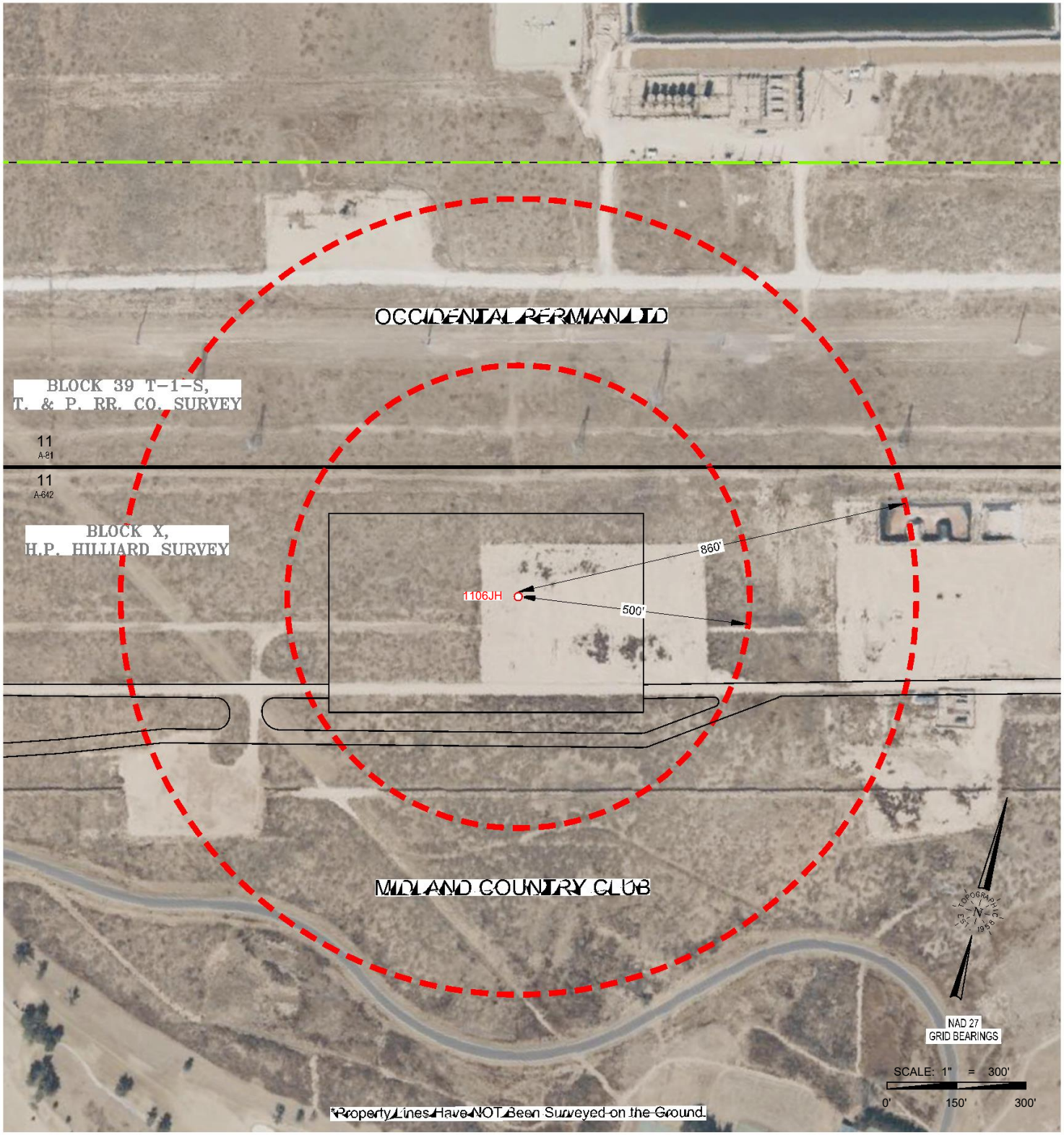
Rebecca L. Morris
Attorney-in-Fact
COG Operating LLC

STATE OF TEXAS §
COUNTY OF MIDLAND §

This instrument was acknowledged before me on this 27th day of June, 2024, by Rebecca L. Morris, Attorney-in-Fact of COG Operating LLC, a Delaware limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

JAMI HATFIELD
Notary Public, State of Texas
Comm. Expires 05-09-2026
Notary ID 131561095



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CD_MCC_HZ_UNIT_1106JH_RADIUS_REV2

CONCHO
OPERATOR: COG OPERATING LLC

MCC HZ UNIT 1106JH RADIUS MAP

LOCATION DESCRIPTION:

SECTION 11, BLOCK X, H.P. HILLIARD SURVEY
MIDLAND COUNTY, TEXAS

LEGEND

- City Limits
- Section Line
- Block Line
- Radius Line
- Lease Road
- Found Monument
- Calculated Corner

Surveyed: 04/24/24	PACKET	Revision: BCL (2)	6/25/24	ORIGINAL DOC. SIZE: 8.5"x11"
COGO: 724-108888				Drawn By: EAH; 10/04/23

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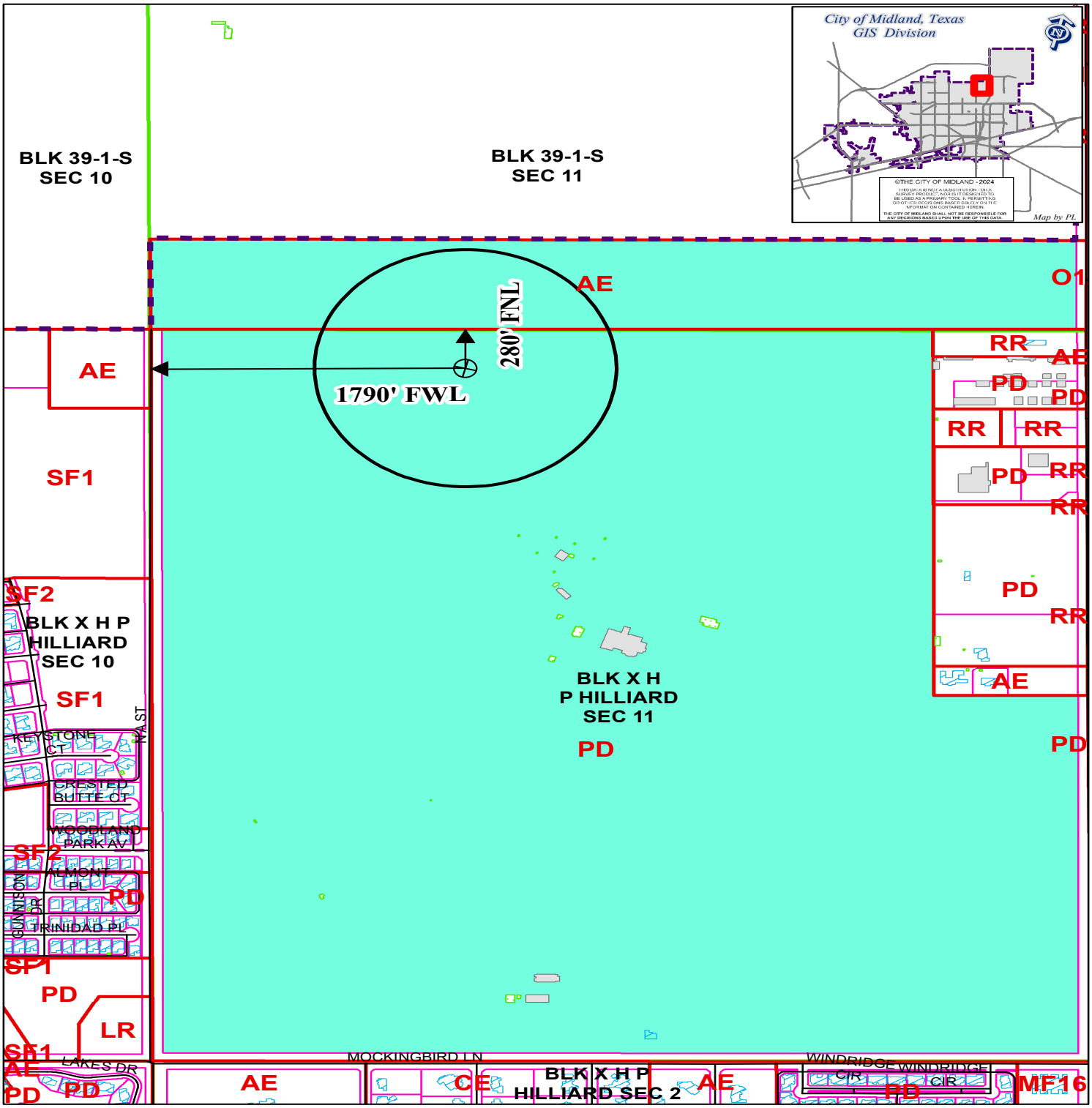
October 22, 2024



LOCATION AND ZONING MAP

Oil - 061943 - 2024 **Scale: 1" = 800'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 280' FNL and 1,790' FWL, Section 11, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 1,790 feet east of North A Street and 5,040 feet north of Mockingbird Lane.

MCC HZ Unit #1106JH

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	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
SF1, SF2, SF3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
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2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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
6/3/2024	COG Operating LLC	600 W. Illinois Ave. Midland, TX 79701

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432) 685-4339
Rebecca L. Morris, Land Manager, Midland Basin	600 W. Illinois Ave. Midland, TX 79701	Rep. Fax
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:
Matt Wilson
600 W. Illinois Ave.
Midland, TX 79701
Office: (432) 253-4554
Cell: (432) 472-6978

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):***

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):
Matt Wilson, Midland Basin North Operations Manager for ConocoPhillips, Cell: (432) 472-6978
ConocoPhillips Global Security – **24 Hour Emergency Hotline**: (281) 293-1748
ConocoPhillips Corporate Crisis **24 Hour Hotline**: (281) 293-3333
Midland Police Department: 911 or 432-685-7110
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Ambulance: 911
Paramedics: 911

Other Permitted Wells in City ***(ATTACH 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 Title Opinion by***~~ **Caroline Hoban** ~~***, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from***~~ ***, a Certified Petroleum Landman/***~~***an opinion letter from***~~ ~~***a licensed Texas Attorney)***~~ **indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].**

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

Surface use: Open Pasture

Surface Ownership: See Exhibit "D"

ATTACHED AS EXHIBIT D **is (**~~***a Title Opinion by***~~ ~~***, a licensed Texas Attorney/a Take-off from***~~ ~~***, a Certified Petroleum Landman***~~***/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: MCC HZ UNIT #1107AH

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:

Surface Hole Location: 280' FNL & 1730' FWL, Section 11, Block X, H.P. Hilliard 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)].**

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***ATTACHED AS EXHIBIT M* ~~is the Road Repair Agreement~~ and *Letter of Credit/Certificate of Deposit/Surety Bond* in the amount of at least $25,000. *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 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 Electric

Description of water source to be used during Drilling:

Water source will be from off-site water wells or trucked if necessary

Description of all electric lines to production facilities (reference exhibits as necessary)

***ATTACHED AS EXHIBIT "N"* [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

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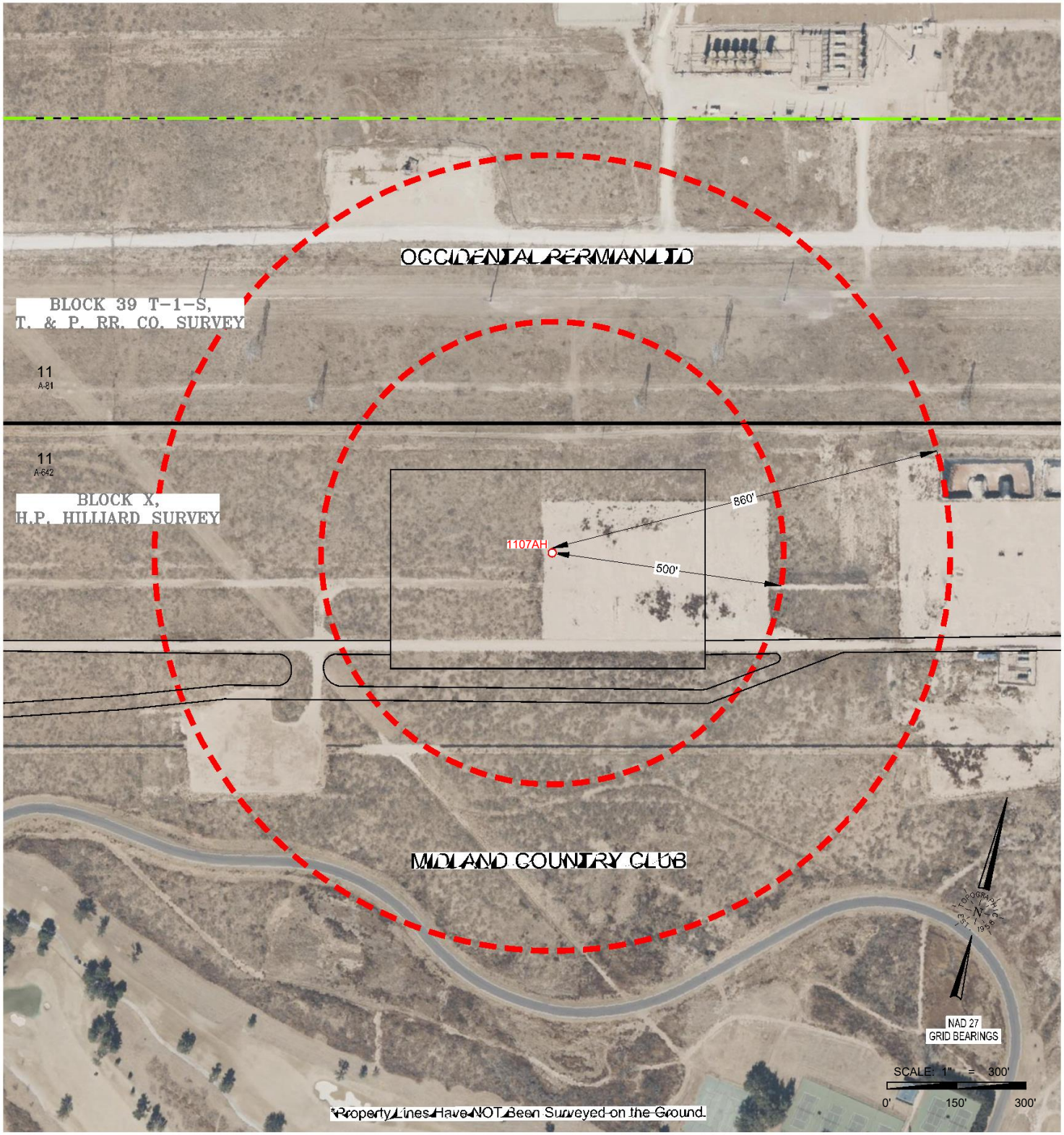

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CD_MCC_HZ_UNIT_1107AH_RADIUS_REV2

CONCHO
OPERATOR: COG OPERATING LLC

MCC HZ UNIT 1107AH RADIUS MAP

LOCATION DESCRIPTION:

SECTION 11, BLOCK X, H.P. HILLIARD SURVEY
MIDLAND COUNTY, TEXAS

LEGEND

- City Limits
- Section Line
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Surveyed: 04/24/24	PACKET	Revision: BCL (2)	6/25/24	ORIGINAL DOC. SIZE: 8.5"x11"
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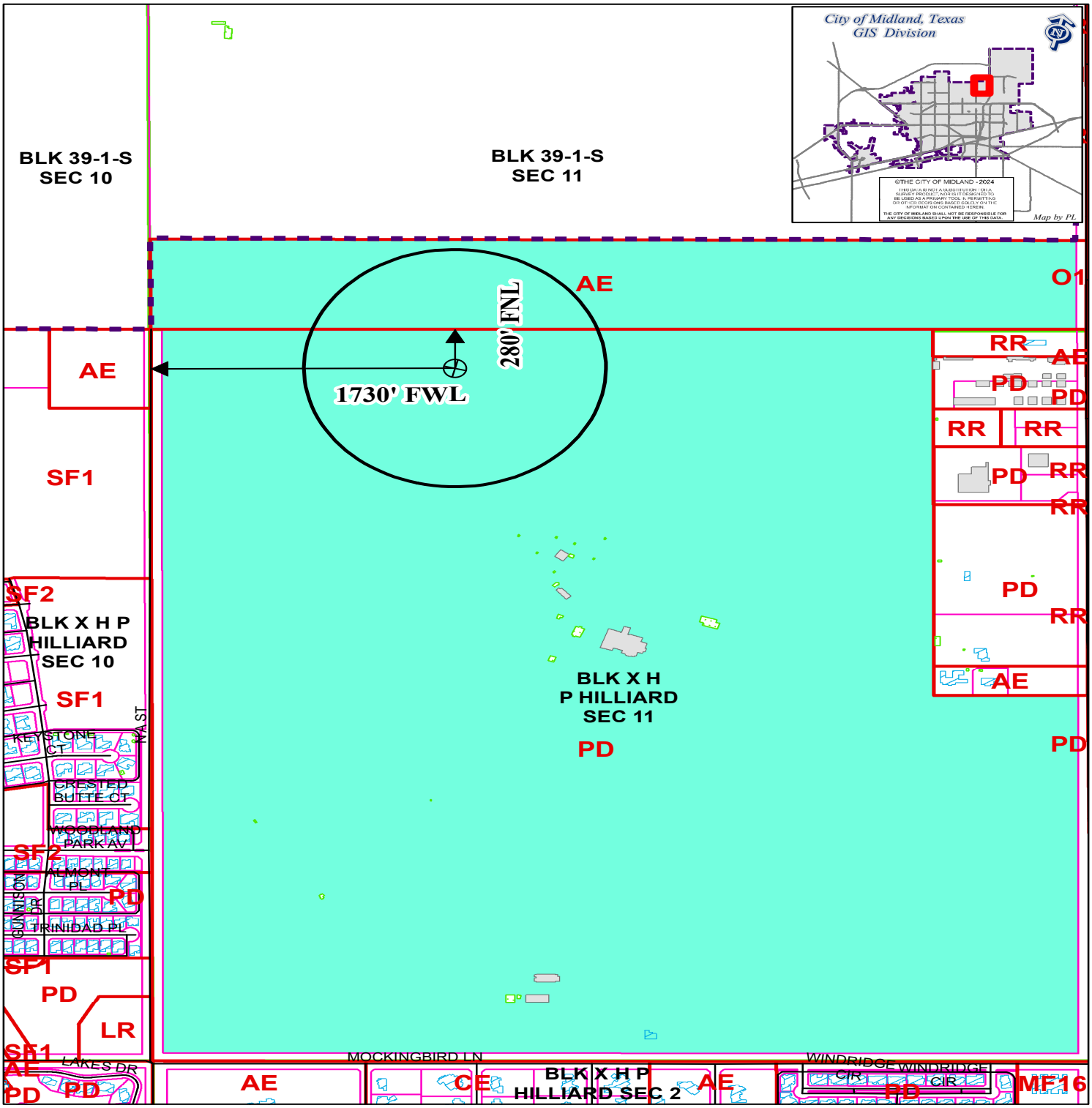

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Generally located 1,730 feet east of North A Street and 5,040 feet south of Mockingbird Lane.

MCC HZ Unit #1107AH

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
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Proposed Well Name: MCC HZ UNIT #1107LH

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:

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COG Operating LLC

STATE OF TEXAS §
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This instrument was acknowledged before me on this 27th day of June, 2024, by Rebecca L. Morris, Attorney-in-Fact of COG Operating LLC, a Delaware limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

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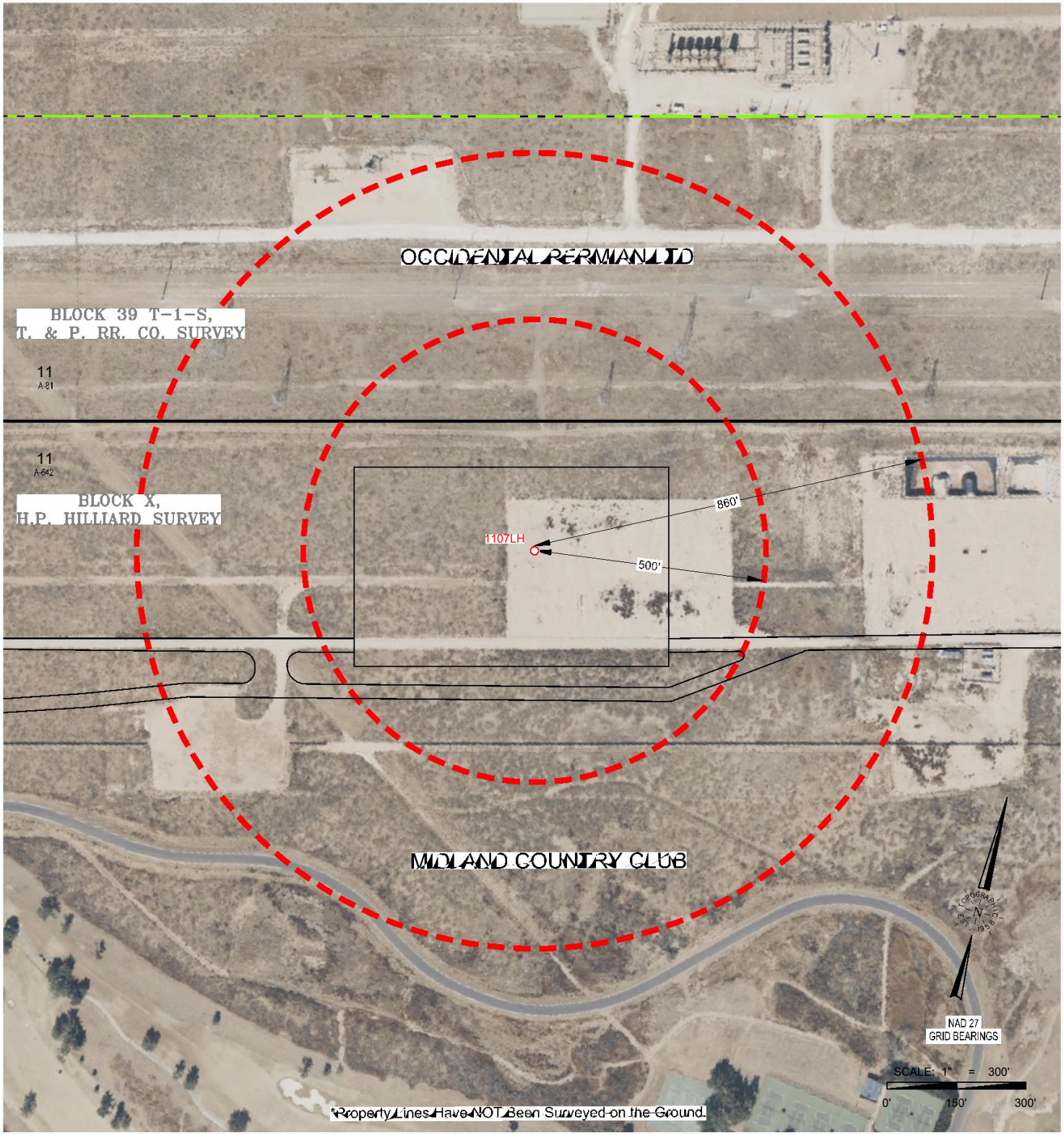

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CD_MCC_HZ_UNIT_1107LH_RADIUS_REV2

CONCHO
OPERATOR: COG OPERATING LLC

MCC HZ UNIT 1107LH RADIUS MAP

LOCATION DESCRIPTION:

SECTION 11, BLOCK X, H.P. HILLIARD SURVEY
MIDLAND COUNTY, TEXAS

LEGEND

- City Limits
- Section Line
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Surveyed: 04/24/24	PACKET	Revision: BCL (2)	6/25/24	ORIGINAL DOC. SIZE: 8.5"x11"
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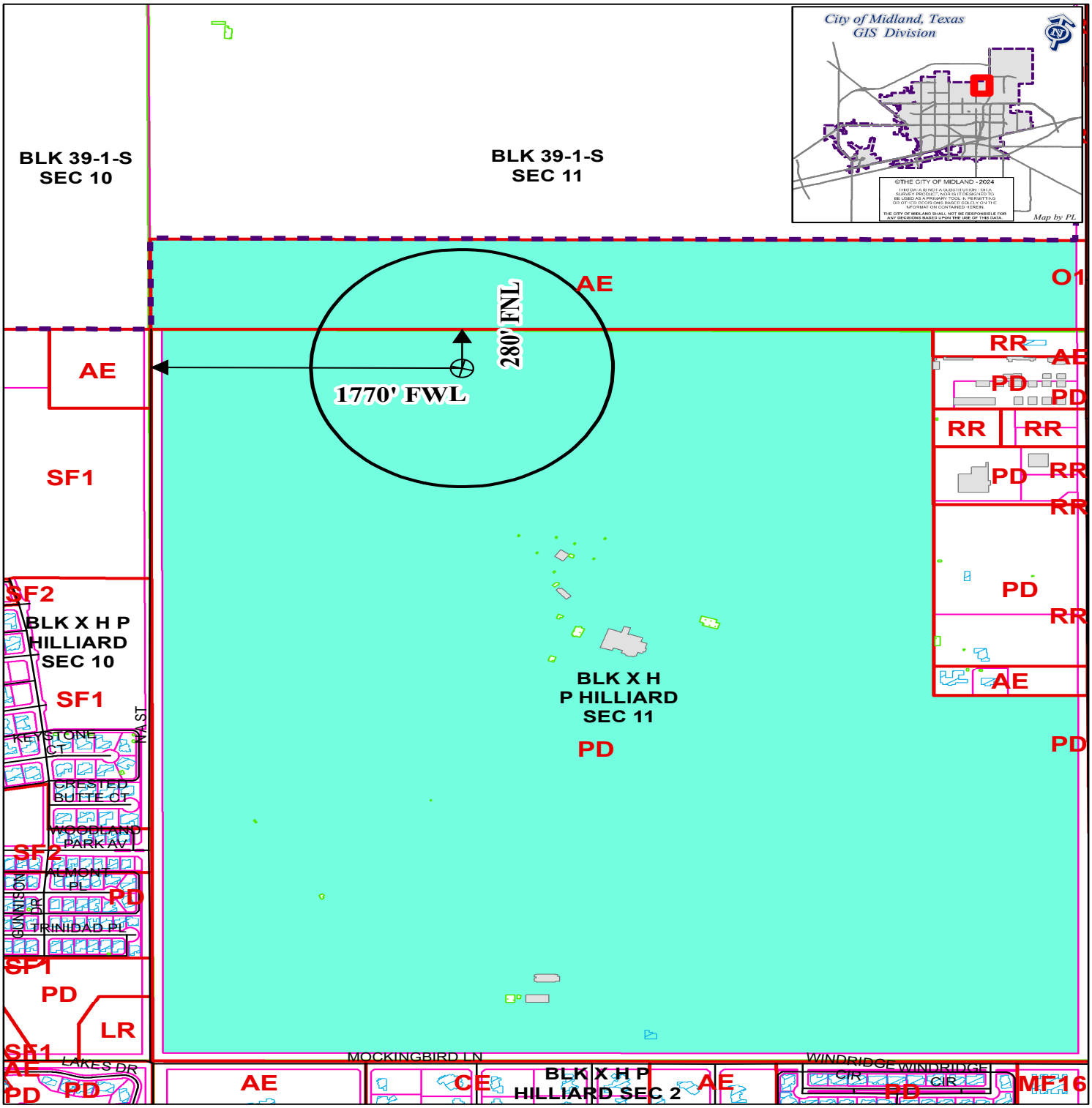

LOCATION AND ZONING MAP

Oil - 061945 - 2024 **Scale: 1" = 800'**

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Generally located 1,770 feet east of North A Street and 5,040 feet south of Mockingbird Lane.

MCC HZ Unit #1107LH

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
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Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):***

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):
Matt Wilson, Midland Basin North Operations Manager for ConocoPhillips, Cell: (432) 472-6978
ConocoPhillips Global Security – **24 Hour Emergency Hotline**: (281) 293-1748
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Other Permitted Wells in City ***(ATTACH EXHIBIT B*** **[see § J(26)]).**

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Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

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III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

Surface use: Open Pasture

Surface Ownership: See Exhibit "D"

ATTACHED AS EXHIBIT D **is (**~~***a Title Opinion by***~~ ~~***, a licensed Texas Attorney/a Take-off from***~~ ~~***, a Certified Petroleum Landman***~~***/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: MCC HZ UNIT #1107MH

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:

Surface Hole Location: 280' FNL & 1750' FWL, Section 11, Block X, H.P. Hilliard 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 Electric

Description of water source to be used during Drilling:

Water source will be from off-site water wells or trucked if necessary.

Description of all electric lines to production facilities (reference exhibits as necessary)

***ATTACHED AS EXHIBIT "N"* [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 *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].**

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***ATTACHED AS EXHIBIT V* is Summary List of Variances**

***ATTACHED AS EXHIBIT W* is Acoustic Impact Study/Mitigation Plan**

CERTIFICATION OF APPLICATION

I, Rebecca L. Morris, Attorney-in-Fact of COG Operating LLC, hereby certify that the information contained in this application is true and correct to the best of my knowledge.

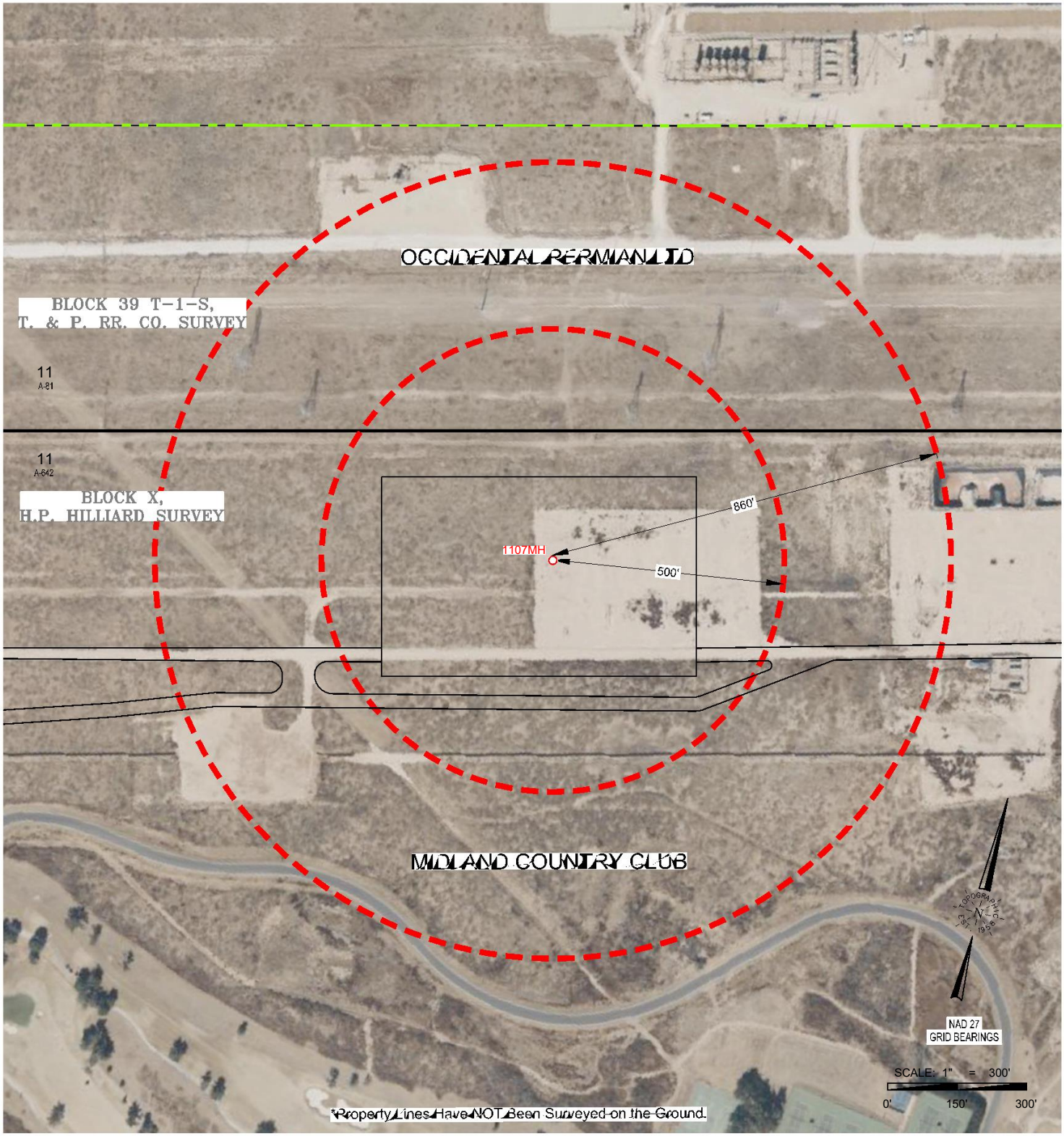
Rebecca L. Morris
Attorney-in-Fact
COG Operating LLC

STATE OF TEXAS §
COUNTY OF MIDLAND §

This instrument was acknowledged before me on this 27th day of June, 2024, by Rebecca L. Morris, Attorney-in-Fact of COG Operating LLC, a Delaware limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

JAMI HATFIELD
Notary Public, State of Texas
Comm. Expires 05-09-2026
Notary ID 131561095



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CD_MCC_HZ_UNIT_1107MH_RADIUS_REV2

CONCHO
OPERATOR: COG OPERATING LLC

MCC HZ UNIT 1107MH RADIUS MAP

LOCATION DESCRIPTION:

SECTION 11, BLOCK X, H.P. HILLIARD SURVEY
MIDLAND COUNTY, TEXAS

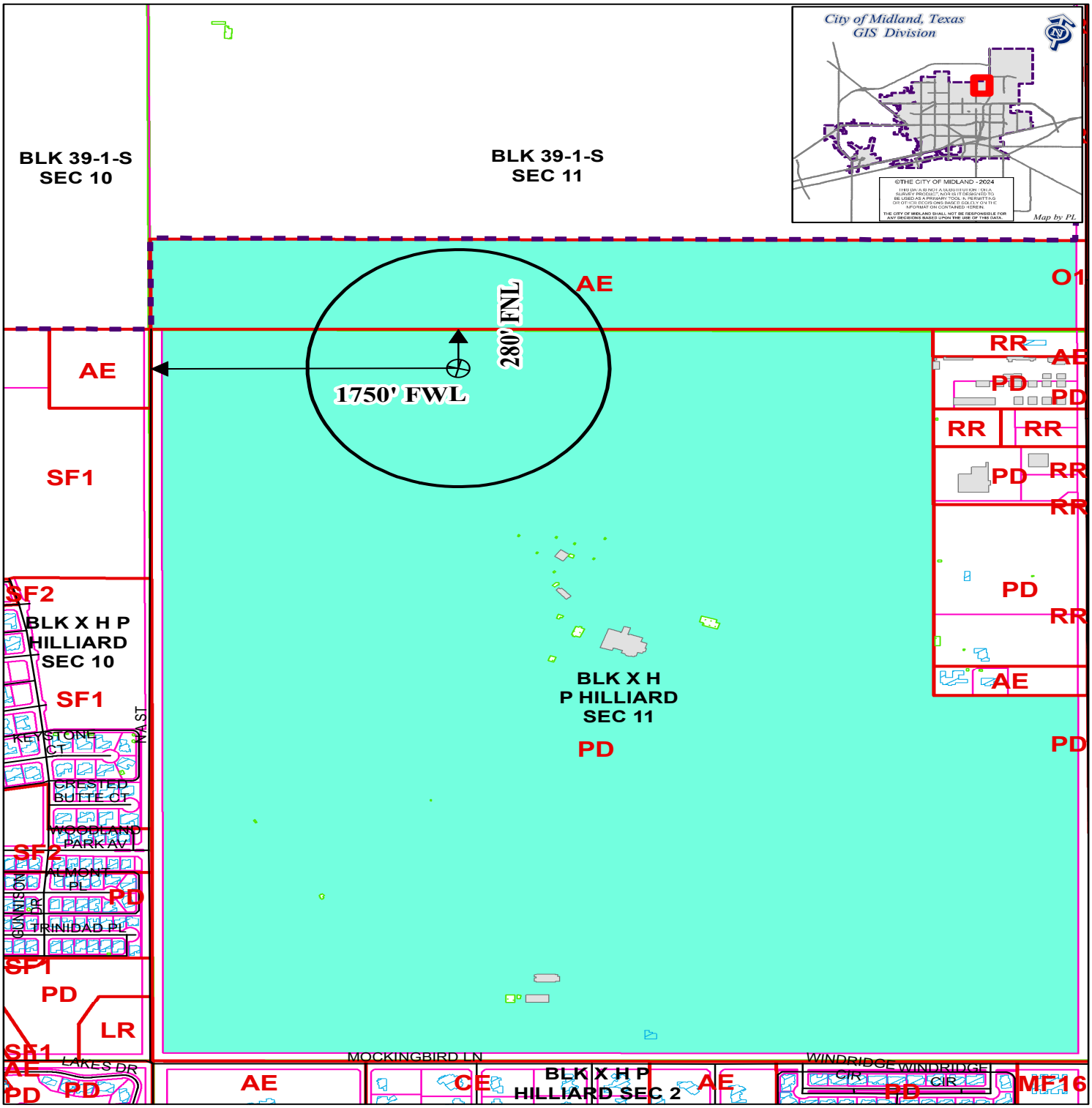
LEGEND

- City Limits
- Section Line
- Block Line
- Radius Line
- Lease Road
- Found Monument
- Calculated Corner

Surveyed: 04/24/24	PACKET	Revision: BCL (2)	6/25/24	ORIGINAL DOC. SIZE: 8.5"x11"
COGO: 724-108888				Drawn By: EAH; 10/04/23

14.114

October 22, 2024



LOCATION AND ZONING MAP

Oil - 061946 - 2024 **Scale: 1" = 800'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 280' FNL and 1,750' FWL, Section 11, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 1,750 feet east of North A Street and 5,040 feet south of Mockingbird Lane.

MCC HZ Unit #1107MH

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, SF3	ONE-FAMILY DWELLING	CR1, CR2, CR3	COMMERCIAL/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

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
6/3/2024	COG Operating LLC	600 W. Illinois Ave. Midland, TX 79701

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432) 685-4339
Rebecca L. Morris, Land Manager, Midland Basin	600 W. Illinois Ave. Midland, TX 79701	Rep. Fax
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:
Matt Wilson
600 W. Illinois Ave.
Midland, TX 79701
Office: (432) 253-4554
Cell: (432) 472-6978

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):***

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):
Matt Wilson, Midland Basin North Operations Manager for ConocoPhillips, Cell: (432) 472-6978
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Other Permitted Wells in City ***(ATTACH EXHIBIT B*** **[see § J(26)]).**

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Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

ATTACHED AS EXHIBIT C

ATTACHED AS EXHIBIT C **is (**~~***a Title Opinion by***~~ **Caroline Hoban** ~~***, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from***~~ ***, a Certified Petroleum Landman/***~~***an opinion letter from***~~ ~~***a licensed Texas Attorney)***~~ **indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].**

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

Surface use: Closed Loop

Surface Ownership: See Exhibit "D"

ATTACHED AS EXHIBIT D **is (**~~***a Title Opinion by***~~ ~~***, a licensed Texas Attorney/a Take-off from***~~ ~~***, a Certified Petroleum Landman***~~***/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: MCC HZ UNIT #1108BH

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:

Surface Hole Location: 280' FNL & 1710' FWL, Section 11, Block X, H.P. Hilliard 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)].**

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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 Electric

Description of water source to be used during Drilling:

Water source will be from off-site water wells or trucked if necessary.

Description of all electric lines to production facilities (reference exhibits as necessary)

ATTACHED AS EXHIBIT "N" **[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

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I, Rebecca L. Morris, Attorney-in-Fact of COG Operating LLC, hereby certify that the information contained in this application is true and correct to the best of my knowledge.

Rebecca L. Morris
Attorney-in-Fact
COG Operating LLC

STATE OF TEXAS §
COUNTY OF MIDLAND §

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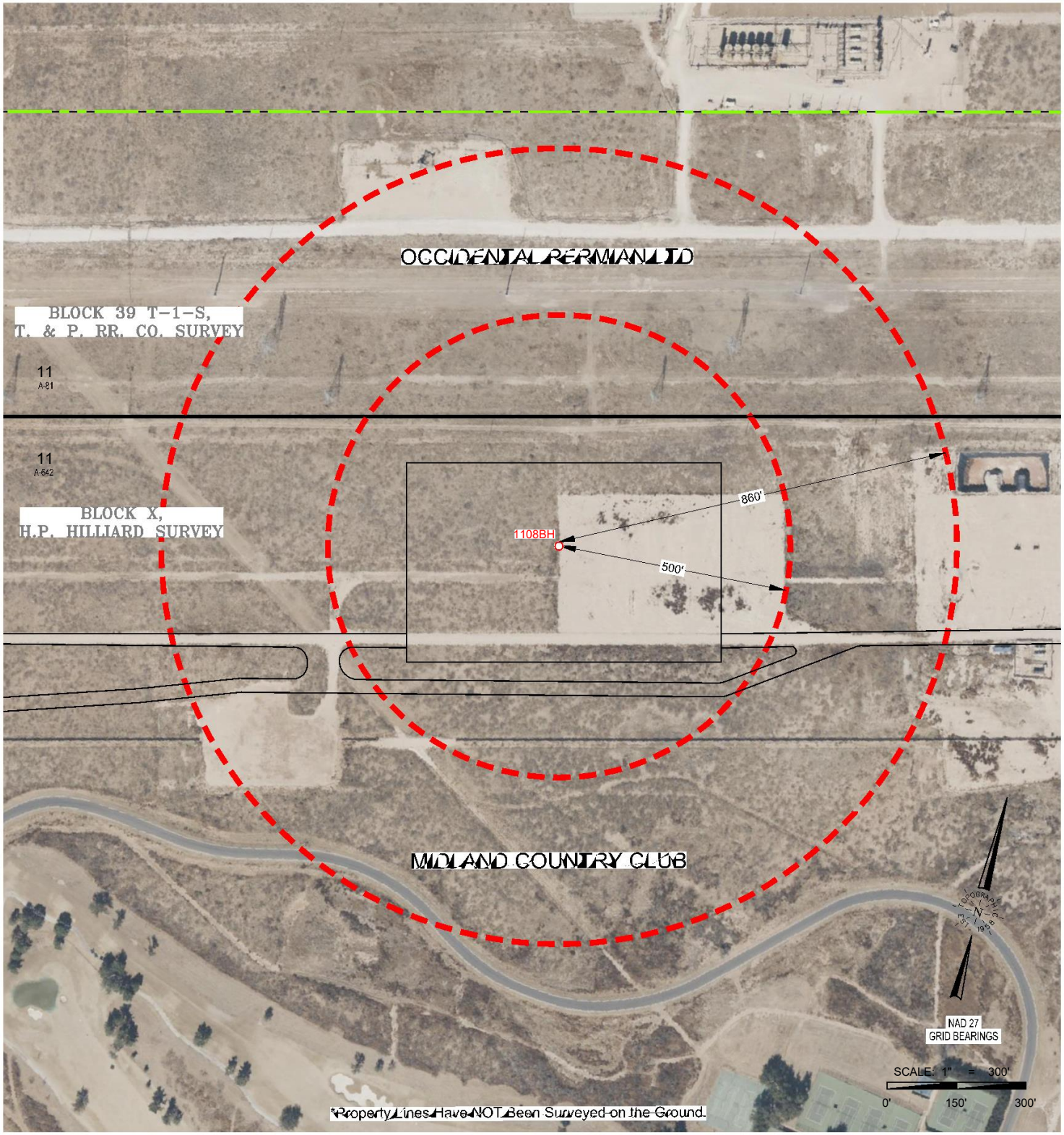
Notary Public, State of Texas

JAMI HATFIELD
Notary Public, State of Texas
Comm. Expires 05-09-2026
Notary ID 131561095



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CD_MCC_HZ_UNIT_1108BH_RADIUS_REV2

CONCHO
OPERATOR: COG OPERATING LLC

MCC HZ UNIT 1108BH RADIUS MAP

LOCATION DESCRIPTION:

SECTION 11, BLOCK X, H.P. HILLIARD SURVEY
MIDLAND COUNTY, TEXAS

LEGEND

- City Limits
- Section Line
- Block Line
- Radius Line
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Surveyed: 04/24/24	PACKET	Revision: BCL (2)	6/25/24	ORIGINAL DOC. SIZE: 8.5"x11"
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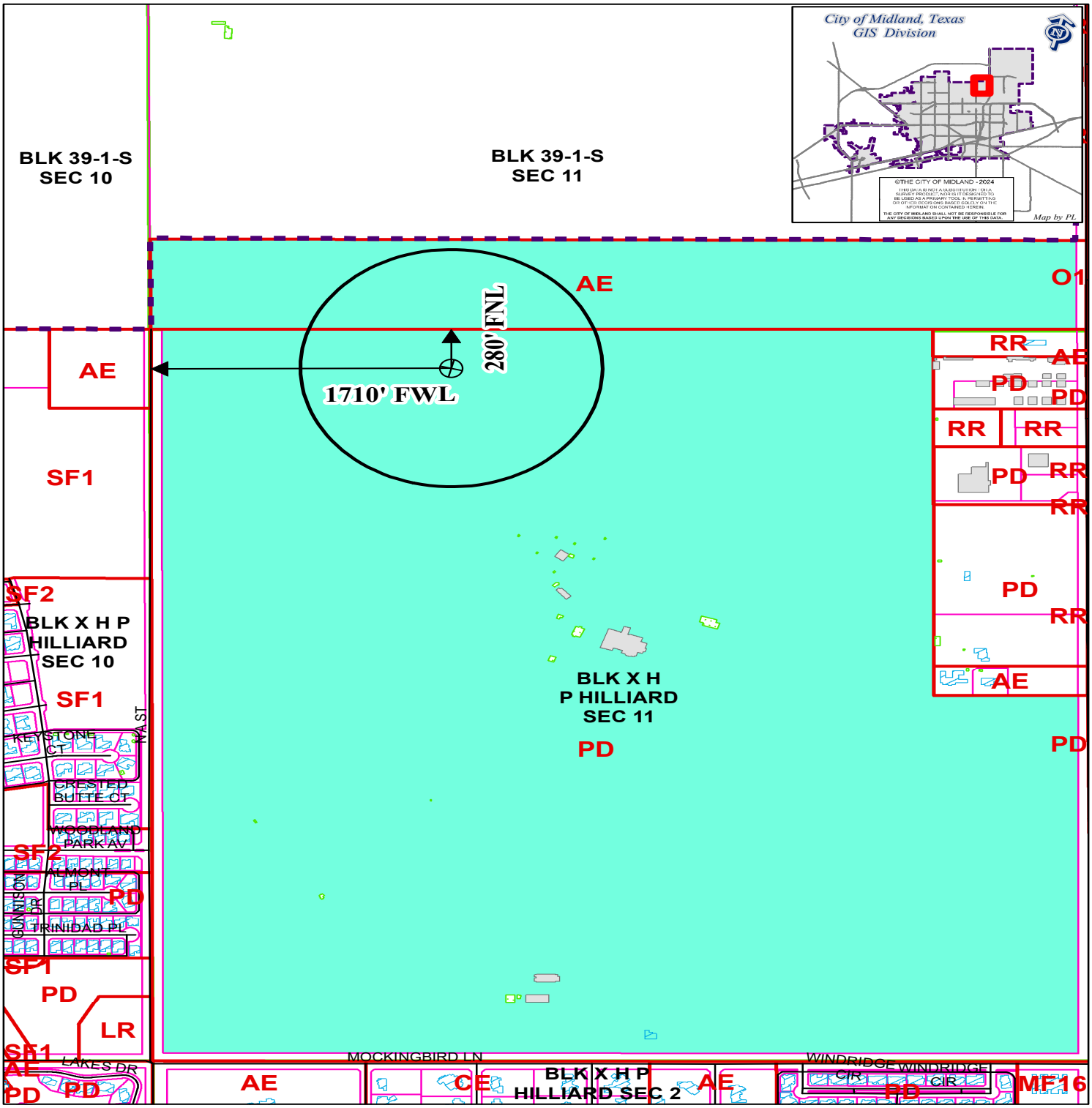

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Generally located 1,710 feet east of North A Street and 5,040 feet south of Mockingbird Lane.

MCC HZ Unit #1108BH

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, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
SF1, SF2, SF3	ONE-FAMILY DWELLING	CR1, CR2, CR3	COMMERCIAL RETAIL
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MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

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Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432) 685-4339
Rebecca L. Morris, Land Manager, Midland Basin	600 W. Illinois Ave. Midland, TX 79701	Rep. Fax
Fee: $4,000.00 Rec'd Yes___ No_	**NOTE: All attachments need to bound and put in a binder before submitting.**	**Pages 1-4**

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IV. Well & Operations Information

Proposed Well Name: MCC HZ UNIT #1109AH

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:

Surface Hole Location: 280' FNL & 1650' FWL, Section 11, Block X, H.P. Hilliard Survey, Midland County, Texas

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(1) **Drilling:** None

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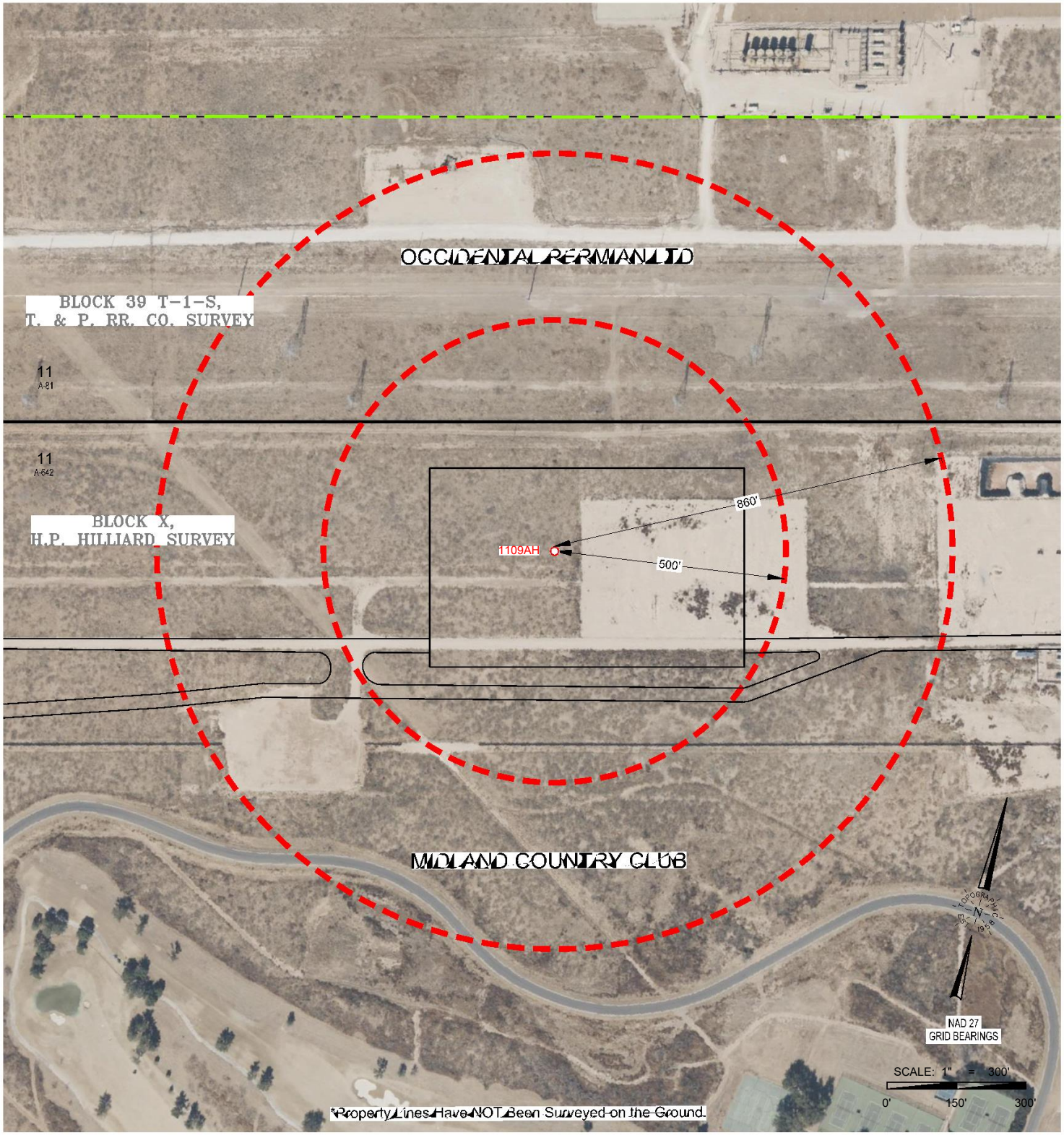
STATE OF TEXAS §
COUNTY OF MIDLAND §

This instrument was acknowledged before me on this 27th day of June, 2024, by Rebecca L. Morris, Attorney-in-Fact of COG Operating LLC, a Delaware limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

JAMI HATFIELD
Notary Public, State of Texas
Comm. Expires 05-09-2026
Notary ID 131561095



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TEXAS FIRM REGISTRATION NO. 10042500
WWW.TOPOGRAPHIC.COM

CD_MCC_HZ_UNIT_1109AH_RADIUS_REV2

CONCHO
OPERATOR: COG OPERATING LLC

MCC HZ UNIT 1109AH RADIUS MAP

LOCATION DESCRIPTION:

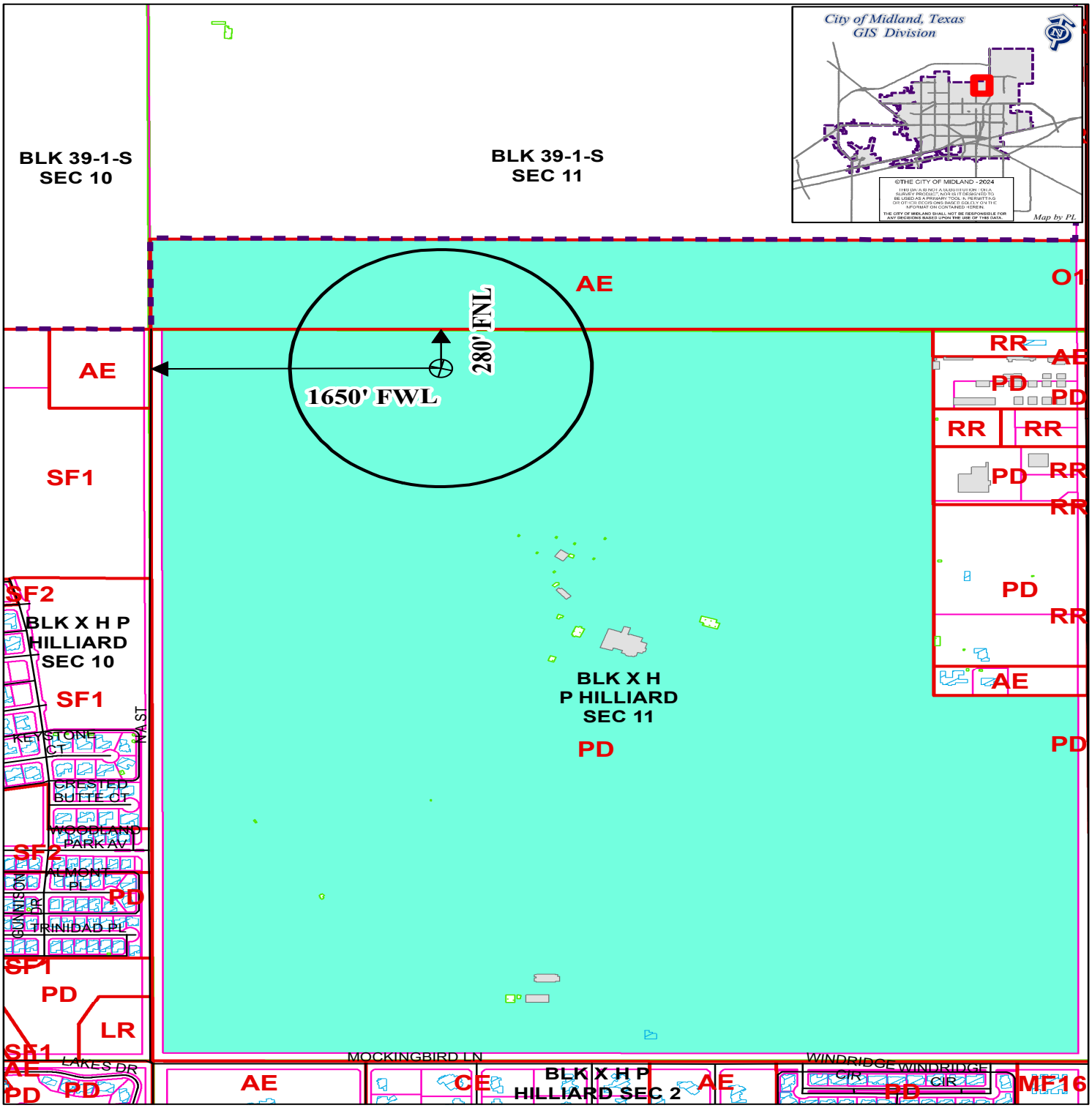
SECTION 11, BLOCK X, H.P. HILLIARD SURVEY
MIDLAND COUNTY, TEXAS

LEGEND

- City Limits
- Section Line
- Block Line
- Radius Line
- Lease Road
- Found Monument
- Calculated Corner

Surveyed: 04/24/24	Revision: BCL (2)	6/25/24	ORIGINAL DOC. SIZE: 8.5"x11"	
COGO: 724-108888			Drawn By: EAH; 10/04/23	

PACKET 14.126 October 22, 2024



LOCATION AND ZONING MAP

Oil - 061949 - 2024 **Scale: 1" = 800'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 280' FNL and 1,650' FWL, Section 11, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 1,650 feet east of North A Street and 5,040 feet north of Mockingbird Lane.

MCC HZ Unit #1109AH

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
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2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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
6/3/2024	COG Operating LLC	600 W. Illinois Ave. Midland, TX 79701

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432) 685-4339
Rebecca L. Morris, Land Manager, Midland Basin	600 W. Illinois Ave. Midland, TX 79701	Rep. Fax
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:
Matt Wilson
600 W. Illinois Ave.
Midland, TX 79701
Office: (432) 253-4554
Cell: (432) 472-6978

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):***

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):
Matt Wilson, Midland Basin North Operations Manager for ConocoPhillips, Cell: (432) 472-6978
ConocoPhillips Global Security – **24 Hour Emergency Hotline**: (281) 293-1748
ConocoPhillips Corporate Crisis **24 Hour Hotline**: (281) 293-3333
Midland Police Department: 911 or 432-685-7110
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Other Permitted Wells in City ***(ATTACH 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 Title Opinion by***~~ **Caroline Hoban** ~~***, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from***~~ ***, a Certified Petroleum Landman/***~~***an opinion letter from***~~ ~~***a licensed Texas Attorney)***~~ **indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].**

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

Surface use: Open Pasture

Surface Ownership: See Exhibit "D"

ATTACHED AS EXHIBIT D **is (**~~***a Title Opinion by***~~ ~~***, a licensed Texas Attorney/a Take-off from***~~ ~~***, a Certified Petroleum Landman***~~***/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: MCC HZ UNIT #1109JH

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:

Surface Hole Location: 280' FNL & 1670' FWL, Section 11, Block X, H.P. Hilliard 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)].**

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***ATTACHED AS EXHIBIT M* ~~is the Road Repair Agreement~~ and *Letter of Credit/Certificate of Deposit/Surety Bond* in the amount of at least $25,000. *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 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 Electric

Description of water source to be used during Drilling:

Water source will be from off-site water wells or trucked if necessary.

Description of all electric lines to production facilities (reference exhibits as necessary)

***ATTACHED AS EXHIBIT "N"* [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 *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].**

***ATTACHED AS EXHIBIT Q* are 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)].**

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***ATTACHED AS EXHIBIT V* is Summary List of Variances**

***ATTACHED AS EXHIBIT W* is Acoustic Impact Study/Mitigation Plan**

CERTIFICATION OF APPLICATION

I, Rebecca L. Morris, Attorney-in-Fact of COG Operating LLC, hereby certify that the information contained in this application is true and correct to the best of my knowledge.

Rebecca L. Morris
Attorney-in-Fact
COG Operating LLC

STATE OF TEXAS §
COUNTY OF MIDLAND §

This instrument was acknowledged before me on this 27th day of June, 2024, by Rebecca L. Morris, Attorney-in-Fact of COG Operating LLC, a Delaware limited liability company, on behalf of said limited liability company.

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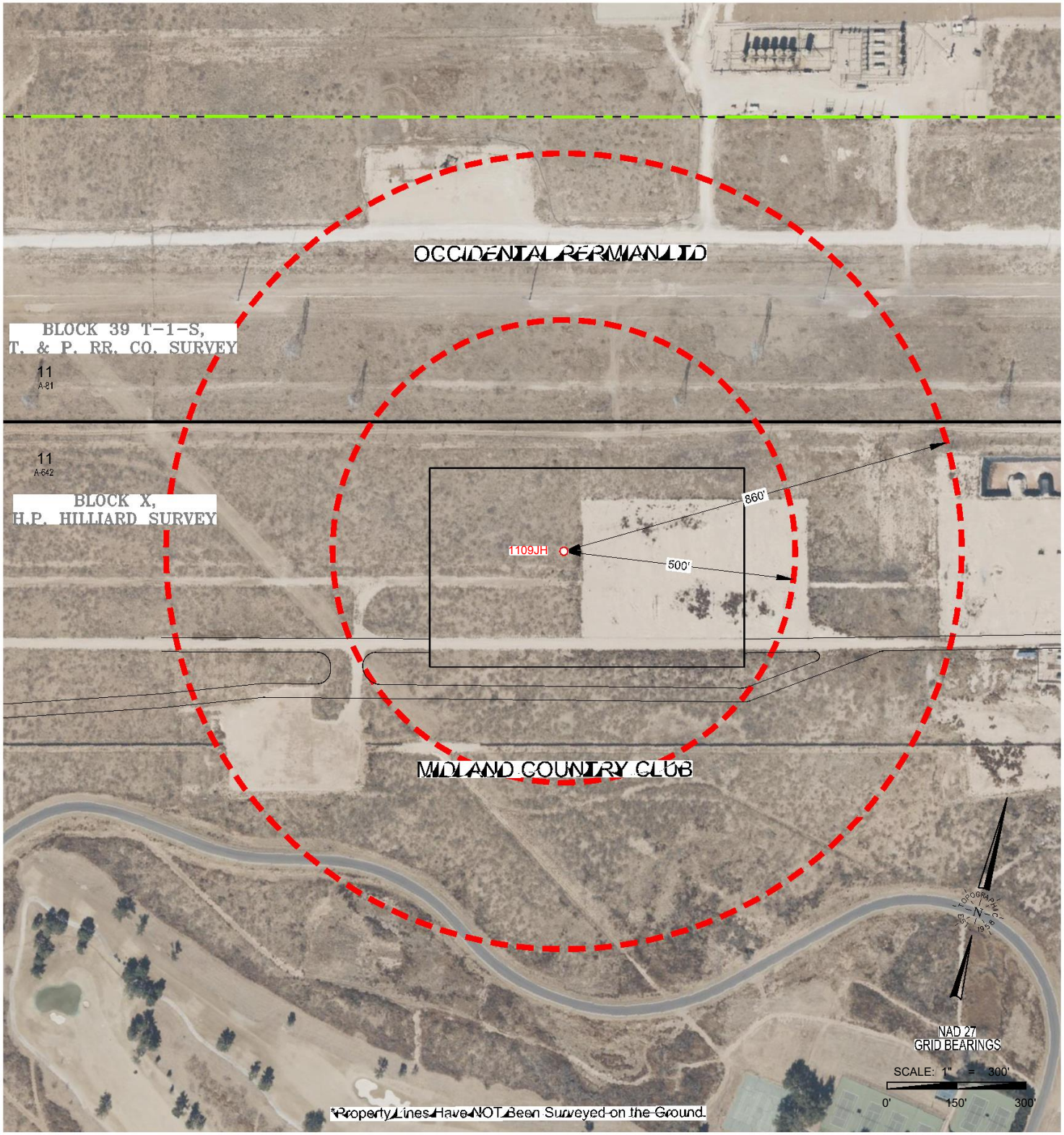

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CD_MCC_HZ_UNIT_1109JH_RADIUS_REV2

CONCHO
OPERATOR: COG OPERATING LLC

MCC HZ UNIT 1109JH RADIUS MAP

LOCATION DESCRIPTION:

SECTION 11, BLOCK X, H.P. HILLIARD SURVEY
MIDLAND COUNTY, TEXAS

LEGEND

- City Limits
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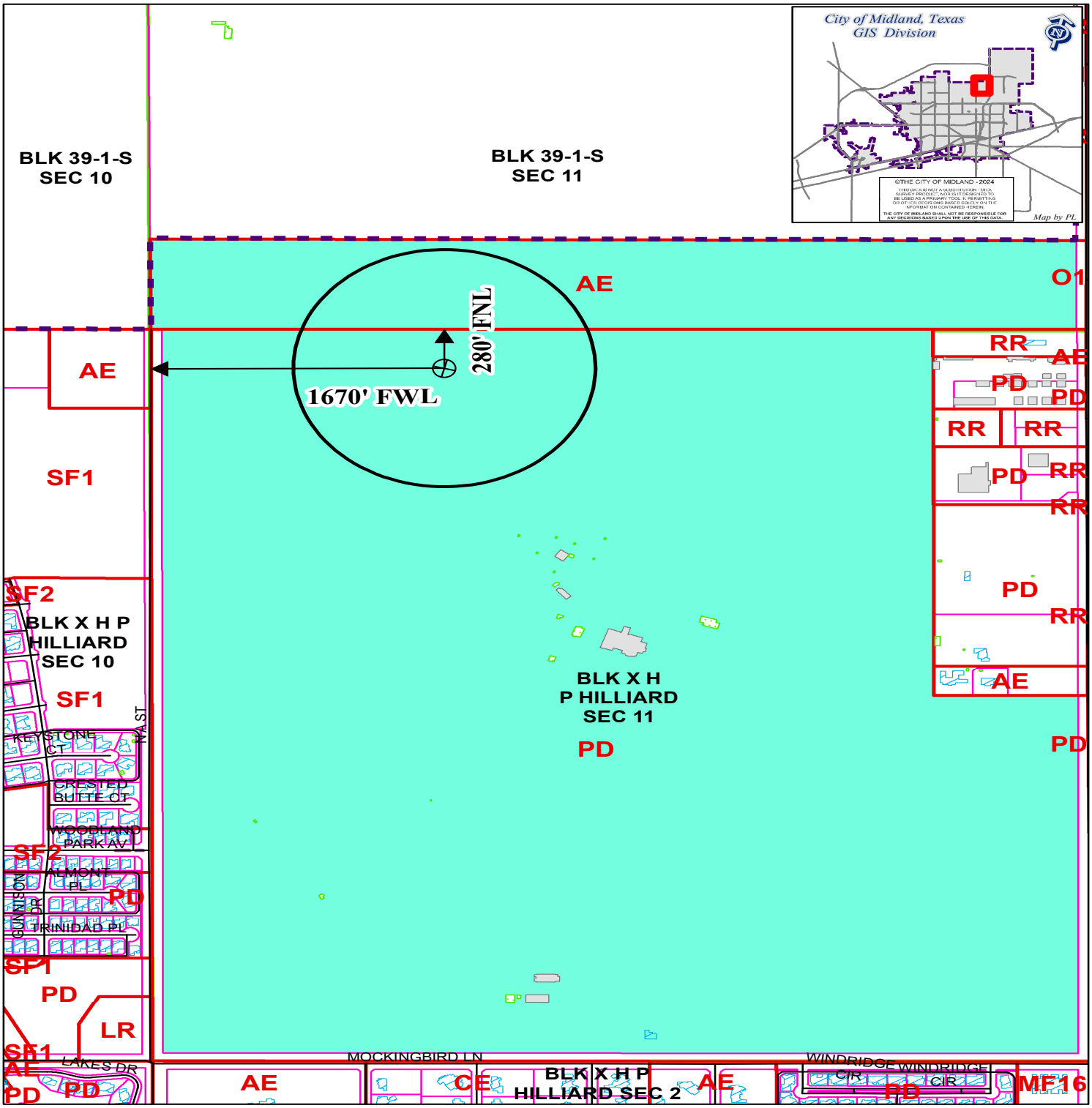
PACKET 14.132 October 22, 2024



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IV. Well & Operations Information

Proposed Well Name: MCC HZ UNIT #1109LH

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:

Surface Hole Location: 280' FNL & 1690' FWL, Section 11, Block X, H.P. Hilliard Survey, Midland County, Texas

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CERTIFICATION OF APPLICATION

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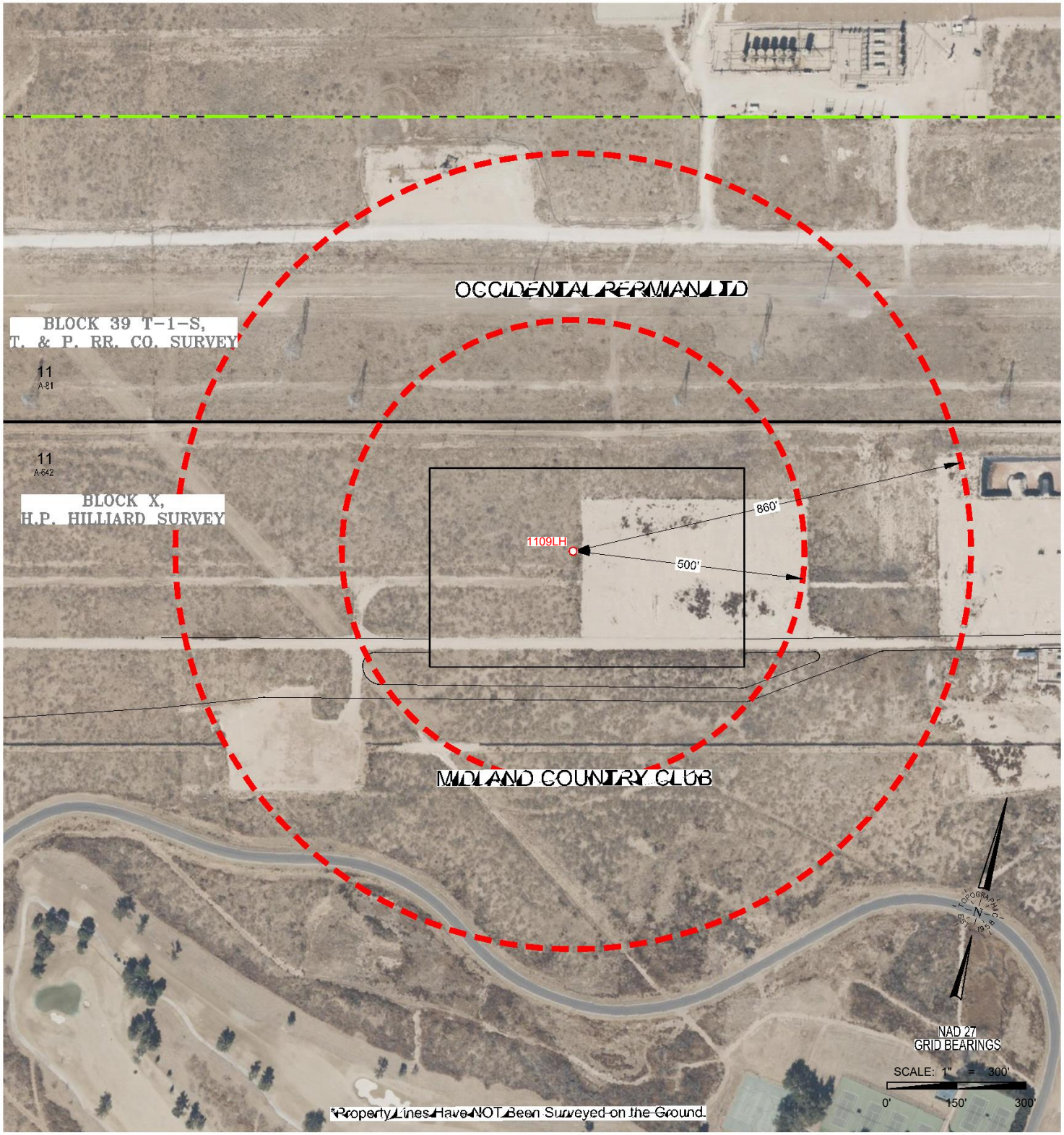

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CD_MCC_HZ_UNIT_1109LH_RADIUS_REV2

CONCHO
OPERATOR: COG OPERATING LLC

MCC HZ UNIT 1109LH RADIUS MAP

LOCATION DESCRIPTION:

SECTION 11, BLOCK X, H.P. HILLIARD SURVEY
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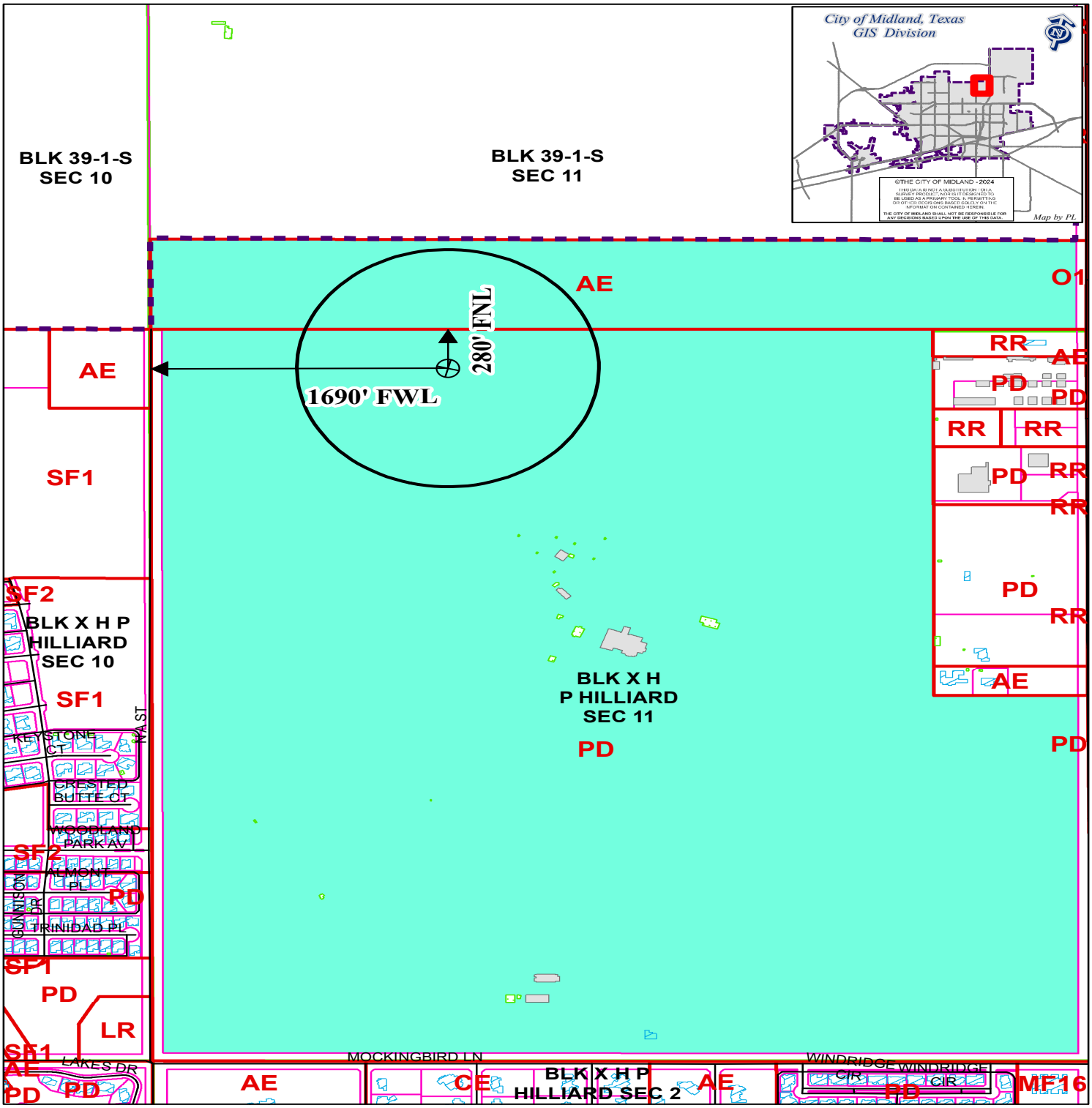

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Surface use: Open Pasture

Surface Ownership: See Exhibit "D"

ATTACHED AS EXHIBIT D **is (**~~***a Title Opinion by***~~ ~~***, a licensed Texas Attorney/a Take-off from***~~ ~~***, a Certified Petroleum Landman***~~***/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: MCC HZ UNIT #1111MH

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:

Surface Hole Location: 280' FNL & 1630' FWL, Section 11, Block X, H.P. Hilliard 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* ~~is the Road Repair Agreement~~ and *Letter of Credit/Certificate of Deposit/Surety Bond* in the amount of at least $25,000. *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 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 Electric

Description of water source to be used during Drilling:

Water source will be from off-site water wells or trucked if necessary.

Description of all electric lines to production facilities (reference exhibits as necessary)

***ATTACHED AS EXHIBIT "N"* [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 *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].**

***ATTACHED AS EXHIBIT Q* are 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 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 Summary List of Variances**

***ATTACHED AS EXHIBIT W* is Acoustic Impact Study/Mitigation Plan**

CERTIFICATION OF APPLICATION

I, Rebecca L. Morris, Attorney-in-Fact of COG Operating LLC, hereby certify that the information contained in this application is true and correct to the best of my knowledge.

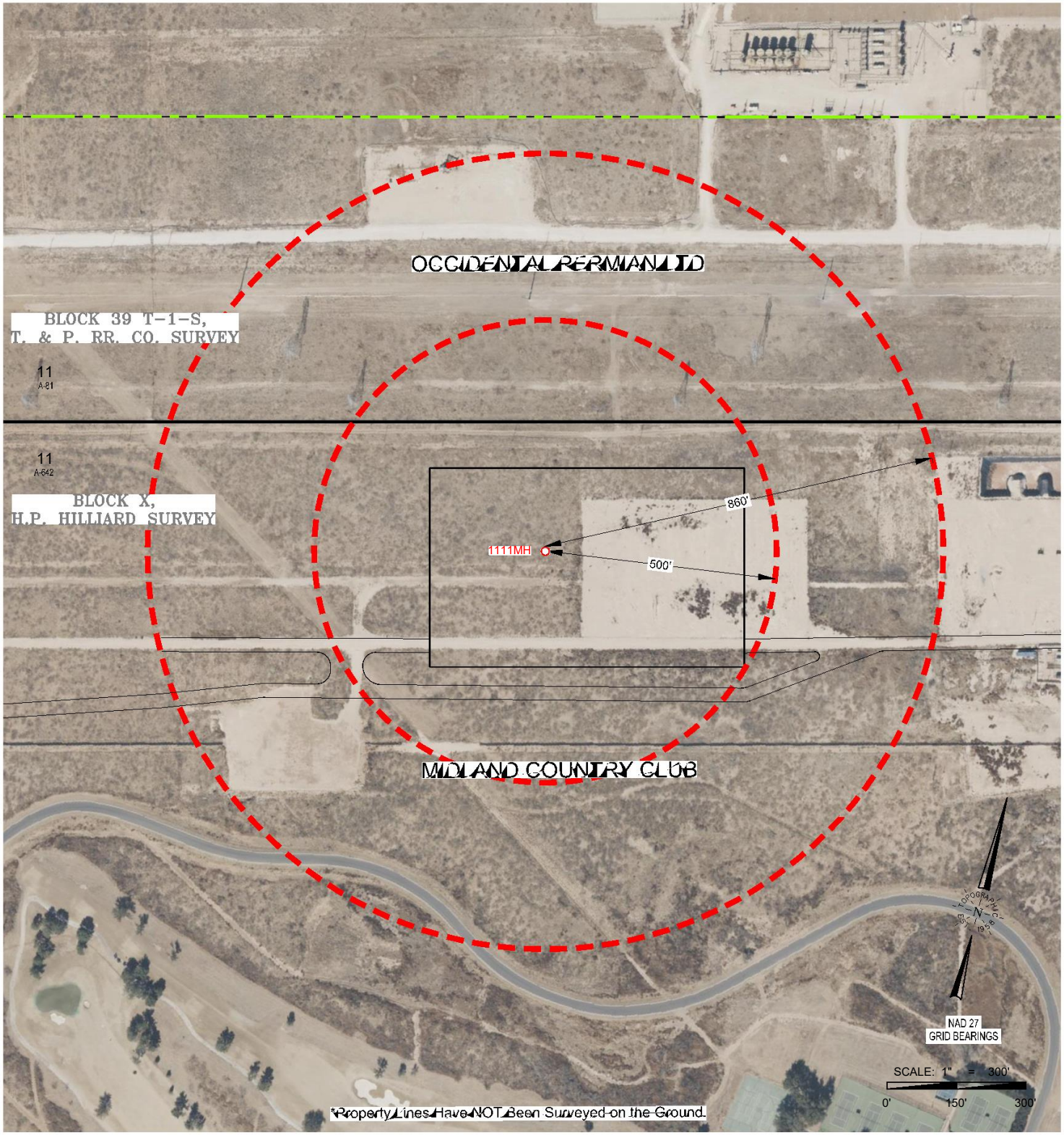
Rebecca L. Morris
Attorney-in-Fact
COG Operating LLC

STATE OF TEXAS §
COUNTY OF MIDLAND §

This instrument was acknowledged before me on this 27th day of June, 2024, by Rebecca L. Morris, Attorney-in-Fact of COG Operating LLC, a Delaware limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

JAMI HATFIELD
Notary Public, State of Texas
Comm. Expires 05-09-2026
Notary ID 131561095



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TELEPHONE: (432) 682-1653 OR (800) 767-1653 • FAX (432) 682-1743
TEXAS FIRM REGISTRATION NO. 10042500
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CD_MCC_HZ_UNIT_1111MH_RADIUS_REV2

CONCHO
OPERATOR: COG OPERATING LLC

MCC HZ UNIT 1111MH RADIUS MAP

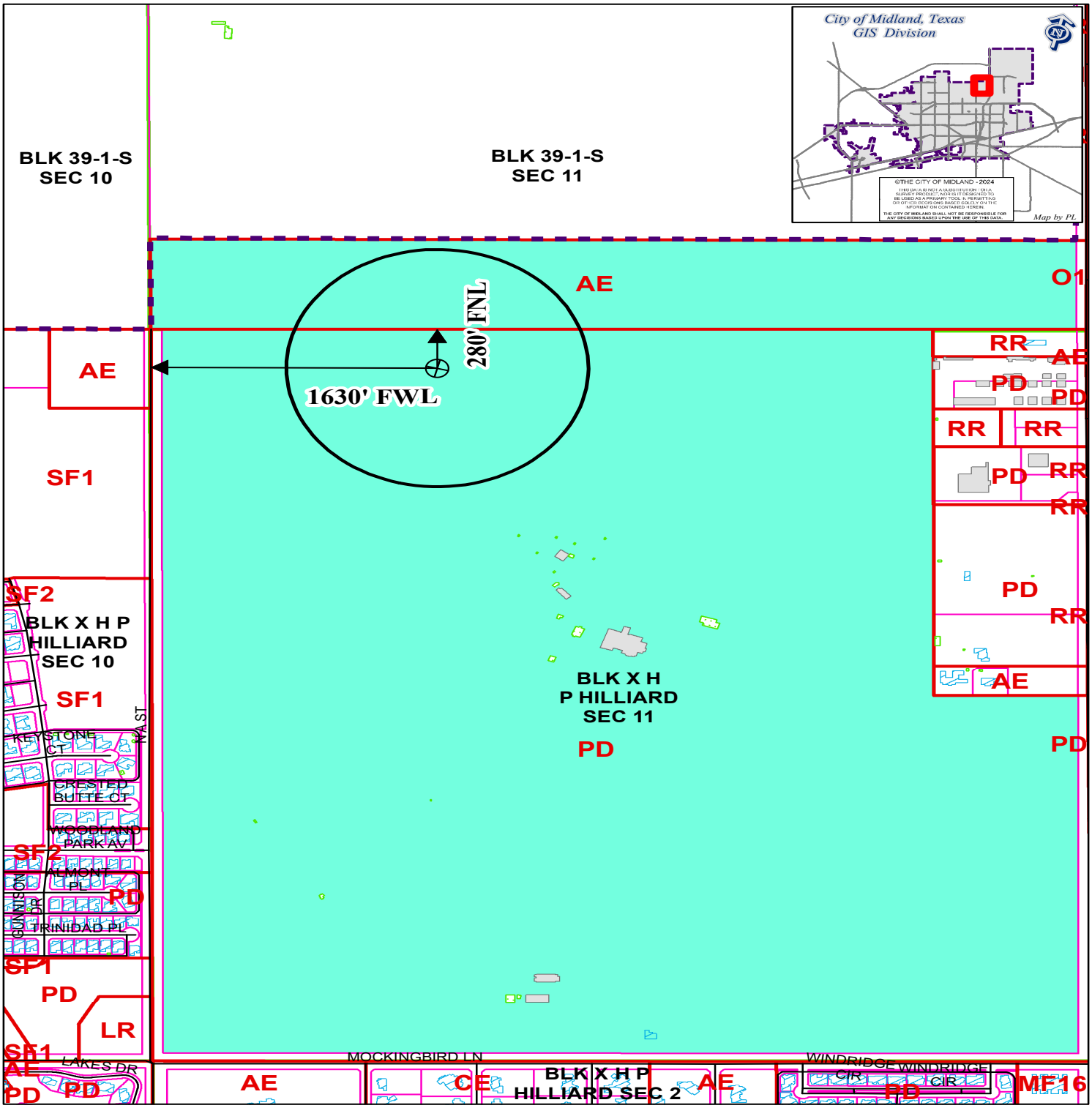
LOCATION DESCRIPTION:

SECTION 11, BLOCK X, H.P. HILLIARD SURVEY
MIDLAND COUNTY, TEXAS

LEGEND

- City Limits
- Section Line
- Block Line
- Radius Line
- Lease Road
- Found Monument
- Calculated Corner

Surveyed: 04/24/24	PACKET	Revision: DCR (2)	6/25/24	ORIGINAL DOC. SIZE: 8.5"x11"
COGO: 724-108888				Drawn By: EAH; 10/04/23



LOCATION AND ZONING MAP

Oil - 061955 - 2024 **Scale: 1" = 800'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 280' FNL and 1,630' FWL, Section 11, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 1,630 feet east of North A Street and 5,040 feet north of Mockingbird Lane.

MCC HZ Unit #1111MH

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, SF3	ONE-FAMILY DWELLING	CR1, CR2, CR3	COMMERCIAL/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

CONCHO
OPERATOR: COG OPERATING LLC

MCC EXHIBIT G

LOCATION DESCRIPTION:

SECTION 11, A-642
BLOCK X, H.P. HILLIARD SURVEY
MIDLAND COUNTY, TEXAS

SPECIAL NOTES:

Original Document Size: 8.5"x14"
All Coordinates are in NAD 27 TX-C Zone
unless otherwise noted.

LEGEND
- Section Line
- Block Line
- Sound Wall
- City Limits
- Powerline
- Pipeline
- Proposed Pipeline
- Lease Road
- Found Monument
- Calculated Corner

Orig. Doc. 8.5x14	Surveyed: 10/04/23
COGO: 724-108888	
Revision: BCL (4)	6/26/24
Drawn By: EAH; 06/11/24	

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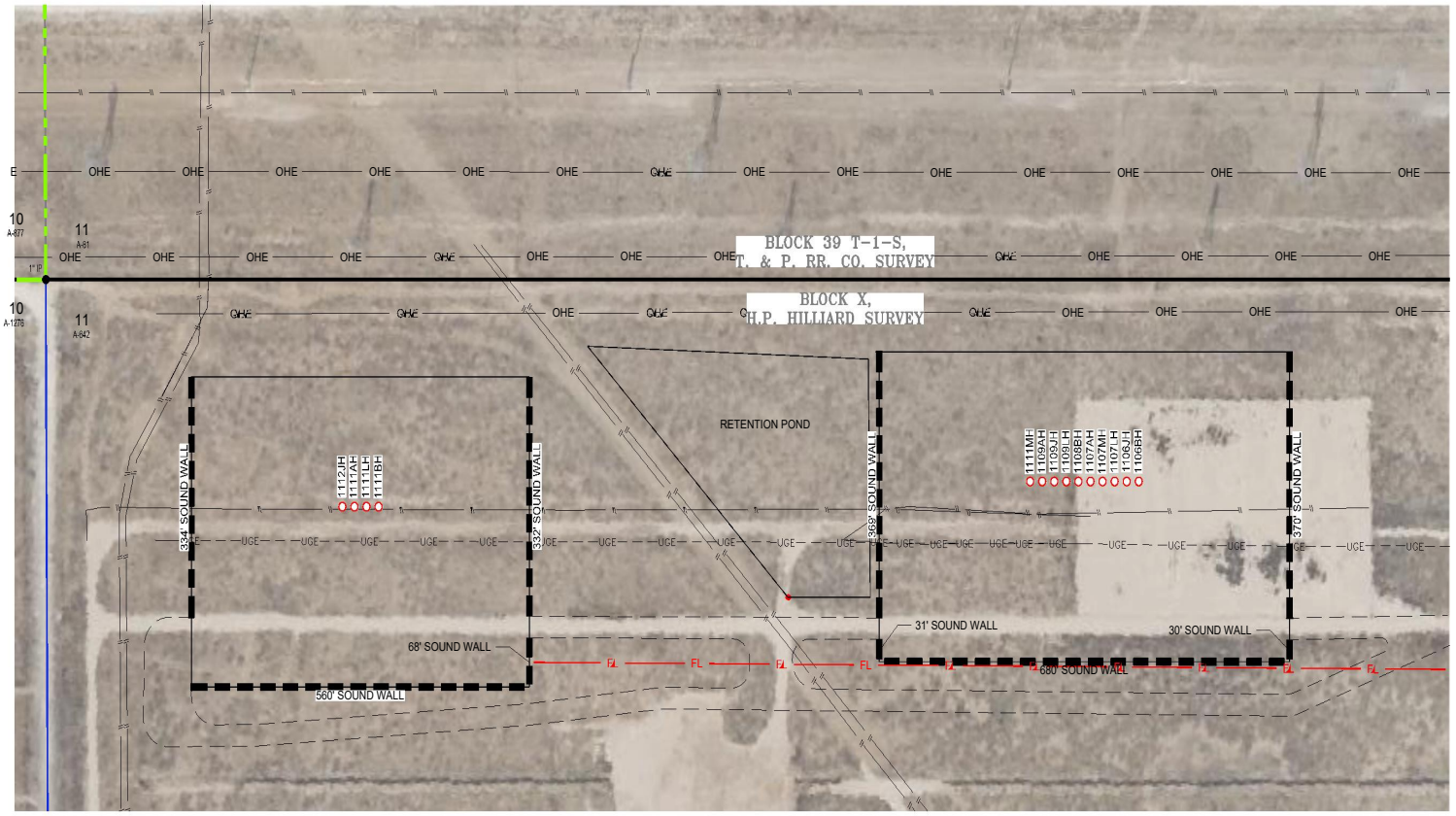
FILE NAME: CD_MCC_EXHIBIT_G_REV4



NAD 27
GRID BEARINGS

SCALE: 1" = 300'
0' 150' 300'

MCC HZ UNIT 1112JH
315' FNL & 490' FWL (SEC. 11)
315' FNLL & 490' FWLL
SHL Ground Elevation: 2810'
X = 1451703 Y = 878093
LAT.: N 32°04'08.21" LONG.: W 102°06'11.54"
LAT.: N 32.0689477 LONG.: W 102.1032052

MCC HZ UNIT 1111AH
315' FNL & 510' FWL (SEC. 11)
315' FNLL & 510' FWLL
SHL Ground Elevation: 2810'
X = 1451723 Y = 878098
LAT.: N 32°04'08.26" LONG.: W 102°06'11.31"
LAT.: N 32.0689622 LONG.: W 102.1031429

MCC HZ UNIT 1111LH
315' FNL & 530' FWL (SEC. 11)
315' FNLL & 530' FWLL
SHL Ground Elevation: 2810'
X=1451742 Y=878103
LAT.: N 32°04'08.32" LONG.: W 102°06'11.09"
LAT.: N 32.0689767 LONG.: W 102.1030806

MCC HZ UNIT 1111BH
315' FNL & 550' FWL (SEC. 11)
315' FNLL & 550' FWLL
SHL Ground Elevation: 2809'
X=1451761 Y=878108
LAT.: N 32°04'08.37" LONG.: W 102°06'10.87"
LAT.: N 32.0689912 LONG.: W 102.1030183

MCC HZ UNIT 1111MH
280' FNL & 1630' FWL (SEC. 11)
280' FNLL & 1630' FWLL
SHL Ground Elevation: 2805'
X=1452799 Y=878410
LAT.: N 32°04'11.52" LONG.: W 102°05'58.87"
LAT.: N 32.0698665 LONG.: W 102.0996858

MCC HZ UNIT 1109AH
280' FNL & 1650' FWL (SEC. 11)
280' FNLL & 1650' FWLL
SHL Ground Elevation: 2805'
X = 1452818 Y = 878415
LAT.: N 32°04'11.57" LONG.: W 102°05'58.64"
LAT.: N 32.0698810 LONG.: W 102.0996235

MCC HZ UNIT 1109JH
280' FNL & 1670' FWL (SEC. 11)
280' FNLL & 1670' FWLL
SHL Ground Elevation: 2805'
X = 1452837 Y = 878420
LAT.: N 32°04'11.62" LONG.: W 102°05'58.42"
LAT.: N 32.0698955 LONG.: W 102.0995613

MCC HZ UNIT 1109LH
280' FNL & 1690' FWL (SEC. 11)
280' FNLL & 1690' FWLL
SHL Ground Elevation: 2805'
X = 1452857 Y = 878425
LAT.: N 32°04'11.68" LONG.: W 102°05'58.20"
LAT.: N 32.0699100 LONG.: W 102.0994990

MCC HZ UNIT 1108BH
280' FNL & 1710' FWL (SEC. 11)
280' FNLL & 1710' FWLL
SHL Ground Elevation: 2805'
X = 1452876 Y = 878430
LAT.: N 32°04'11.73" LONG.: W 102°05'57.97"
LAT.: N 32.0699245 LONG.: W 102.0994367

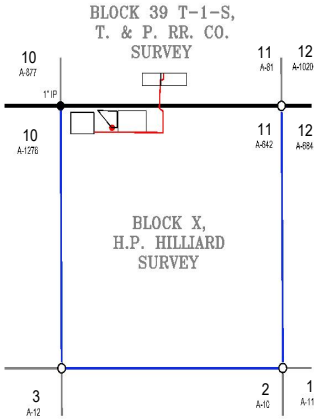
MCC HZ UNIT 1107AH
280' FNL & 1730' FWL (SEC. 11)
280' FNLL & 1730' FWLL
SHL Ground Elevation: 2805'
X = 1452896 Y = 878435
LAT.: N 32°04'11.78" LONG.: W 102°05'57.75"
LAT.: N 32.0699390 LONG.: W 102.0993745

MCC HZ UNIT 1107MH
280' FNL & 1750' FWL (SEC. 11)
280' FNLL & 1750' FWLL
SHL Ground Elevation: 2805'
X = 1452915 Y = 878440
LAT.: N 32°04'11.83" LONG.: W 102°05'57.52"
LAT.: N 32.0699535 LONG.: W 102.0993122

MCC HZ UNIT 1107LH
280' FNL & 1770' FWL (SEC. 11)
280' FNLL & 1770' FWLL
SHL Ground Elevation: 2805'
X = 1452934 Y = 878445
LAT.: N 32°04'11.88" LONG.: W 102°05'57.30"
LAT.: N 32.0699680 LONG.: W 102.0992499

MCC HZ UNIT 1106JH
280' FNL & 1790' FWL (SEC. 11)
280' FNLL & 1790' FWLL
SHL Ground Elevation: 2805'
X = 1452954 Y = 878450
LAT.: N 32°04'11.94" LONG.: W 102°05'57.08"
LAT.: N 32.0699824 LONG.: W 102.0991876

MCC HZ UNIT 1106BH
280' FNL & 3522' FWL (SEC. 11)
280' FNLL & 3522' FWLL
SHL Ground Elevation: 2805'
X = 1452973 Y = 878455
LAT.: N 32°04'11.99" LONG.: W 102°05'56.85"
LAT.: N 32.0699969 LONG.: W 102.0991254



City Council Meeting

Item Number: 15

Meeting Date: October 22, 2024

To: City Council / City Manager

From: Garrick Clayton, Oil and Gas Coordinator

Subject: **RESOLUTION APPROVING THE ISSUANCE OF PERMITS TO COG OPERATING, LLC ("OPERATOR") TO DRILL FOUR OIL AND GAS WELLS LOCATED IN SECTION 11, BLOCK X, H.P. HILLIARD SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 490 FEET AND 550 FEET EAST OF NORTH A STREET AND 5,005 FEET NORTH OF MOCKINGBIRD LANE); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT (DISTRICT 1) (DEVELOPMENT SERVICES) (SET THE STANDARD FOR A SAFE AND SECURE CITY)**

Purpose:

Resolution approving the issuance of permits to Permian Deep Rock Oil Co., LLC ("Operator") for the drilling of the following oil and gas wells: MCC HZ UNIT #1111AH; MCC HZ UNIT #1111BH; MCC HZ UNIT #1111LH; and MCC HZ UNIT #1112JH; said wells being generally located between 490 feet and 550 feet east of North A Street extension and 5,005 feet North of Mockingbird Lane. The required 30-day public comment has passed, and the Council may consider this request. No notices of objection received.

Recommended City Council Action:

Approve

Fiscal Impact:

There is no cost to the City to process this application.

Strategic Priority:

(Set the Standard for a Safe and Secure City)

Discussion:

The Oil and Gas Advisory Committee has reviewed the well sites in detail and recommends approval with consideration of a fourth, North facing sound barrier and an additional exhibit. COG Operating will be using 24 ft. tall sound walls on 3 of 4 sides of the location during drilling and fracing. In addition, a quiet type frac system that will utilize an electric frac fleet, with power generation equipment that will be staged on pad behind sound barriers. A closed loop system will be used for drilling operations so no reserve pits or cuttings will be kept on the property and the Tank Battery for these wells will be located in the county. COG Operating is requesting the following variances:

(1) requests to allow for twenty-four-hour fracing operations.
(2) requests variance to the Road Repair Agreement due to no city streets will be used.
(3) request a variance to the landscaping and irrigation due to no access to city water and the land is undeveloped.
(4) requests variance to remove drill cuttings from the location.

Attachments: Applications; Location maps; Exhibit - Drill site map, Exhibit – Flow Line Location.

Jose E. Ort

City Manager's Office

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF PERMITS TO COG OPERATING, LLC ("OPERATOR") TO DRILL FOUR OIL AND GAS WELLS LOCATED IN SECTION 11, BLOCK X, H.P. HILLIARD SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED BETWEEN 490 FEET AND 550 FEET EAST OF NORTH A STREET AND 5,005 FEET NORTH OF MOCKINGBIRD LANE); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

WHEREAS, on December 8, 2009, the City Council of the City of Midland duly approved Ordinance No. 8769 which amended Title VI, "Police Regulations," Chapter 1, "General Offenses," of the City Code of Midland, Texas, so as to establish Section 23, "Oil and Gas Well Permits issued on or after January 1, 2010," which governs the granting or rejecting of Oil and Gas Well Permits; and

WHEREAS, the purpose of said section is to establish reasonable and uniform limitations, safeguards, and regulations for present and future operations related to the exploring, drilling, developing, producing, transporting and storing of oil or gas or other substances produced in association with oil and gas within the City of Midland to protect the health, safety, and general welfare of the public and the orderly development of the City of Midland; abate or prevent potential public nuisances; minimize the potential adverse impact to surface and mineral owners, protect the quality of the environment and encourage the orderly production of available mineral resources; and

WHEREAS, Section 6-1-23(C) of the City Code of Midland, Texas, makes it an offense to knowingly drill or participate in the drilling of any well or to re-enter any well within the corporate limits of the City of Midland without a permit having first been issued by the authority of the City Council; and

WHEREAS, Operator has submitted applications to the City of Midland to drill oil and gas wells on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance

with Section 6-1-23(H)(1) and a public hearing was held on September 10, 2024; and

WHEREAS, subsequent to said public hearing, and in accordance with Section 6-1-23(H)(1), the City Council allowed the public and Operator thirty (30) days to submit written input to the City Manager regarding Operator's applications to drill oil and gas wells on the property described in Section Two hereof; and

WHEREAS, the City Council has considered those issues set forth in Section 6-1-23(I) in determining whether to grant or deny permits to Operator to drill oil and gas wells on the property described in Section Two hereof; and

WHEREAS, the City Council finds it to be in the public interest to approve the issuance of permits to Operator to drill oil and gas wells on the property described in Section Two hereof;

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

SECTION ONE. That the above recitals are hereby adopted and approved by the City Council of the City of Midland.

SECTION TWO. That the Mayor is hereby authorized and directed to execute permits, on behalf of the City of Midland, that will allow Operator to drill the following oil and gas wells:

MCC HZ UNIT #1111AH; MCC HZ UNIT #1111BH; MCC HZ UNIT #1111LH; and MCC HZ UNIT #1112JH;

located in Section 11, Block X, H.P. Hilliard Survey, City of Midland, Midland County, Texas. Said permits shall be in forms substantially similar to those attached hereto as Exhibits "A" through "D" and incorporated herein for all legal purposes.

SECTION THREE. That the requirement of a Road Repair Agreement between Operator and the City of Midland is hereby waived in regard to said permits.

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., 2024, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

_____
Tommy Gonzalez, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT "A"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1111AH oil and gas well shall be 315 feet from the north line and 510 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey**,** City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. No road repair agreement is required because no City streets will be used to access the well site.
3. No landscaping or irrigation is required.
4. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "B"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1111BH oil and gas well shall be 315 feet from the north line and 550 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey**,** City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. No road repair agreement is required because no City streets will be used to access the well site.
3. No landscaping or irrigation is required.
4. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "C"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1111LH oil and gas well shall be 315 feet from the north line and 530 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey**,** City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

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A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. No road repair agreement is required because no City streets will be used to access the well site.
3. No landscaping or irrigation is required.
4. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "D"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1112JH oil and gas well shall be 315 feet from the north line and 490 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey**,** City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

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If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. No road repair agreement is required because no City streets will be used to access the well site.
3. No landscaping or irrigation is required.
4. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "A"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1111AH oil and gas well shall be 315 feet from the north line and 510 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey**,** City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

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A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
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GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "B"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

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The location of Operator's MCC HZ UNIT #1111BH oil and gas well shall be 315 feet from the north line and 550 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey**,** City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

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If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
2. No road repair agreement is required because no City streets will be used to access the well site.
3. No landscaping or irrigation is required.
4. Drill cuttings may be removed from the surface location.

Sound walls shall be used during drilling and completion operations as noted in the application.

This permit shall constitute a written contract for purposes of insurance requirements.

In addition to the requirements of this permit and the Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), including, but not limited to Subsections (K) through (Z), Operator shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Operator's application for said well.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "C"

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on October 22, 2024, considered the application of COG Operating LLC ("Operator") dated June 3, 2024, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1111LH oil and gas well shall be 315 feet from the north line and 530 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey**,** City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

This permit shall be effective from October 22, 2024 through October 22, 2025, and so long thereafter as oil or gas is produced, or until such time as Operator has permanently abandoned the operations of the well or facility for which this permit is issued.

The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the surface estate owner(s) and mineral estate owner(s) if there exists a severance of the surface estate and mineral estate. This permit in no way exempts Operator from its responsibilities or obligations as to third parties. The issuance of this permit only means that Operator has, at this time, complied with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance No. 8769) and that the Midland City Council, as a regulatory body, will allow Operator to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the permittee to occupy the property. It is expressly provided that this permit does not authorize a trespass by the permittee as to any third party. This

permit does not in any way restrict the use of the surface estate. Securing a permit does not authorize Operator to act with impunity as to third parties, nor does it insulate Operator from the consequences of its actions with regard to those third parties. The receipt of a permit does not undertake to adjudicate property rights.

This permit granted by the City of Midland does not act to immunize Operator from civil tort liability from private parties for actions arising out of the use of the permit. This is because the permit is a "negative pronouncement" that grants no affirmative rights to the permittee. The issuance of this permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of State or local law or regulations. Operator has obtained a permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued a permit to drill an oil and gas well does not shield Operator from third party tort liability stemming from the consequences of the permitted activity.

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

OPERATOR AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY OF MIDLAND, THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY OPERATOR UNDER AN OIL AND GAS WELL PERMIT WHERE SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED BY OPERATOR'S SOLE NEGLIGENCE OR THE JOINT NEGLIGENCE OF THE OPERATOR AND ANY OTHER PERSON OR ENTITY.

A right-of-way license agreement approved by a resolution of the Midland City Council is required for any oil and/or gas flowline or pipeline or any other device associated with a proposed well site that extends into, on, above, in, under, across or through any City rights-of-way, including but not limited to streets, alleys, and utility and drainage rights-of-way.

If the well that is the subject of this permit is not located within the County of Midland, Texas, Operator shall notify the Midland Central Appraisal District of the following: (1) the well's location within the territorial limits of the City of Midland; and (2) that the City of

Midland is to be included as a taxing entity. Operator shall make said notification no later than 60 days after completion of the well.

The Midland City Council, in granting this permit, also grants the following variance(s):

1. Twenty-four hour hydraulic fracturing operations are permitted.
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CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

EXHIBIT "D"

OIL AND GAS WELL PERMIT

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This documentation hereby constitutes a permit, issued in accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), to drill an oil and gas well as requested in Operator's application that has been filed with the Oil & Gas Compliance Coordinator and is incorporated herein for all legal purposes.

The location of Operator's MCC HZ UNIT #1112JH oil and gas well shall be 315 feet from the north line and 490 feet from the west line, Section 11, Block X**,** H.P. Hilliard Survey**,** City and County of Midland, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in Operator's application. Further, all operations done under this permit shall be done and accomplished in strict accordance with Midland City Code § 6-1-23, "Oil and Gas Well Permits Issued On or After January 1, 2010" (Ordinance 8769), which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit, including, but not limited to, Subsections (K) through (Z).

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GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of October 2024.

CITY OF MIDLAND, TEXAS

BY: _____

Lori Merritt Blong, Mayor

UNDERSTOOD AND AGREE THIS _____day of October 2024.

COG Operating LLC

By: _____

Jon Philley

Midland Basin North Asset Manager

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
6/3/2024	COG Operating LLC	600 W. Illinois Ave. Midland, TX 79701

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432) 685-4339
Rebecca L. Morris, Land Manager, Midland Basin	600 W. Illinois Ave. Midland, TX 79701	Rep. Fax
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:
Matt Wilson
600 W. Illinois Ave.
Midland, TX 79701
Office: (432) 253-4554
Cell: (432) 472-6978

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):***

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):
Matt Wilson, Midland Basin North Operations Manager for ConocoPhillips, Cell: (432) 472-6978
ConocoPhillips Global Security – **24 Hour Emergency Hotline**: (281) 293-1748
ConocoPhillips Corporate Crisis **24 Hour Hotline**: (281) 293-3333
Midland Police Department: 911 or 432-685-7110
Midland Fire Department: 911
Ambulance: 911
Paramedics: 911

Other Permitted Wells in City ***(ATTACH 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 *Title Opinion by*~~ , ~~*a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from*~~ Caroline Hoban , *a Certified Petroleum Landman/~~an opinion letter from~~* , ~~*a licensed Texas Attorney)*~~ indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].**

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

Surface use: Open Pasture

Surface Ownership: See Exhibit "D"

ATTACHED AS EXHIBIT D **is (~~a *Title Opinion by*~~ , ~~*a licensed Texas Attorney/a Take-off from*~~ , ~~*a Certified Petroleum Landman*~~*/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: MCC HZ UNIT #1111AH

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:

Surface Hole Location: 315' FNL & 510' FWL, Section 11, Block X, H.P. Hilliard 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 ~~**is the Road Repair Agreement**~~ **and** ***Letter of Credit/Certificate of Deposit/Surety Bond*** **in the amount of at least $25,000.** ***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 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 Electric

Description of water source to be used during Drilling:

Water source will be from off-site water wells or trucked if necessary

Description of all electric lines to production facilities (reference exhibits as necessary)

ATTACHED AS EXHIBIT "N" **[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 *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].**

***ATTACHED AS EXHIBIT Q* are 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 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 Summary List of Variances**

***ATTACHED AS EXHIBIT W* is Acoustic Impact Study/Mitigation Plan**

CERTIFICATION OF APPLICATION

I, Rebecca L. Morris, Attorney-in-Fact of COG Operating LLC, hereby certify that the information contained in this application is true and correct to the best of my knowledge.

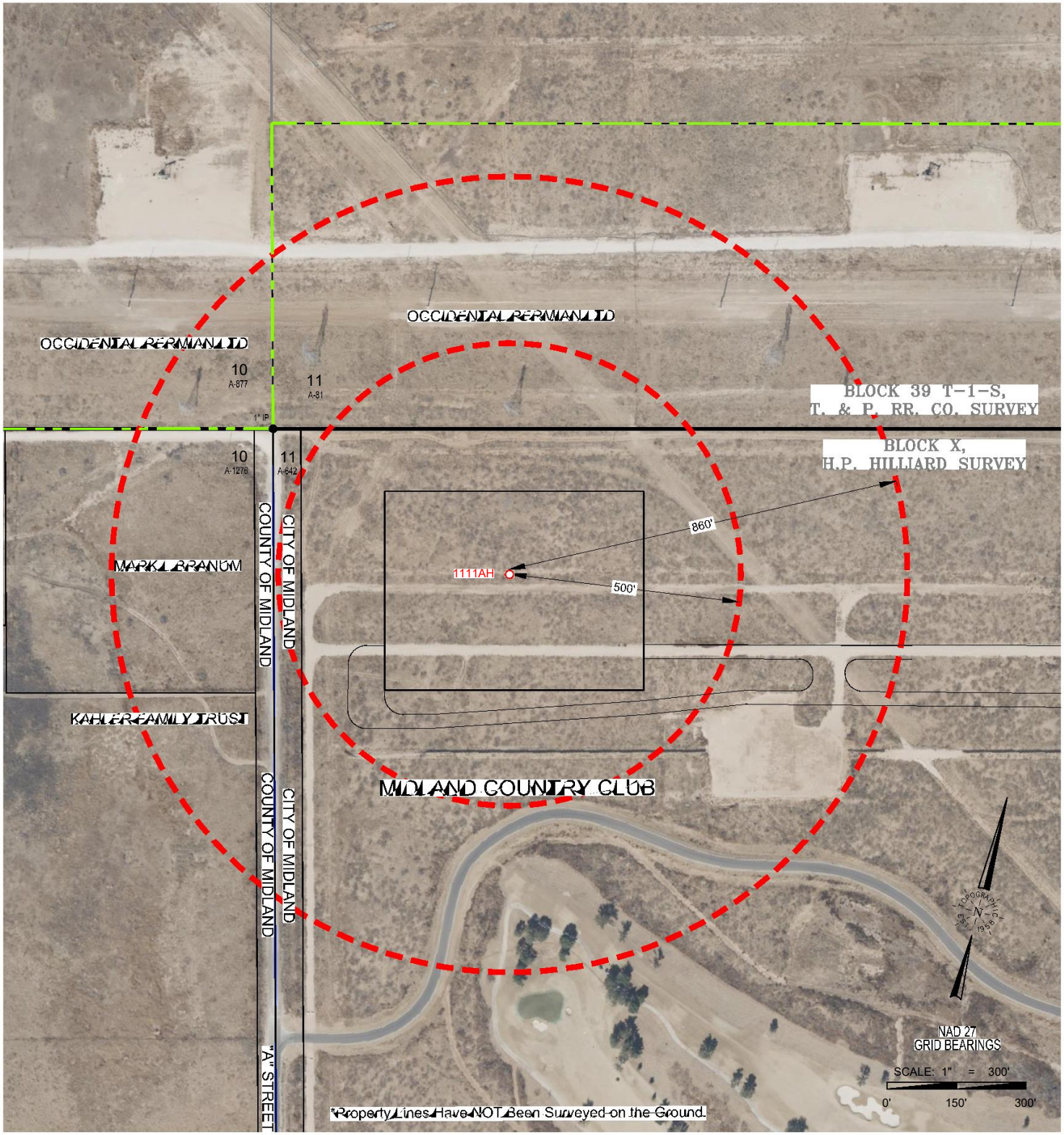
Rebecca L. Morris
Attorney-in-Fact
COG Operating LLC

STATE OF TEXAS §
COUNTY OF MIDLAND §

This instrument was acknowledged before me on this 27th day of June, 2024, by Rebecca L. Morris, Attorney-in-Fact of COG Operating LLC, a Delaware limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

JAMI HATFIELD
Notary Public, State of Texas
Comm. Expires 05-09-2026
Notary ID 131561095



TOPOGRAPHIC
LOYALTY INNOVATION LEGACY

2903 NORTH BIG SPRING • MIDLAND, TEXAS 79705
TELEPHONE: (432) 682-1653 OR (800) 767-1653 • FAX (432) 682-1743
TEXAS FIRM REGISTRATION NO. 10042500
WWW.TOPOGRAPHIC.COM

CD_MCC_HZ_UNIT_1111AH_RADIUS_REV2

CONCHO
OPERATOR: COG OPERATING LLC

MCC HZ UNIT 1111AH RADIUS MAP

LOCATION DESCRIPTION:

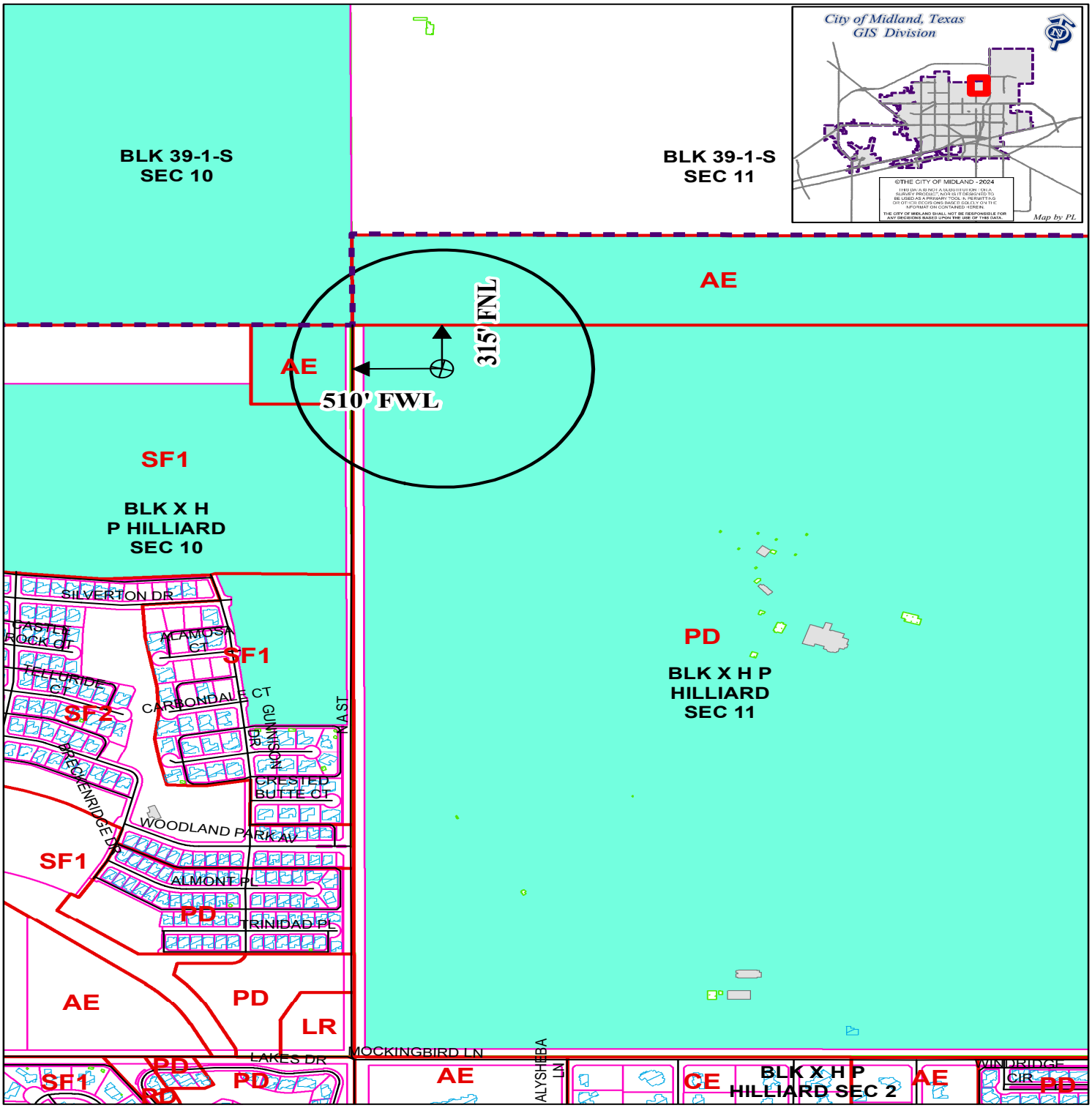
SECTION 11, BLOCK X, H.P. HILLIARD SURVEY
MIDLAND COUNTY, TEXAS

LEGEND

- City Limits
- Section Line
- Block Line
- Radius Line
- Lease Road
- Found Monument
- Calculated Corner

Surveyed:	4/11/24	Revision:DCR (2)	6/25/24	ORIGINAL DOC. SIZE: 8.5"x11"
COGO:	724-108888			Drawn By: EAH; 10/04/23

PACKET 15:42 October 22, 2024



LOCATION AND ZONING MAP

Oil - 061952 - 2024 **Scale: 1" = 800'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 315' FNL and 510' FWL, Section 11, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 510 feet east of North A Street and 5,005 feet north of Mockingbird Lane.

MCC HZ Unit #1111AH

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
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	CR2, CR3, CR4	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

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
6/3/2024	COG Operating LLC	600 W. Illinois Ave. Midland, TX 79701

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432) 685-4339
Rebecca L. Morris, Land Manager, Midland Basin	600 W. Illinois Ave. Midland, TX 79701	Rep. Fax
Fee: $4,000.00 Rec'd Yes___ No_	**NOTE: All attachments need to bound and put in a binder before submitting.**	**Pages 1-4**

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Ambulance: 911
Paramedics: 911

Other Permitted Wells in City ***(ATTACH EXHIBIT B*** **[see § J(26)]).**

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Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

ATTACHED AS EXHIBIT C

ATTACHED AS EXHIBIT C **is (**~~***a Title Opinion by***~~ **Caroline Hoban** ~~***, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from***~~ ***, a Certified Petroleum Landman/***~~***an opinion letter from***~~ ~~***a licensed Texas Attorney)***~~ **indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].**

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

Surface use: Open Pasture

Surface Ownership: See Exhibit "D"

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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: MCC HZ UNIT #1111BH

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:

Surface Hole Location: 315' FNL & 550' FWL, Section 11, Block X, H.P. Hilliard Survey, Midland County, Texas

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Description of Public Utilities required during (1) drilling and (2) operations:

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(2) Operations: Oncor Electric

Description of water source to be used during Drilling:

Water source will be from off-site water wells or trucked if necessary.

Description of all electric lines to production facilities (reference exhibits as necessary)

***ATTACHED AS EXHIBIT "N"* [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 *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].**

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***ATTACHED AS EXHIBIT W* is Acoustic Impact Study/Mitigation Plan**

CERTIFICATION OF APPLICATION

I, Rebecca L. Morris, Attorney-in-Fact of COG Operating LLC, hereby certify that the information contained in this application is true and correct to the best of my knowledge.

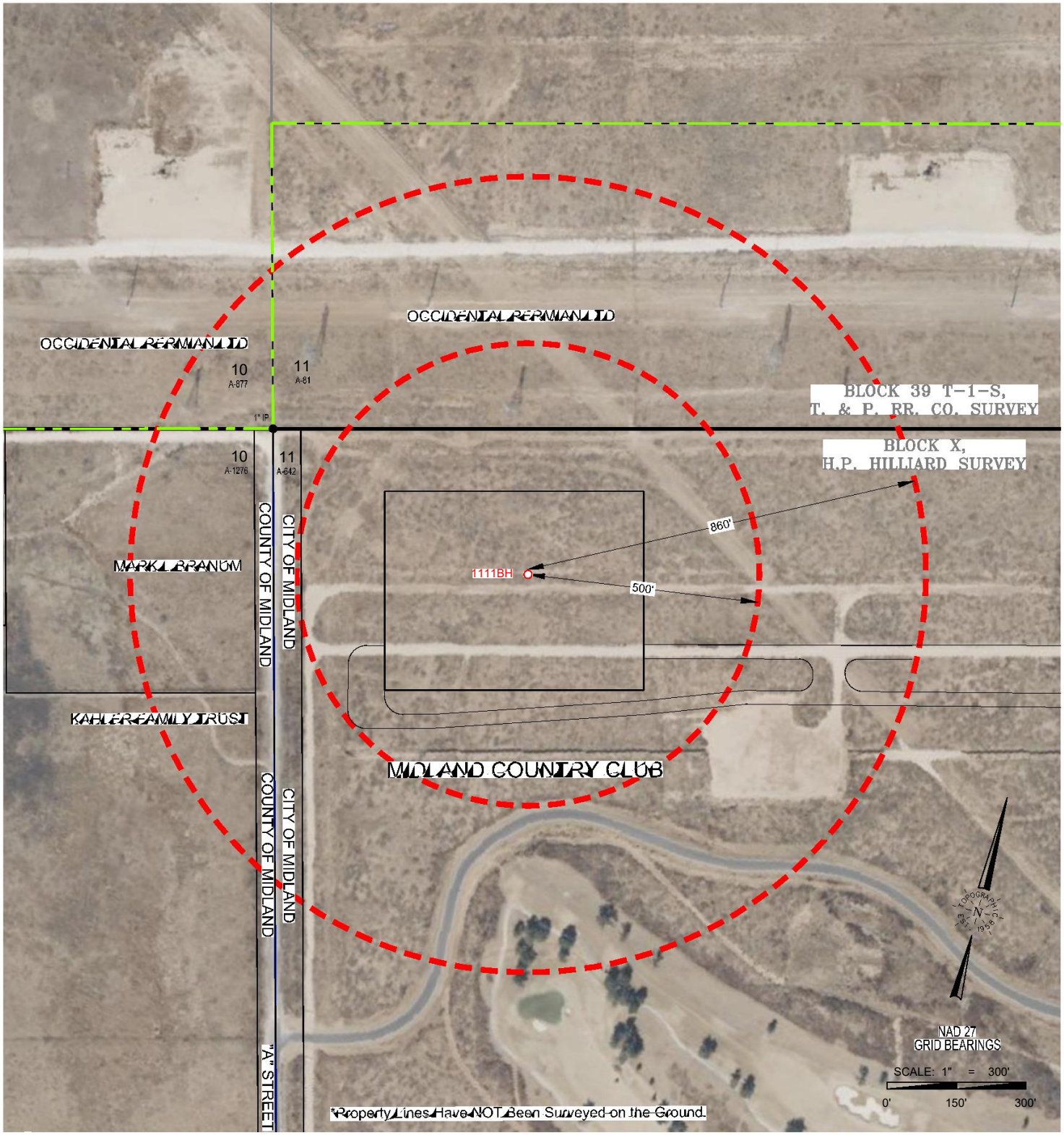
Rebecca L. Morris
Attorney-in-Fact
COG Operating LLC

STATE OF TEXAS §
COUNTY OF MIDLAND §

This instrument was acknowledged before me on this 27th day of June, 2024, by Rebecca L. Morris, Attorney-in-Fact of COG Operating LLC, a Delaware limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

JAMI HATFIELD
Notary Public, State of Texas
Comm. Expires 05-09-2026
Notary ID 131561095



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CD_MCC_HZ_UNIT_1111BH_RADIUS_REV2

CONCHO
OPERATOR: COG OPERATING LLC

MCC HZ UNIT 1111BH RADIUS MAP

LOCATION DESCRIPTION:

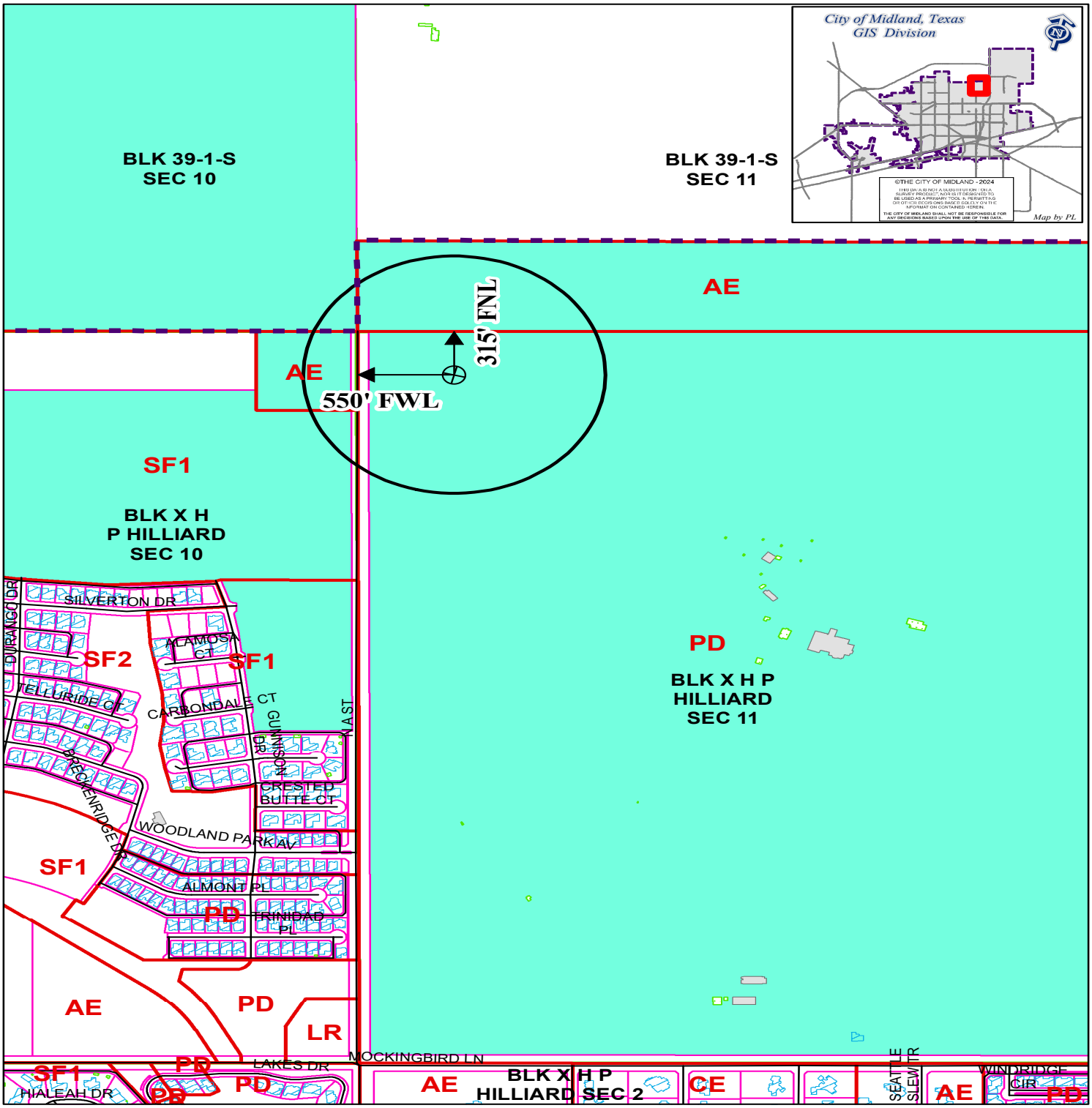
SECTION 11, BLOCK X, H.P. HILLIARD SURVEY
MIDLAND COUNTY, TEXAS

LEGEND

- City Limits
- Section Line
- Block Line
- Radius Line
- Lease Road
- Found Monument
- Calculated Corner

Surveyed:	4/11/24	Revision:DCR (2)	6/25/24	ORIGINAL DOC. SIZE: 8.5"x11"
COGO:	724-108888			Drawn By: EAH; 10/04/23

PACKET 15:48 October 22, 2024



LOCATION AND ZONING MAP

Oil - 061953 - 2024 **Scale: 1" = 800'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 315' FNL and 550' FWL, Section 11, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 550 feet east of North A Street and 5,005 feet north of Mockingbird Lane.

MCC HZ Unit #1111BH

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
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	CR1, CR2, CR3	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

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
6/3/2024	COG Operating LLC	600 W. Illinois Ave. Midland, TX 79701

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432) 685-4339
Rebecca L. Morris, Land Manager, Midland Basin	600 W. Illinois Ave. Midland, TX 79701	Rep. Fax
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:
Matt Wilson
600 W. Illinois Ave.
Midland, TX 79701
Office: (432) 253-4554
Cell: (432) 472-6978

Company Compliance Representative (Name, Address, Local Telephone) ***(ATTACH STATEMENT AS EXHIBIT A):***

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):
Matt Wilson, Midland Basin North Operations Manager for ConocoPhillips, Cell: (432) 472-6978
ConocoPhillips Global Security – **24 Hour Emergency Hotline**: (281) 293-1748
ConocoPhillips Corporate Crisis **24 Hour Hotline**: (281) 293-3333
Midland Police Department: 911 or 432-685-7110
Midland Fire Department: 911
Ambulance: 911
Paramedics: 911

Other Permitted Wells in City ***(ATTACH 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 *Title Opinion by*~~ , ~~*a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from*~~ Caroline Hoban , *a Certified Petroleum Landman/~~an opinion letter from~~* , ~~*a licensed Texas Attorney)*~~ indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].**

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

Surface use: Open Pasture

Surface Ownership: See Exhibit "D"

ATTACHED AS EXHIBIT D **is (~~a *Title Opinion by*~~ , ~~*a licensed Texas Attorney/a Take-off from*~~ , ~~*a Certified Petroleum Landman*~~*/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: MCC HZ UNIT #1111LH

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:

Surface Hole Location: 315' FNL & 530' FWL, Section 11, Block X, H.P. Hilliard 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)].**

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ATTACHED AS EXHIBIT M ~~**is the Road Repair Agreement**~~ **and** ***Letter of Credit/Certificate of Deposit/Surety Bond*** **in the amount of at least $25,000.** ***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 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 Electric

Description of water source to be used during Drilling:

Water source will be from off-site water wells or trucked if necessary.

Description of all electric lines to production facilities (reference exhibits as necessary)

ATTACHED AS EXHIBIT "N" **[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 *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].**

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I, Rebecca L. Morris, Attorney-in-Fact of COG Operating LLC, hereby certify that the information contained in this application is true and correct to the best of my knowledge.

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Attorney-in-Fact
COG Operating LLC

STATE OF TEXAS §
COUNTY OF MIDLAND §

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Notary Public, State of Texas

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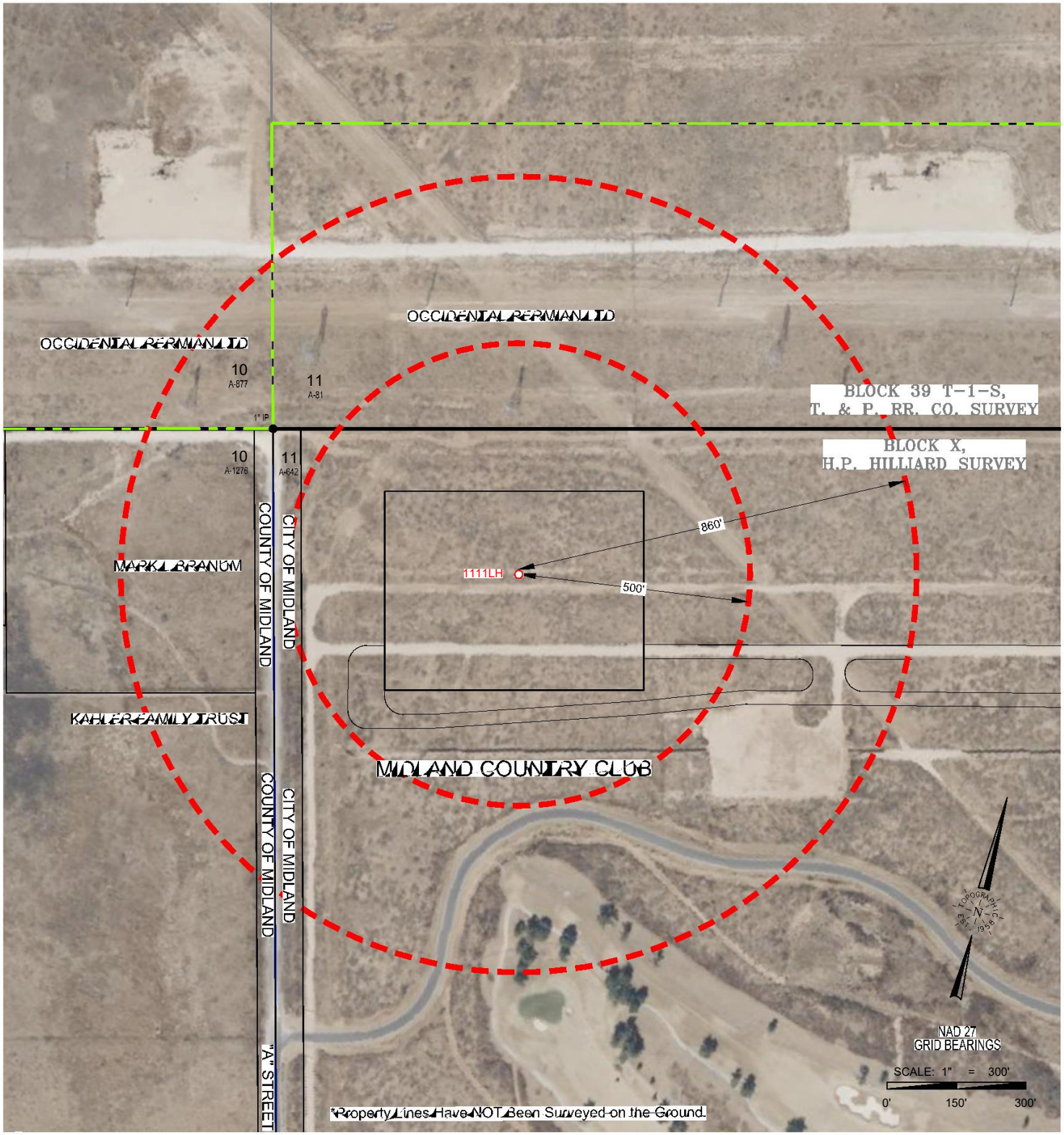

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CD_MCC_HZ_UNIT_1111LH_RADIUS_REV2

CONCHO
OPERATOR: COG OPERATING LLC

MCC HZ UNIT 1111LH RADIUS MAP

LOCATION DESCRIPTION:

SECTION 11, BLOCK X, H.P. HILLIARD SURVEY
MIDLAND COUNTY, TEXAS

LEGEND

- City Limits
- Section Line
- Block Line
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- Lease Road
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Surveyed:	9/14/23	Revision:DCR (2)	6/25/24	ORIGINAL DOC. SIZE: 8.5"x11"
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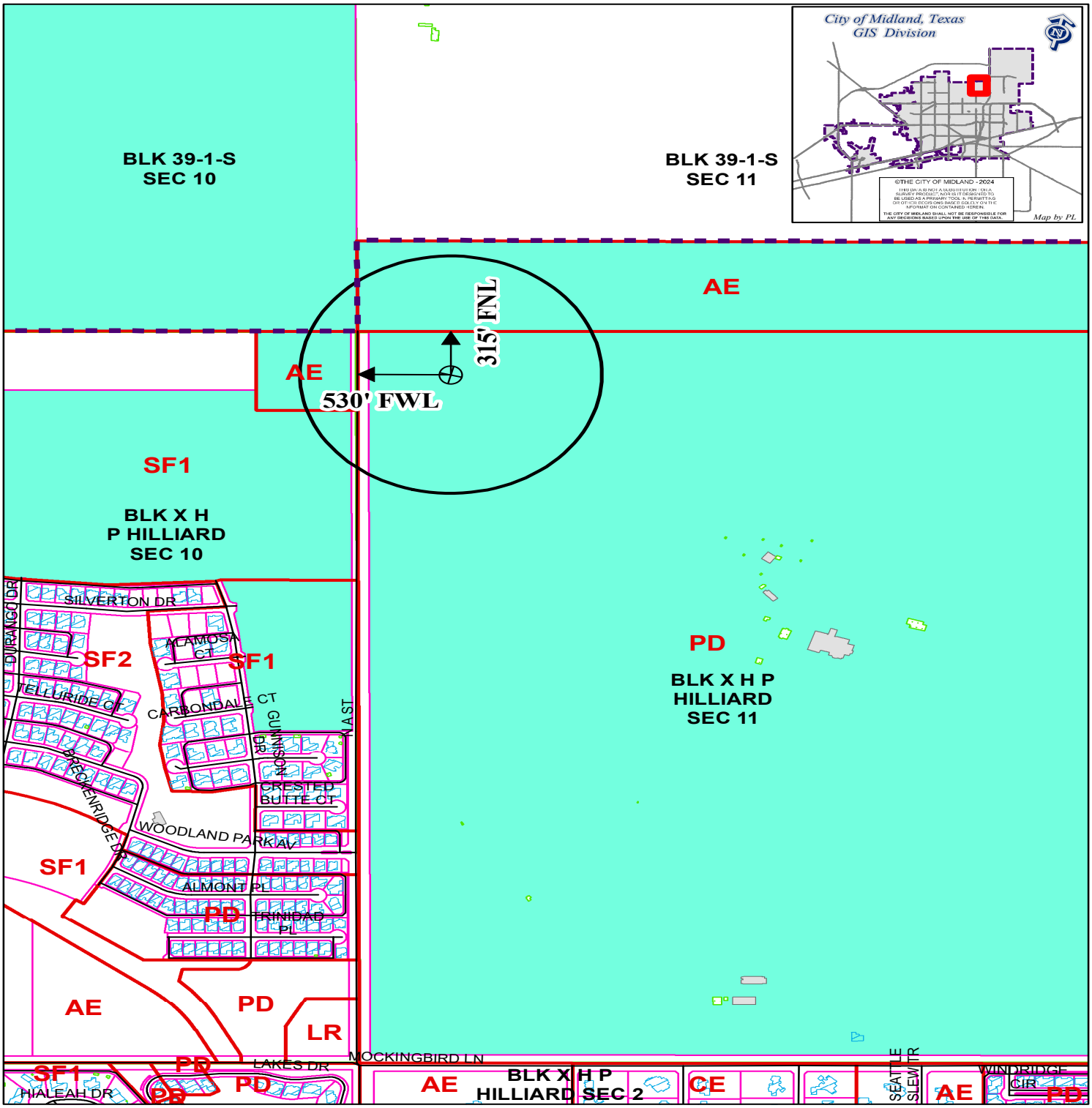
PACKET 19.54 October 22, 2024



LOCATION AND ZONING MAP

Oil - 061954 - 2024 **Scale: 1" = 800'**

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Generally located 530 feet east of North A Street and 5,005 feet north of Mockingbird Lane.

MCC HZ Unit #1111LH

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, 02	OFFICE
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1F1, LR2, MF3	ONE-FAMILY DWELLING	CR2, CR3, LR3	COMMUNITY RETAIL
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2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
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APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

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6/3/2024	COG Operating LLC	600 W. Illinois Ave. Midland, TX 79701

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432) 685-4339
Rebecca L. Morris, Land Manager, Midland Basin	600 W. Illinois Ave. Midland, TX 79701	Rep. Fax
Fee: $4,000.00 Rec'd Yes___ No_	**NOTE: All attachments need to bound and put in a binder before submitting.**	**Pages 1-4**

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Option B:
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Surface Ownership: See Exhibit "D"

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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: MCC HZ UNIT #1112JH

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:

Surface Hole Location: 315' FNL & 490' FWL, Section 11, Block X, H.P. Hilliard Survey, Midland County, Texas

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Water source will be from off-site water wells or trucked if necessary.

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CERTIFICATION OF APPLICATION

I, Rebecca L. Morris, Attorney-in-Fact of COG Operating LLC, hereby certify that the information contained in this application is true and correct to the best of my knowledge.

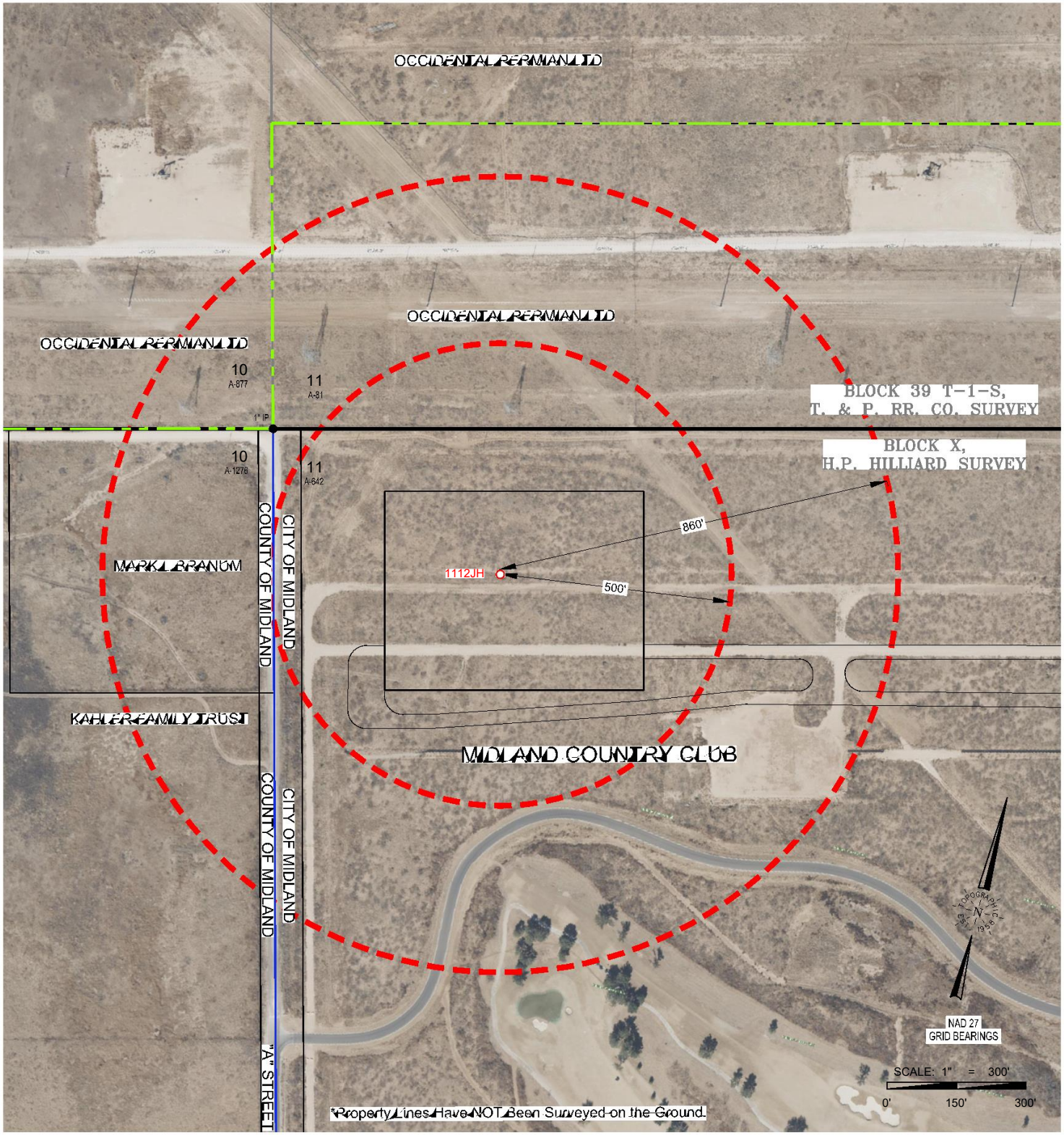
Rebecca L. Morris
Attorney-in-Fact
COG Operating LLC

STATE OF TEXAS §
COUNTY OF MIDLAND §

This instrument was acknowledged before me on this 27th day of June, 2024, by Rebecca L. Morris, Attorney-in-Fact of COG Operating LLC, a Delaware limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

JAMI HATFIELD
Notary Public, State of Texas
Comm. Expires 05-09-2026
Notary ID 131561095



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CD_MCC_HZ_UNIT_1112JH_RADIUS_REV5

CONCHO
OPERATOR: COG OPERATING LLC

MCC HZ UNIT 1112JH RADIUS MAP

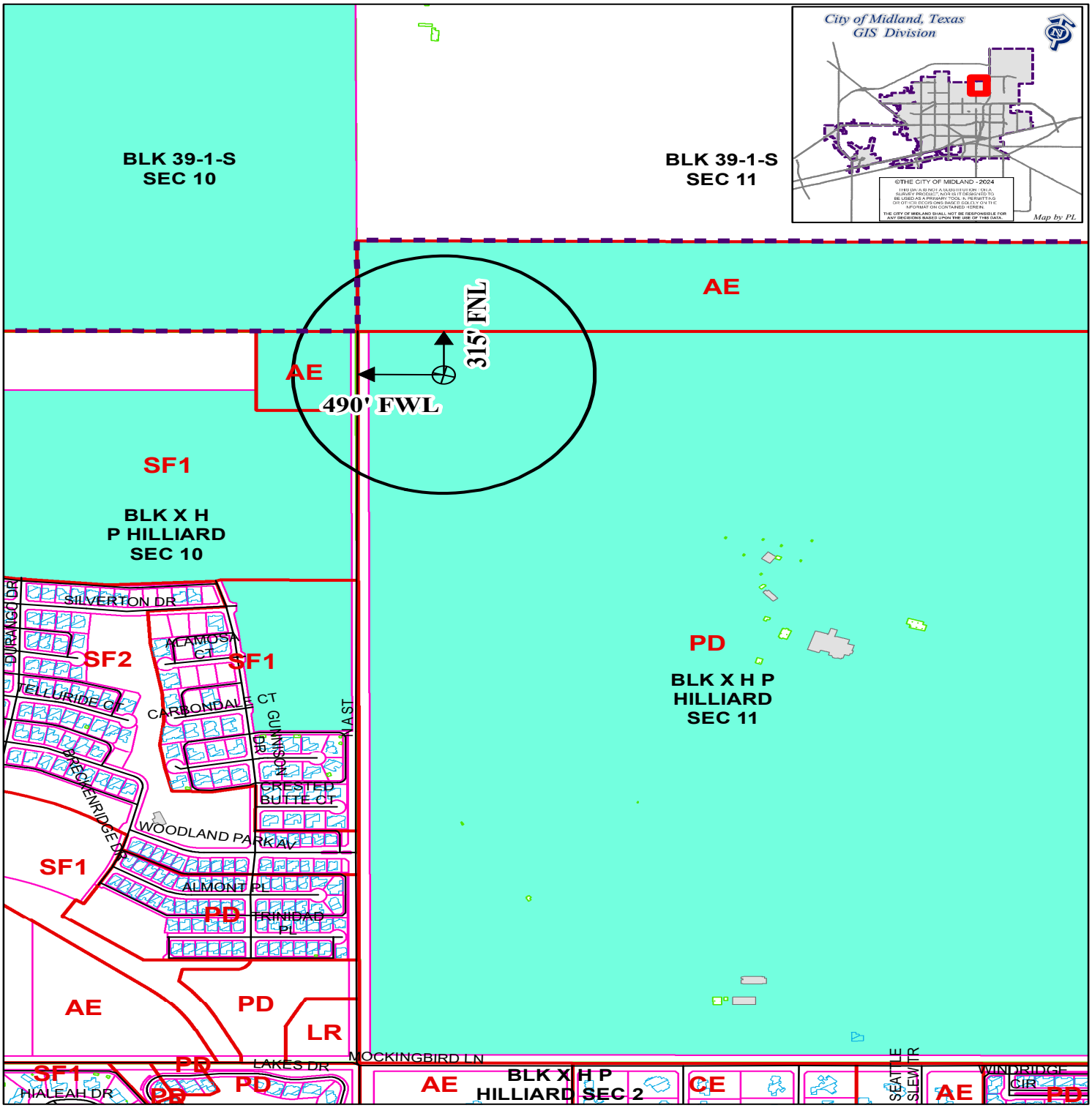
LOCATION DESCRIPTION:

SECTION 11, BLOCK X, H.P. HILLIARD SURVEY
MIDLAND COUNTY, TEXAS

LEGEND

- City Limits
- Section Line
- Block Line
- Radius Line
- Lease Road
- Found Monument
- Calculated Corner

Surveyed:	05/10/24	Revision: DCR (5)	6/24/24	ORIGINAL DOC. SIZE: 8.5"x11"
COGO:	724-108888			Drawn By: EAH; 10/04/23



LOCATION AND ZONING MAP

Oil - 061956 - 2024 **Scale: 1" = 800'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 315' FNL and 490' FWL, Section 11, Block X, H.P. Hilliard Survey, Midland County, Texas.

Generally located 490 feet east of North A Street and 5,005 feet north of Mockingbird Lane.

MCC HZ Unit #1112JH

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	CR1, CR2, CR3	COMMERCIAL/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

CONCHO
OPERATOR: COG OPERATING LLC

MCC EXHIBIT G

LOCATION DESCRIPTION:

SECTION 11, A-642
BLOCK X, H.P. HILLIARD SURVEY
MIDLAND COUNTY, TEXAS

SPECIAL NOTES:

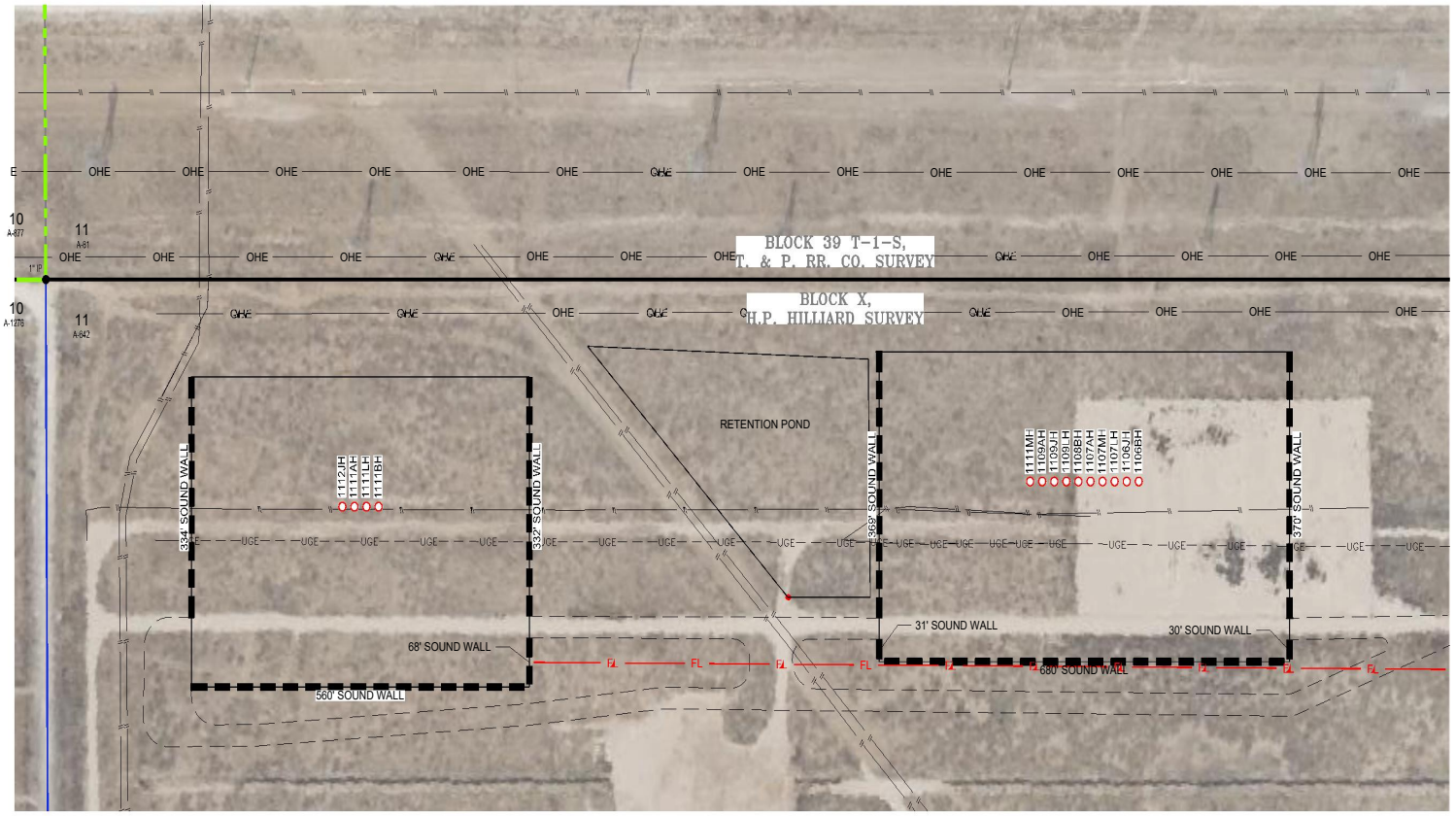
Original Document Size: 8.5"x14"
All Coordinates are in NAD 27 TX-C Zone
unless otherwise noted.

LEGEND
- Section Line
- Block Line
- Sound Wall
- City Limits
- Powerline
- Pipeline
- Proposed Pipeline
- Lease Road
- Found Monument
- Calculated Corner

Orig. Doc. 8.5x14	Surveyed: 10/04/23
COGO: 724-108888	
Revision: BCL (4)	6/26/24
Drawn By: EAH; 06/11/24	

TOPOGRAPHIC
LOYALTY INNOVATION LEGACY
2903 NORTH BIG SPRING • MIDLAND, TEXAS 79705
TELEPHONE: (432) 682-1653 OR (800) 767-1653 FAX: (432) 682-3672
TEXAS FIRM REGISTRATION NO. 10042800
WWW.TOPOGRAPHIC.COM

FILE NAME: CD_MCC_EXHIBIT_G_REV4



NAD 27
GRID BEARINGS

SCALE: 1" = 300'
0' 150' 300'

MCC HZ UNIT 1112JH
315' FNL & 490' FWL (SEC. 11)
315' FNLL & 490' FWLL
SHL Ground Elevation: 2810'
X = 1451703 Y = 878093
LAT.: N 32°04'08.21" LONG.: W 102°06'11.54"
LAT.: N 32.0689477 LONG.: W 102.1032052

MCC HZ UNIT 1111AH
315' FNL & 510' FWL (SEC. 11)
315' FNLL & 510' FWLL
SHL Ground Elevation: 2810'
X = 1451723 Y = 878098
LAT.: N 32°04'08.26" LONG.: W 102°06'11.31"
LAT.: N 32.0689622 LONG.: W 102.1031429

MCC HZ UNIT 1111LH
315' FNL & 530' FWL (SEC. 11)
315' FNLL & 530' FWLL
SHL Ground Elevation: 2810'
X=1451742 Y=878103
LAT.: N 32°04'08.32" LONG.: W 102°06'11.09"
LAT.: N 32.0689767 LONG.: W 102.1030806

MCC HZ UNIT 1111BH
315' FNL & 550' FWL (SEC. 11)
315' FNLL & 550' FWLL
SHL Ground Elevation: 2809'
X=1451761 Y=878108
LAT.: N 32°04'08.37" LONG.: W 102°06'10.87"
LAT.: N 32.0689912 LONG.: W 102.1030183

MCC HZ UNIT 1111MH
280' FNL & 1630' FWL (SEC. 11)
280' FNLL & 1630' FWLL
SHL Ground Elevation: 2805'
X=1452799 Y=878410
LAT.: N 32°04'11.52" LONG.: W 102°05'58.87"
LAT.: N 32.0698665 LONG.: W 102.0996858

MCC HZ UNIT 1109AH
280' FNL & 1650' FWL (SEC. 11)
280' FNLL & 1650' FWLL
SHL Ground Elevation: 2805'
X = 1452818 Y = 878415
LAT.: N 32°04'11.57" LONG.: W 102°05'58.64"
LAT.: N 32.0698810 LONG.: W 102.0996235

MCC HZ UNIT 1109JH
280' FNL & 1670' FWL (SEC. 11)
280' FNLL & 1670' FWLL
SHL Ground Elevation: 2805'
X = 1452837 Y = 878420
LAT.: N 32°04'11.62" LONG.: W 102°05'58.42"
LAT.: N 32.0698955 LONG.: W 102.0995613

MCC HZ UNIT 1109LH
280' FNL & 1690' FWL (SEC. 11)
280' FNLL & 1690' FWLL
SHL Ground Elevation: 2805'
X = 1452857 Y = 878425
LAT.: N 32°04'11.68" LONG.: W 102°05'58.20"
LAT.: N 32.0699100 LONG.: W 102.0994990

MCC HZ UNIT 1108BH
280' FNL & 1710' FWL (SEC. 11)
280' FNLL & 1710' FWLL
SHL Ground Elevation: 2805'
X = 1452876 Y = 878430
LAT.: N 32°04'11.73" LONG.: W 102°05'57.97"
LAT.: N 32.0699245 LONG.: W 102.0994367

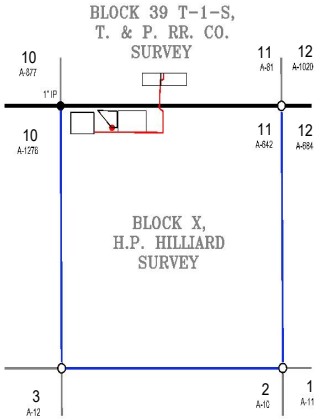
MCC HZ UNIT 1107AH
280' FNL & 1730' FWL (SEC. 11)
280' FNLL & 1730' FWLL
SHL Ground Elevation: 2805'
X = 1452896 Y = 878435
LAT.: N 32°04'11.78" LONG.: W 102°05'57.75"
LAT.: N 32.0699390 LONG.: W 102.0993745

MCC HZ UNIT 1107MH
280' FNL & 1750' FWL (SEC. 11)
280' FNLL & 1750' FWLL
SHL Ground Elevation: 2805'
X = 1452915 Y = 878440
LAT.: N 32°04'11.83" LONG.: W 102°05'57.52"
LAT.: N 32.0699535 LONG.: W 102.0993122

MCC HZ UNIT 1107LH
280' FNL & 1770' FWL (SEC. 11)
280' FNLL & 1770' FWLL
SHL Ground Elevation: 2805'
X = 1452934 Y = 878445
LAT.: N 32°04'11.88" LONG.: W 102°05'57.30"
LAT.: N 32.0699680 LONG.: W 102.0992499

MCC HZ UNIT 1106JH
280' FNL & 1790' FWL (SEC. 11)
280' FNLL & 1790' FWLL
SHL Ground Elevation: 2805'
X = 1452954 Y = 878450
LAT.: N 32°04'11.94" LONG.: W 102°05'57.08"
LAT.: N 32.0699824 LONG.: W 102.0991876

MCC HZ UNIT 1106BH
280' FNL & 3522' FWL (SEC. 11)
280' FNLL & 3522' FWLL
SHL Ground Elevation: 2805'
X = 1452973 Y = 878455
LAT.: N 32°04'11.99" LONG.: W 102°05'56.85"
LAT.: N 32.0699969 LONG.: W 102.0991254



City Council Meeting

Item Number: 16

Meeting Date: October 22, 2024

To: City Council / City Manager

From: Isaac Garnett, Manager, Community Development

Subject: RESOLUTION AUTHORIZING THE EXECUTION OF COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACTS WITH CASA DE AMIGOS OF MIDLAND, TEXAS, INCORPORATED, THE SALVATION ARMY OF MIDLAND, THE MIDLAND COUNTY HOSPITAL DISTRICT, SENIOR LIFE MIDLAND, INC., MISSION HEALTH CARE, INC.,THRIVING UNITED, INC., CHURCH ON WHEELS, INC., WEST TEXAS FOOD BANK, AND MIDLAND HABITAT FOR HUMANITY; AUTHORIZING THE FUNDING OF COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAMS; AND APPROPRIATING AND ALLOCATING FUNDS (DISTRICT: ALL) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

The City's 2024/2025 Community Development Block Grant (CDBG) entitlement includes 10 contracts with local organizations and four programs administered by the City totaling $1,450,807, including approximately $100,000 reserved for contingency funding. These contracts support affordable homeownership, social services, parks and recreation, public facilities, and road construction targeting assistance to low-income residents, earning less than 80 percent of the median area income.

Recommended City Council Action:

Approval

Fiscal Impact:

A total of $1,450,807 in funding will be appropriated upon approval. This includes $973,411 from the 2024-2025 CDBG Block Grant (060), $460,000 from the 2023-2024 CDBG Block Grant, and $17,396 from the 2020 CARES CV19 Block Grant Project (700299) within the Community Development Block Grant Fund (060), all for the specified purposes outlined in the resolution.

Strategic Priority:

Quality of Life and Place

Discussion:

The Fifth Year Action Plan outlines specific priorities and objectives, detailing how HUD resources will be allocated through contracts. The Community Development Block Grant office will fund the following programs:

- **Casa de Amigos** - Home Cleaning Program: $60,000
- **Mission Health Care, Inc.** - Take Home Terrific Meal Program: $41,100
- **Casa de Amigos** - Senior Nutrition Program: $70,000
- **Salvation Army of Midland** - Homeless Nutrition Programs: $100,000
- **Midland County Hospital District** - Mental Health & Wellness (CRISP) CV19 Program: $17,396
- **Senior Life Midland (SLM)** - Meals on Wheels Weekend Program: $43,900
- **Thriving United Inc.** - Peer Support Outreach: $83,000
- **West Texas Food Bank** – Emergency Food Box Distribution Program: $81,000
- **Church on Wheels, Inc**. – Facility Floor Replacement Program: $23,000
- **Midland Habitat for Humanity** – Habitat for Humanity Improvements Project: $381,000

Additionally, CDBG Block Grant funds (060) will be appropriated for the following:

- **OHAP Major-Down Payment Assistance**: $150,000
- **OHAP Minor Repair Program**: $100,000
- **City of Midland Parks and Recreation Department** - Dunagan Park Restroom: $150,000
- **City of Midland Parks and Recreation Department** - Washington Park Water Slides Resurfacing: $50,000
- **Contingency Funds**: $100,411

These allocations reflect the commitment to address key community needs and support the stated objectives and align with previous Council action taken on July 23, 2024, wherein the City of Midland's 2024-2025 Fifth Year Action Plan to the Consolidated Plan for Community Development and Housing Funds for the City's Fiscal Years 2020-2024 was adopted.

City Manager's Office

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACTS WITH CASA DE AMIGOS OF MIDLAND, TEXAS, INCORPORATED, THE SALVATION ARMY OF MIDLAND, THE MIDLAND COUNTY HOSPITAL DISTRICT, SENIOR LIFE MIDLAND, INC., MISSION HEALTH CARE, INC.,THRIVING UNITED, INC., CHURCH ON WHEELS, INC., WEST TEXAS FOOD BANK, AND MIDLAND HABITAT FOR HUMANITY; AUTHORIZING THE FUNDING OF COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAMS; AND APPROPRIATING AND ALLOCATING FUNDS

WHEREAS, Casa de Amigos of Midland, Texas, Incorporated, has agreed to provide services for the Case de Amigos Home Cleaning Program for $60,000.00; and

WHEREAS, Casa de Amigos of Midland, Texas, Incorporated, has agreed to provide services for the SE Senior Center Nutrition Program for $70,000.00; and

WHEREAS, the Salvation Army of Midland has agreed to provide services for the Homeless Nutrition Program for $100,000.00; and

WHEREAS, the Midland County Hospital District has agreed to provide services for the Community Referral and Indigent Services CV19 Program for $17,396.00; and

WHEREAS, Senior Life Midland, Inc. has agreed to provide services for the Senior Life Midland Meals on Wheels Program for $43,900.00; and

WHEREAS, Mission Health Care, Inc., has agreed to provide services for the Mission Center Take Home Terrific Meal Program for $41,100.00; and

WHEREAS, Thriving United, Inc., has agreed to provide services for the Peer Support Specialist Program for $83,000.00; and

WHEREAS, Church on Wheels, Inc., has agreed to provide services for the Facility Flooring Replacement Program for $23,000.00; and

WHEREAS, West Texas Food Bank has agreed to provide services for the Emergency Food Box Distribution Program for $81,000.00; and

WHEREAS, Midland Habitat for Humanity has agreed to provide services for the

Habitat for Humanity Infrastructure Improvements Project for $381,000.00; and

WHEREAS, the City Council finds it to be in the public interest to enter into contracts with said entities for said services; and

WHEREAS, the City Council finds it to be in the public interest to allocate funds in the amount of $150,000.00 to the OHAP Major-Down Payment Assistance Program; and

WHEREAS, the City Council finds it to be in the public interest to allocate funds in the amount of $100,000.00 to the OHAP-Minor Home Repairs Program; and

WHEREAS, the City Council finds it to be in the public interest to allocate funds in the amount of $150,000.00 to the City of Midland Parks and Recreation Department Dunagan Park Restroom; and

WHEREAS, the City Council finds it to be in the public interest to allocate funds in the amount of $50,000.00 to the City of Midland Parks and Recreation Department Washington Park Water Slides Resurfacing; and

WHEREAS, the City Council finds it to be in the public interest to allocate funds in the amount of $100,411.00 in contingencies for Fifth Year Action Plan Amendments;

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

SECTION ONE. That the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, Texas, Community Development Block Grant contracts with Casa de Amigos of Midland, Texas, Incorporated, The Salvation Army of Midland, The Midland County Hospital District, Senior Life Midland, Inc., Mission Health Care, Inc., Thriving United, Inc., Church on Wheels, Inc., West Texas Food Bank, and Midland Habitat for Humanity to provide community relief services with grant funds received from the United States Department of Housing and Urban Development. Said contracts 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 City Council hereby authorizes and approves the allocation of funds to the OHAP Major-Down Payment Assistance Program, the OHAP-Minor Home Repairs Program, the City of Midland Parks and Recreation Department Dunagan Park Restroom, the and City of Midland Parks and Recreation Department Washington Park Water Slides Resurfacing.

SECTION THREE. That funds in the amount of $1,433,411.00 shall be appropriated to the 2024-2025 CDBG Block Grant Project and $17,396.00 shall be allocated from the 2020-2021 CDBG CARES CV19 Block Grant Project (700299) Community Development Block Grant Fund (060) for the stated purposes.

SECTION FOUR. That the City Comptroller is hereby authorized and directed to make payment to Casa de Amigos of Midland, Texas, Incorporated, The Salvation Army of Midland, The Midland County Hospital District, Senior Life Midland, Inc., Mission Health Care, Inc., Thriving United, Inc., Church on Wheels, Inc., West Texas Food Bank, and Midland Habitat for Humanity pursuant to the terms of their respective contracts, not to exceed the contracted price, 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., 2024, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

_____
Tommy Gonzalez, City Manager

_____
Christy Weakland, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Isaac Garnett, Community Development
Administrator

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

AGREEMENT BETWEEN CITY OF MIDLAND, TEXAS AND CASA DE AMIGOS OF MIDLAND, TEXAS, INCORPORATED FOR THE CASA DE AMIGOS HOME CLEANING PROGRAM

This Agreement ("Agreement") made by and between the **CITY OF MIDLAND**, a Texas home rule municipal corporation ("City") and **CASA DE AMIGOS OF MIDLAND, TEXAS, INCORPORATED** ("Corporation");

I. PURPOSE

The purpose of this Agreement is to state the terms and conditions by which Corporation shall perform the Casa de Amigos Home Cleaning Program utilizing Community Development Block Grant ("CDBG") funds as described in Exhibit "A", attached hereto and incorporated herein for all legal purposes. Any change in the performance schedule, purpose or the location of the operation must be approved in advance by City.

II. PAYMENT

Upon and after the receipt of a notice to proceed from City, Corporation is authorized to incur costs against a total amount of SIXTY THOUSAND DOLLARS ($60,000.00). Payments shall be made on a reimbursement basis to Corporation for services and expenses as shown in Exhibit "A", attached hereto and made a part hereof for all legal purposes. All payments shall be made to Corporation upon certification by Corporation and approval by the Community Development Division of City's Development Services Department and the City Manager. When reimbursements for personal services are requested, time sheets must be presented by Corporation to City, in a form suitable to City. Final payment on the program must be at least THREE THOUSAND DOLLARS ($3,000.00) and will not be made until all final program reporting is completed.

III. PROCUREMENT STANDARDS

Corporation will make program procurement in accordance with 24 CFR Part 84 and Part 85 and applicable Texas Statutes. At least ten (10) days before Corporation seeks competitive bids on procurement of over TEN THOUSAND DOLLARS ($10,000.00) and for any work contracts of over TWO THOUSAND DOLLARS ($2,000.00) of the above-described program, the plans and specifications and other bid documents shall be submitted to City and reviewed by City's Community Development Division for conformance with federal and City requirements.

IV. INDEMNITY

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

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

CORPORATION AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND SUPPLIERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS AGREEMENT. WHEN CITY SO DESIRES, CORPORATION SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED.

V. INSURANCE

A. Corporation shall carry insurance in the following types and amounts for the duration of this Agreement and furnish Certificates of Insurance along with copies of policy declaration pages and all policy endorsements as evidence hereof to City:

1. Statutory Workers' Compensation; said insurance shall waive subrogation in favor of City.

2. Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of $1,000,000. The policy must provide contractual liability coverage for liability assumed under this Agreement, products and completed operations coverage, independent contractor's coverage, and a waiver of a Transfer of Right of Recovery Against Others in favor of City. If this coverage is underwritten on a claim made basis, the retroactive date shall be coincident with the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. Corporation shall maintain coverage for the duration of this Agreement and for six months following completion of the construction improvements associated with this Agreement. Corporation shall pay for this extended reporting period coverage. Said insurance shall name City as an additional insured.

B. If insurance policies are not written for amounts specified in Subsection A, above, Corporation shall carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

C. Corporation shall provide City at least thirty (30) days written notice of erosion of the aggregate limit below the minimum required combined single limit coverage.

D. Corporation shall provide all provisions of this Agreement concerning liability, duty, standard of care, together with the indemnification or defense provisions herein, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies.

E. Corporation shall not commence work under this Agreement until it has obtained all required insurance and until such insurance has been reviewed by the City Attorney's Office of the City of Midland.

F. Corporation shall produce an endorsement to each affected policy that contains language similar to the following:

1. That names City of Midland, Texas, Attn.: CDBG Program Coordinator, 300

N. Loraine, P. O. Box 1152, Midland, Texas, 79702, as additional insured (except for Workers' Compensation and Employee's Liability coverage), with right of subrogation against City waived on each affected policy including Worker's Compensation.

2. That obligates the insurance company to notify City of any non-renewal, cancellation, or material change to the policy, at least thirty (30) calendar days before the change or cancellation.

3. That the "other" insurance clause shall not apply to City where City is an additional insured shown on the policy. It is intended that the policies required in this Agreement, covering both City and Corporation, shall be considered primary coverage, as applicable.

G. Corporation shall not cause any insurance to be canceled or permit any insurance to lapse during the term of this Agreement or the six-month period following completion, in the case of a claims-made policy.

H. City reserves the right to review the insurance requirements of this Article V during the effective period of this Agreement and to make reasonable adjustments to insurance coverages, their limits when deemed necessary and prudent by City based upon changes in statutory law, court decisions, or the claims history of the industry or financial condition of the insurance company as well as that of Corporation. City shall be entitled to review, upon request, and without expense to City, to receive copies of the requisite insurance policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter on any of such policies.

I. All certificates shall include a clause to the effect that the policy may not be canceled, reduced, restricted, or limited until thirty (30) calendar days after City has received written notice of such cancellation or change. During the term of this Agreement, Corporation shall have in effect a general liability insurance policy in an amount of not less than $1,000,000 combined single limit for bodily injury and property damage. This liability policy shall be endorsed to name the City of Midland as an additional insured. Corporation shall provide City with a Certificate of Insurance evidencing the required coverage upon execution of this Agreement.

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

VI. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Corporation shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Corporation 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 respondent superior shall not apply as between City and Corporation, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Corporation. No person performing any work hereunder 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. Corporation 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 Corporation's work. Corporation shall assume exclusive responsibility for the work. Corporation is entirely free to do the work in its own way.

VII. APPLICABLE LAWS, ORDINANCES

Corporation shall comply with all applicable laws, ordinances and codes of the United States, State of Texas and City and shall require all contractors and subcontractors to comply with the same. Corporation hereby agrees as follows:

A. Corporation will comply with the policies, guidelines and requirements of 24 CFR Part 84 and 85 and OMB Circulars A-87 and A-122, as they relate to the application, acceptance and use of federal funds for this federally assisted program. Corporation will also comply with the Single Audit provisions of OMB Circular A-133 and make all audits for fiscal years in which CDBG funds are expended available to City.

B. Corporation will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the applicant received federal financial assistance.

C. Corporation will comply with Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.602), which provides that no person in the United States shall, on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with

CDBG funds. Additionally, Corporation will comply with regulations at 24 CFR 570.613 concerning eligibility restrictions for certain resident aliens.

D. Corporation will comply with Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), which provides that it is the policy of the United States to provide for fair housing throughout the United States. It prohibits particular discriminatory acts regarding housing if the discrimination is based on race, color, religion, sex, national origin, family status, or mental and physical disability.

E. Corporation will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u), as amended, and the regulations issued pursuant thereto (24 CFR Part 135) which provides that to the greatest extent feasible opportunities for employment and other economic opportunities be directed to low and very low-income City residents and to business concerns which provide economic opportunity to low and very low-income persons.

F. Corporation will obtain and maintain documentation evidencing that program beneficiaries meet CDBG program income eligibility criteria, specifically as required by 24 CFR 570.208. Corporation shall further comply with the retention of records provisions of 24 CFR 570.502.

G. Corporation will ensure that subcontractors for work or construction activity under this Agreement shall comply with the equal opportunity requirements of Executive Order 11246, as amended.

H. Corporation will ensure that subcontractors for work or construction activity under this Agreement shall comply with 24 CFR Part 84 and 85and Section 110 of the Housing and Community Development Act of 1974 and the regulations issued pursuant thereto (24 CFR 570.603), which provide for adherence to certain labor standards.

I. No officer, employee or board member of Corporation shall have a financial interest, direct or indirect, in this Agreement or the monies transferred hereunder, or be financially interested, directly or indirectly in the sale to Corporation of any land, materials, supplies or services purchased with any funds transferred hereunder, except on behalf of Corporation as an officer, employee, member, or program participant. Corporation shall further comply with the conflict-of-interest provisions of 24 CFR 570.611 and 24 CFR Part 84 and Part 85.

J. Corporation will ensure that funds will not be used to directly or indirectly employ, award contracts to or otherwise engage the services of or fund any subcontractor during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

K. Corporation shall follow the provisions of 24 CFR Part 84 and Part 85 concerning

standards for financial management systems.

L. Corporation will comply with the property management and disposition requirements of 24 CFR Part 84 and 85 including copyright provisions therein.

M. Corporation certifies that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of Corporation, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Corporation shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

N. Corporation shall comply with and shall ensure that its subcontractors comply with the provisions of the Drug-Free Workplace Act, 41 U.S.C, 701, et seq.

O. Corporation shall follow the provisions of 24 CFR 570.614 Architectural Barriers Act and the Americans with Disabilities Act.

P. Corporation shall make available to City, as determined by City, information and/or data which document compliance, in all phases of its work, with the above paragraphs A through O. Corporation shall fully cooperate with City when City monitors the services and work performed under this Agreement, which City may do at any time during the term of this Agreement. Corporation shall maintain accounts and records adequate to identify and account for all cost pertaining to this Agreement. Records are to be retained in accordance with 24 CFR Part 84 and Part 85.

VIII. PROGRAM INCOME

It is agreed and understood that except in the disposition of CDBG acquired assets that there will be no program income generated as a result of this Agreement which requires compliance with 24 CFR 570.504.

IX. TRANSFER OF ASSETS

Corporation shall, upon termination or expiration of this Agreement, transfer to City all CDBG funds and all loans and accounts receivable attributable to the use of CDBG funds that Corporation has on hand at the time of termination. If Corporation ceases to use any asset acquired with CDBG funds for the purposes described in this Agreement, Corporation shall either pay to City the fair market value of the asset or transfer control of the asset to City.

X. RECOGNITION OF FUNDING

Corporation shall provide recognition of CDBG funding in its procurement announcements. Corporation shall post, in a publicly visible location where CDBG assisted activity is provided, an acknowledgment that the City of Midland Community Development Block Grant Program is contributing to the program. City's Community Development Office will determine if posting is adequate given the scale of the CDBG assisted activity.

XI. PROGRAM REPORTS

Monthly status reports are to be prepared by Corporation and submitted in a timely fashion to City. A final performance report shall be prepared and submitted promptly after program completion. An inventory of CDBG acquired assets shall be submitted to City, in a form suitable to City, on an annual basis and at the end of this Agreement.

XII. TERM OF AGREEMENT

The term of this Agreement shall begin October 1, 2024, and end September 30, 2025, unless an extension of time is granted by the City Council.

XIII. RELEASE

CORPORATION 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 CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.

XIV. GENERAL FUND

It is expressly understood that this Agreement in no way obligates the general fund

or any other monies or credits of City, and is, therefore, expressly contingent on federal funds of City's CDBG program.

XV. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, CORPORATION 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 THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. CORPORATION SPECIFICALLY AGREES THAT IF CORPORATION 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, CORPORATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CORPORATION MIGHT OTHERWISE BE ENTITLED.

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

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

XVI. DEFAULT PROVISION

In the event that either Corporation or City fails to perform or is unable to perform substantially its obligations under the terms of this Agreement, the non-defaulting party shall notify the defaulting party in writing of such default. Within five (5) days after receipt of such notification, Corporation and City shall meet to discuss the default, the reasons thereof and the methods to cure default. If the defaulting party has not substantially cured the default within ten (10) days after receipt of such notification, or City and Corporation have not agreed within such time upon a solution to the default, the non-defaulting party

may, at its option, pursue any remedies at law or in equity.

In any event, this Agreement may be terminated by the mutual consent of Corporation and City in writing.

XVII. 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, Corporation, or its 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 and 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 Corporation will settle, the physical and mailing addresses of Corporation at the time and date the claim was presented and the physical and mailing addresses of Corporation for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Corporation 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 Corporation that its 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, Corporation's failure to comply with the requirements herein shall perpetually bar Corporation'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. Corporation agrees that the requirements of this Agreement are reasonable.

XVIII. SOVEREIGN IMMUNITY

By executing this Agreement, City is not waiving its right of sovereign 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 SOVEREIGN IMMUNITY.

XIX. THIRD-PARTY BENEFICIARY

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

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

XX. ASSIGNMENT

Corporation 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.

XXI. TERMINATION WITHOUT CAUSE

City shall have the right, at its sole option, to terminate this Agreement at any time, with or without cause, by giving 90 days written notice to Corporation of City's election to so terminate.

XXII. VENUE AND GOVERNING LAW

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. This Agreement 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 Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

XXIII. PROCUREMENT SUSPENSION AND DEBARMENT

City has found that Corporation has not been suspended or debarred from performing work on Federal contracts.

XXIV. FEDERAL WAGE REQUIREMENTS

If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations, including 29 C.F.R. Parts 1, 3, 5, 6, and 7, 18 U.S.C. §874 and 40 U.S.C. §3145, 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.

XXV. COMPLIANCE

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this the day of _____, 2024.

CITY OF MIDLAND, TEXAS

By:_____
Lori Merritt Blong, Mayor

CASA DE AMIGOS OF MIDLAND, TEXAS, INCORPORATED

By:_____

Name:_____

Title:_____

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Isaac Garnett, Community Development Administrator

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of CASA DE AMIGOS OF MIDLAND, TEXAS, INCORPORATED, known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that s/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 _____, 2024.

_____
Notary Public, State of Texas

CDBG EXHIBIT A

NAME: Home Cleaning Program **Request: $60,000**

APPLICANT: Casa de Amigos

Description: Casa de Amigos requests funds to support its Citywide Community Services' Home Cleaning Program. The program's objective is to maintain safe and sanitary living conditions for indigent senior citizens (60+ years of age) and disabled individuals. Services include an initial deep cleaning and subsequent routine weekly cleaning. It is expected that 102 clients will be assisted during the year.

Budget: The requested funds would be used to help pay the wages of the program's homemakers. CDBG funds are proposed to be 30% of the total Citywide Community Services budget. The Citywide Community Services budget for the program year will be $98,000. Grants from United Way also help fund the program.

Eligibility: Per 24 CFR 570.201(e), public services are eligible for CDBG funding. A public service for senior citizens and disabled persons is considered by HUD as a presumed benefit to low- and moderate-income activity under its limited clientele provisions. This request will be subject to the 15% limitation on funds allocated for public services.

Consolidated Plan: Public services of benefit to the elderly and handicapped individuals are a priority community need.

Other Comments: As an ongoing program, this request is subject to the potential need for the operator to secure replacement funding. The home cleaning service has been continuously CDBG supported since 1991.

AGREEMENT BETWEEN CITY OF MIDLAND, TEXAS AND SENIOR LIFE MIDLAND, INC., FOR THE SENIOR LIFE MIDLAND MEALS ON WHEELS PROGRAM

This Agreement ("Agreement") made by and between the **CITY OF MIDLAND**, a Texas home rule municipal corporation ("City") and **SENIOR LIFE MIDLAND, INC.** ("Corporation");

I. PURPOSE

The purpose of this Agreement is to state the terms and conditions by which Corporation shall perform the Senior Life Midland Meals on Wheels Program utilizing Community Development Block Grant ("CDBG") funds as described in Exhibit "A", attached hereto and incorporated herein for all legal purposes. Any change in the performance schedule, purpose or the location of the operation must be approved in advance by City.

II. PAYMENT

Upon and after the receipt of a notice to proceed from City, Corporation is authorized to incur costs against a total amount of FORTY-THREE THOUSAND NINE HUNDRED DOLLARS ($43,900.00). Payments shall be made on a reimbursement basis to Corporation for services and expenses as shown in Exhibit "A", attached hereto and made a part hereof for all legal purposes. All payments shall be made to Corporation upon certification by Corporation and approval by the Community Development Division of City's Development Services Department and the City Manager. When reimbursements for personal services are requested, time sheets must be presented by Corporation to City, in a form suitable to City. Final payment on the program must be at least THREE THOUSAND DOLLARS ($3,000.00) and will not be made until all final program reporting is completed.

III. PROCUREMENT STANDARDS

Corporation will make program procurement in accordance with 24 CFR Part 84 and Part 85 and applicable Texas Statutes. At least ten (10) days before Corporation seeks competitive bids on procurement of over TEN THOUSAND DOLLARS ($10,000.00) and for any work contracts of over TWO THOUSAND DOLLARS ($2,000.00) of the above-described program, the plans and specifications and other bid documents shall be submitted to City and reviewed by City's Community Development Division for conformance with federal and City requirements.

IV. INDEMNITY

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

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

CORPORATION AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND SUPPLIERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS AGREEMENT. WHEN CITY SO DESIRES, CORPORATION SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR

WAIVED.

V. INSURANCE

A. Corporation shall carry insurance in the following types and amounts for the duration of this Agreement and furnish Certificates of Insurance along with copies of policy declaration pages and all policy endorsements as evidence hereof to City:

1. Statutory Workers' Compensation; said insurance shall waive subrogation in favor of City.

2. Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of $1,000,000. The policy must provide contractual liability coverage for liability assumed under this Agreement, products and completed operations coverage, independent contractor's coverage, and a waiver of a Transfer of Right of Recovery Against Others in favor of City. If this coverage is underwritten on a claim made basis, the retroactive date shall be coincident with the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. Corporation shall maintain coverage for the duration of this Agreement and for six months following completion of the construction improvements associated with this Agreement. Corporation shall pay for this extended reporting period coverage. Said insurance shall name City as an additional insured.

B. If insurance policies are not written for amounts specified in Subsection A, above, Corporation shall carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

C. Corporation shall provide City at least thirty (30) days written notice of erosion of the aggregate limit below the minimum required combined single limit coverage.

D. Corporation shall provide all provisions of this Agreement concerning liability, duty, standard of care, together with the indemnification or defense provisions herein, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies.

E. Corporation shall not commence work under this Agreement until it has obtained all required insurance and until such insurance has been reviewed by the City Attorney's Office of the City of Midland.

F. Corporation shall produce an endorsement to each affected policy that contains language similar to the following:

1. That names City of Midland, Texas, Attn.: CDBG Program Coordinator, 300 N. Loraine, P. O. Box 1152, Midland, Texas, 79702, as additional insured (except for Workers' Compensation and Employee's Liability coverage), with right of subrogation against City waived on each affected policy including Worker's Compensation.

2. That obligates the insurance company to notify City of any non-renewal, cancellation, or material change to the policy, at least thirty (30) calendar days before the change or cancellation.

3. That the "other" insurance clause shall not apply to City where City is an additional insured shown on the policy. It is intended that the policies required in this Agreement, covering both City and Corporation, shall be considered primary coverage, as applicable.

G. Corporation shall not cause any insurance to be canceled or permit any insurance to lapse during the term of this Agreement or the six-month period following completion, in the case of a claims-made policy.

H. City reserves the right to review the insurance requirements of this Article V during the effective period of this Agreement and to make reasonable adjustments to insurance coverages, their limits when deemed necessary and prudent by City based upon changes in statutory law, court decisions, or the claims history of the industry or financial condition of the insurance company as well as that of Corporation. City shall be entitled to review, upon request, and without expense to City, to receive copies of the requisite insurance policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter on any of such policies.

I. All certificates shall include a clause to the effect that the policy may not be canceled, reduced, restricted, or limited until thirty (30) calendar days after City has received written notice of such cancellation or change. During the term of this Agreement, Corporation shall have in effect a general liability insurance policy in an amount of not less than $1,000,000 combined single limit for bodily injury and property damage. This liability policy shall be endorsed to name the City of Midland as an additional insured. Corporation shall provide City with a Certificate of Insurance evidencing the required coverage upon execution of this Agreement.

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

VI. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Corporation shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Corporation 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 respondent superior shall not apply as between City and Corporation, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Corporation. No person performing any work hereunder 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. Corporation 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 Corporation's work. Corporation shall assume exclusive responsibility for the work. Corporation is entirely free to do the work in its own way.

VII. APPLICABLE LAWS, ORDINANCES

Corporation shall comply with all applicable laws, ordinances and codes of the United States, State of Texas and City and shall require all contractors and subcontractors to comply with the same. Corporation hereby agrees as follows:

A. Corporation will comply with the policies, guidelines and requirements of 24 CFR Part 84 and 85 and OMB Circulars A-87 and A-122, as they relate to the application, acceptance and use of federal funds for this federally assisted program. Corporation will also comply with the Single Audit provisions of OMB Circular A-133 and make all audits for fiscal years in which CDBG funds are expended available to City.

B. Corporation will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the applicant received federal financial assistance.

C. Corporation will comply with Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.602), which provides that no person in the United States shall, on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with

CDBG funds. Additionally, Corporation will comply with regulations at 24 CFR 570.613 concerning eligibility restrictions for certain resident aliens.

D. Corporation will comply with Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), which provides that it is the policy of the United States to provide for fair housing throughout the United States. It prohibits particular discriminatory acts regarding housing if the discrimination is based on race, color, religion, sex, national origin, family status, or mental and physical disability.

E. Corporation will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u), as amended, and the regulations issued pursuant thereto (24 CFR Part 135) which provides that to the greatest extent feasible opportunities for employment and other economic opportunities be directed to low and very low-income City residents and to business concerns which provide economic opportunity to low and very low-income persons.

F. Corporation will obtain and maintain documentation evidencing that program beneficiaries meet CDBG program income eligibility criteria, specifically as required by 24 CFR 570.208. Corporation shall further comply with the retention of records provisions of 24 CFR 570.502.

G. Corporation will ensure that subcontractors for work or construction activity under this Agreement shall comply with the equal opportunity requirements of Executive Order 11246, as amended.

H. Corporation will ensure that subcontractors for work or construction activity under this Agreement shall comply with 24 CFR Part 84 and 85and Section 110 of the Housing and Community Development Act of 1974 and the regulations issued pursuant thereto (24 CFR 570.603), which provide for adherence to certain labor standards.

I. No officer, employee or board member of Corporation shall have a financial interest, direct or indirect, in this Agreement or the monies transferred hereunder, or be financially interested, directly or indirectly in the sale to Corporation of any land, materials, supplies or services purchased with any funds transferred hereunder, except on behalf of Corporation as an officer, employee, member, or program participant. Corporation shall further comply with the conflict-of-interest provisions of 24 CFR 570.611 and 24 CFR Part 84 and Part 85.

J. Corporation will ensure that funds will not be used to directly or indirectly employ, award contracts to or otherwise engage the services of or fund any subcontractor during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

K. Corporation shall follow the provisions of 24 CFR Part 84 and Part 85 concerning

standards for financial management systems.

L. Corporation will comply with the property management and disposition requirements of 24 CFR Part 84 and 85 including copyright provisions therein.

M. Corporation certifies that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of Corporation, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Corporation shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

N. Corporation shall comply with and shall ensure that its subcontractors comply with the provisions of the Drug-Free Workplace Act, 41 U.S.C, 701, et seq.

O. Corporation shall follow the provisions of 24 CFR 570.614 Architectural Barriers Act and the Americans with Disabilities Act.

P. Corporation shall make available to City, as determined by City, information and/or data which document compliance, in all phases of its work, with the above paragraphs A through O. Corporation shall fully cooperate with City when City monitors the services and work performed under this Agreement, which City may do at any time during the term of this Agreement. Corporation shall maintain accounts and records adequate to identify and account for all cost pertaining to this Agreement. Records are to be retained in accordance with 24 CFR Part 84 and Part 85.

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XIV. GENERAL FUND

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or any other monies or credits of City, and is, therefore, expressly contingent on federal funds of City's CDBG program.

XV. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, CORPORATION 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 THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. CORPORATION SPECIFICALLY AGREES THAT IF CORPORATION 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, CORPORATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CORPORATION MIGHT OTHERWISE BE ENTITLED.

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

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

XVI. DEFAULT PROVISION

In the event that either Corporation or City fails to perform or is unable to perform substantially its obligations under the terms of this Agreement, the non-defaulting party shall notify the defaulting party in writing of such default. Within five (5) days after receipt of such notification, Corporation and City shall meet to discuss the default, the reasons thereof and the methods to cure default. If the defaulting party has not substantially cured the default within ten (10) days after receipt of such notification, or City and Corporation have not agreed within such time upon a solution to the default, the non-defaulting party

may, at its option, pursue any remedies at law or in equity.

In any event, this Agreement may be terminated by the mutual consent of Corporation and City in writing.

XVII. 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, Corporation, or its 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 and 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 Corporation will settle, the physical and mailing addresses of Corporation at the time and date the claim was presented and the physical and mailing addresses of Corporation for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Corporation 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 Corporation that its 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, Corporation's failure to comply with the requirements herein shall perpetually bar Corporation'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. Corporation agrees that the requirements of this Agreement are reasonable.

XVIII. SOVEREIGN IMMUNITY

By executing this Agreement, City is not waiving its right of sovereign 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 SOVEREIGN IMMUNITY.

XIX. THIRD-PARTY BENEFICIARY

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

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

XX. ASSIGNMENT

Corporation 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.

XXI. TERMINATION WITHOUT CAUSE

City shall have the right, at its sole option, to terminate this Agreement at any time, with or without cause, by giving 90 days written notice to Corporation of City's election to so terminate.

XXII. VENUE AND GOVERNING LAW

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. This Agreement 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 Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

XXIII. PROCUREMENT SUSPENSION AND DEBARMENT

City has found that Corporation has not been suspended or debarred from performing work on Federal contracts.

XXIV. FEDERAL WAGE REQUIREMENTS

If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations, including 29 C.F.R. Parts 1, 3, 5, 6, and 7, 18 U.S.C. §874 and 40 U.S.C. §3145, 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.

XXV. COMPLIANCE

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this the day of _____, 2024.

CITY OF MIDLAND, TEXAS

By:_____
Lori Merritt Blong, Mayor

SENIOR LIFE MIDLAND, INC.

By:_____

Name:_____

Title:_____

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Isaac Garnett, Community Development Administrator

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of SENIOR LIFE MIDLAND, INC., known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that s/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 _____, 2024.

_____
Notary Public, State of Texas

CDBG EXIBIT A

NAME: Homebound Senior Weekend Meal **Request: $43,900**

APPLICANT: Senior Life Midland (SLM)

Description: The objective of Meals on Wheels Weekend Meals is to promote better mental and physical health for older homebound persons through nutritious meals and socialization. The
nutrition program will be provided each weekend by volunteer drivers. Senior Life Midland (SLM), with main offices at 3301 Sinclair St., will provide meals which meet the nutritional guidelines set by the Texas Department on Aging and Texas Department of Human Services for elderly nutritional programs.

Budget: The budgeted funds of $43,900 funds will be used to help pay for the weekend meals prepared at the facility's main kitchen.

Eligibility: Per 24 CFR 570.201, public services are eligible for CDBG funding. A public service for senior citizens and disabled persons is considered by HUD as a presumed benefit to low- and moderate-income activity under its limited clientele provisions.

Consolidated Plan: Public services of benefit to the elderly and handicapped individuals are a priority community need.

Other Comments: None

AGREEMENT BETWEEN CITY OF MIDLAND, TEXAS AND MIDLAND COUNTY HOSPITAL DISTRICT FOR THE COMMUNITY REFERRAL AND INDIGENT SERVICES CV19 PROGRAM

This Agreement ("Agreement") made by and between the **CITY OF MIDLAND**, a Texas home rule municipal corporation ("City") and the **MIDLAND COUNTY HOSPITAL DISTRICT** ("Hospital");

I. PURPOSE

The purpose of this Agreement is to state the terms and conditions by which Hospital shall perform the Community Referral and Indigent Services Program utilizing Community Development Block Grant ("CDBG") funds as described in Exhibit "A", attached hereto and incorporated herein for all legal purposes. Any change in the performance schedule, purpose or the location of the operation must be approved in advance by City.

II. PAYMENT

Upon and after the receipt of a notice to proceed from City, Hospital is authorized to incur costs against a total amount of SEVENTEEN THOUSAND THREE HUNDRED NINETY-SIX DOLLARS ($17,396.00). Payments shall be made on a reimbursement basis to Hospital for services and expenses as shown in Exhibit "A", attached hereto and made a part hereof for all legal purposes. All payments shall be made to Hospital upon certification by Hospital and approval by the Community Development Division of City's Development Services Department and the City Manager. When reimbursements for personal services are requested, time sheets must be presented by Hospital to City, in a form suitable to City. Final payment on the program must be at least THREE THOUSAND DOLLARS ($3,000.00) and will not be made until all final program reporting is completed.

III. PROCUREMENT STANDARDS

Hospital will make program procurement in accordance with 24 CFR Part 84 and Part 85 and applicable Texas Statutes. At least ten (10) days before Hospital seeks competitive bids on procurement of over TEN THOUSAND DOLLARS ($10,000.00) and for any work contracts of over TWO THOUSAND DOLLARS ($2,000.00) of the above-described program, the plans and specifications and other bid documents shall be submitted to City and reviewed by City's Community Development Division for conformance with federal and City requirements.

IV. INDEMNITY

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

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

HOSPITAL AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND SUPPLIERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS AGREEMENT. WHEN CITY SO DESIRES, HOSPITAL SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED.

V. INSURANCE

A. Hospital shall carry insurance in the following types and amounts for the duration of this Agreement and furnish Certificates of Insurance along with copies of policy declaration pages and all policy endorsements as evidence hereof to City:

1. Statutory Workers' Compensation; said insurance shall waive subrogation in favor of City.

2. Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of $1,000,000. The policy must provide contractual liability coverage for liability assumed under this Agreement, products and completed operations coverage, independent contractor's coverage, and a waiver of a Transfer of Right of Recovery Against Others in favor of City. If this coverage is underwritten on a claim made basis, the retroactive date shall be coincident with the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. Hospital shall maintain coverage for the duration of this Agreement and for six months following completion of the construction improvements associated with this Agreement. Hospital shall pay for this extended reporting period coverage. Said insurance shall name City as an additional insured.

B. If insurance policies are not written for amounts specified in Subsection A, above, Hospital shall carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

C. Hospital shall provide City at least thirty (30) days written notice of erosion of the aggregate limit below the minimum required combined single limit coverage.

D. Hospital shall provide all provisions of this Agreement concerning liability, duty, standard of care, together with the indemnification or defense provisions herein, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies.

E. Hospital shall not commence work under this Agreement until it has obtained all required insurance and until such insurance has been reviewed by the City Attorney's Office of the City of Midland.

F. Hospital shall produce an endorsement to each affected policy that contains language similar to the following:

1. That names City of Midland, Texas, Attn.: CDBG Program Coordinator, 300 N. Loraine, P. O. Box 1152, Midland, Texas, 79702, as additional insured

(except for Workers' Compensation and Employee's Liability coverage), with right of subrogation against City waived on each affected policy including Worker's Compensation.

2. That obligates the insurance company to notify City of any non-renewal, cancellation, or material change to the policy, at least thirty (30) calendar days before the change or cancellation.

3. That the "other" insurance clause shall not apply to City where City is an additional insured shown on the policy. It is intended that the policies required in this Agreement, covering both City and Hospital, shall be considered primary coverage, as applicable.

G. Hospital shall not cause any insurance to be canceled or permit any insurance to lapse during the term of this Agreement or the six-month period following completion, in the case of a claims-made policy.

H. City reserves the right to review the insurance requirements of this Article V during the effective period of this Agreement and to make reasonable adjustments to insurance coverages, their limits when deemed necessary and prudent by City based upon changes in statutory law, court decisions, or the claims history of the industry or financial condition of the insurance company as well as that of Hospital. City shall be entitled to review, upon request, and without expense to City, to receive copies of the requisite insurance policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter on any of such policies.

I. All certificates shall include a clause to the effect that the policy may not be canceled, reduced, restricted, or limited until thirty (30) calendar days after City has received written notice of such cancellation or change. During the term of this Agreement, Hospital shall have in effect a general liability insurance policy in an amount of not less than $1,000,000 combined single limit for bodily injury and property damage. This liability policy shall be endorsed to name the City of Midland as an additional insured. Hospital shall provide City with a Certificate of Insurance evidencing the required coverage upon execution of this Agreement.

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

VI. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Hospital shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Hospital 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 respondent superior shall not apply as between City and Hospital, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Hospital. No person performing any work hereunder 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. Hospital 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 Hospital's work. Hospital shall assume exclusive responsibility for the work. Hospital is entirely free to do the work in its own way.

VII. APPLICABLE LAWS, ORDINANCES

Hospital shall comply with all applicable laws, ordinances and codes of the United States, State of Texas and City and shall require all contractors and subcontractors to comply with the same. Hospital hereby agrees as follows:

A. Hospital will comply with the policies, guidelines and requirements of 24 CFR Part 84 and 85 and OMB Circulars A-87 and A-122, as they relate to the application, acceptance and use of federal funds for this federally assisted program. Hospital will also comply with the Single Audit provisions of OMB Circular A-133 and make all audits for fiscal years in which CDBG funds are expended available to City.

B. Hospital will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the applicant received federal financial assistance.

C. Hospital will comply with Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.602), which provides that no person in the United States shall, on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with CDBG funds. Additionally, Hospital will comply with regulations at 24 CFR 570.613

concerning eligibility restrictions for certain resident aliens.

D. Hospital will comply with Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), which provides that it is the policy of the United States to provide for fair housing throughout the United States. It prohibits particular discriminatory acts regarding housing if the discrimination is based on race, color, religion, sex, national origin, family status, or mental and physical disability.

E. Hospital will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u), as amended, and the regulations issued pursuant thereto (24 CFR Part 135) which provides that to the greatest extent feasible opportunities for employment and other economic opportunities be directed to low and very low-income City residents and to business concerns which provide economic opportunity to low and very low-income persons.

F. Hospital will obtain and maintain documentation evidencing that program beneficiaries meet CDBG program income eligibility criteria, specifically as required by 24 CFR 570.208. Hospital shall further comply with the retention of records provisions of 24 CFR 570.502.

G. Hospital will ensure that subcontractors for work or construction activity under this Agreement shall comply with the equal opportunity requirements of Executive Order 11246, as amended.

H. Hospital will ensure that subcontractors for work or construction activity under this Agreement shall comply with 24 CFR Part 84 and 85and Section 110 of the Housing and Community Development Act of 1974 and the regulations issued pursuant thereto (24 CFR 570.603), which provide for adherence to certain labor standards.

I. No officer, employee or board member of Hospital shall have a financial interest, direct or indirect, in this Agreement or the monies transferred hereunder, or be financially interested, directly or indirectly in the sale to Hospital of any land, materials, supplies or services purchased with any funds transferred hereunder, except on behalf of Hospital as an officer, employee, member, or program participant. Hospital shall further comply with the conflict-of-interest provisions of 24 CFR 570.611 and 24 CFR Part 84 and Part 85.

J. Hospital will ensure that funds will not be used to directly or indirectly employ, award contracts to or otherwise engage the services of or fund any subcontractor during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

K. Hospital shall follow the provisions of 24 CFR Part 84 and Part 85 concerning standards for financial management systems.

L. Hospital will comply with the property management and disposition requirements of 24 CFR Part 84 and 85 including copyright provisions therein.

M. Hospital certifies that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of Hospital, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Hospital shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

N. Hospital shall comply with and shall ensure that its subcontractors comply with the provisions of the Drug-Free Workplace Act, 41 U.S.C, 701, et seq.

O. Hospital shall follow the provisions of 24 CFR 570.614 Architectural Barriers Act and the Americans with Disabilities Act.

P. Hospital shall make available to City, as determined by City, information and/or data which document compliance, in all phases of its work, with the above paragraphs A through O. Hospital shall fully cooperate with City when City monitors the services and work performed under this Agreement, which City may do at any time during the term of this Agreement. Hospital shall maintain accounts and records adequate to identify and account for all cost pertaining to this Agreement. Records are to be retained in accordance with 24 CFR Part 84 and Part 85.

VIII. PROGRAM INCOME

It is agreed and understood that except in the disposition of CDBG acquired assets that there will be no program income generated as a result of this Agreement which requires compliance with 24 CFR 570.504.

IX. TRANSFER OF ASSETS

Hospital shall, upon termination or expiration of this Agreement, transfer to City all

CDBG funds and all loans and accounts receivable attributable to the use of CDBG funds that Hospital has on hand at the time of termination. If Hospital ceases to use any asset acquired with CDBG funds for the purposes described in this Agreement, Hospital shall either pay to City the fair market value of the asset or transfer control of the asset to City.

X. RECOGNITION OF FUNDING

Hospital shall provide recognition of CDBG funding in its procurement announcements. Hospital shall post, in a publicly visible location where CDBG assisted activity is provided, an acknowledgment that the City of Midland Community Development Block Grant Program is contributing to the program. City's Community Development Office will determine if posting is adequate given the scale of the CDBG assisted activity.

XI. PROGRAM REPORTS

Monthly status reports are to be prepared by Hospital and submitted in a timely fashion to City. A final performance report shall be prepared and submitted promptly after program completion. An inventory of CDBG acquired assets shall be submitted to City, in a form suitable to City, on an annual basis and at the end of this Agreement.

XII. TERM OF AGREEMENT

The term of this Agreement shall begin October 1, 2024, and end September 30, 2025, unless an extension of time is granted by the City Council.

XIII. RELEASE

HOSPITAL 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 CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.

XIV. GENERAL FUND

It is expressly understood that this Agreement in no way obligates the general fund or any other monies or credits of City, and is, therefore, expressly contingent on federal funds of City's CDBG program.

XV. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, HOSPITAL 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 THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. HOSPITAL SPECIFICALLY AGREES THAT IF HOSPITAL 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, HOSPITAL AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH HOSPITAL MIGHT OTHERWISE BE ENTITLED.

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

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In any event, this Agreement may be terminated by the mutual consent of Hospital and City in writing.

XVII. 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, Hospital, or its 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 and 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 Hospital will settle, the physical and mailing addresses of Hospital at the time and date the claim was presented and the physical and mailing addresses of Hospital for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Hospital 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 Hospital that its 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, Hospital's failure to comply with the requirements herein shall perpetually bar Hospital'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. Hospital agrees that the requirements of this Agreement are reasonable.

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By executing this Agreement, City is not waiving its right of sovereign 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 SOVEREIGN IMMUNITY.

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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.

XX. ASSIGNMENT

Hospital 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.

XXI. TERMINATION WITHOUT CAUSE

City shall have the right, at its sole option, to terminate this Agreement at any time, with or without cause, by giving 90 days written notice to Hospital of City's election to so terminate.

XXII. VENUE AND GOVERNING LAW

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. This Agreement 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 Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

XXIII. PROCUREMENT SUSPENSION AND DEBARMENT

City has found that Hospital has not been suspended or debarred from performing work on Federal contracts.

XXIV. FEDERAL WAGE REQUIREMENTS

If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations, including 29 C.F.R. Parts 1, 3, 5, 6, and 7, 18 U.S.C. §874 and 40 U.S.C. §3145, 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.

XXV. COMPLIANCE

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this the day of _____, 2024.

CITY OF MIDLAND, TEXAS

By:_____
Lori Merritt Blong, Mayor

MIDLAND COUNTY HOSPITAL DISTRICT

By:_____

Name:_____

Title:_____

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Isaac Garnett, Community Development Administrator

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of MIDLAND COUNTY HOSPITAL DISTRICT known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that s/he executed the same as the act and deed of said Hospital, 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 _____, 2024.

_____
Notary Public, State of Texas

CDBG EXHIBIT A (CV-19)

NAME: Community Referral/ Indigent Program (CRISP) Request: $17,396

APPLICANT: Midland Memorial Hospital

Description: Mental Health & Wellness Department requests funds to support its Community Referral and Indigent Services Program (CRISP) to help individuals of all ages to recover from the devastation of the pandemic and overcome barriers to restore and stabilize health and livelihood.

The Community Referral and Indigent Program (CRISP) program objective is to provide personal services that follow participants at every point-of-service to assure connection with needed resources and supportive providers. The CRISP team will coordinate, make and follow up with participants/providers to ensure that integrated care is received thus preventing additional stress and cost on the hospital emergency room. All hardship individuals will have an evidence-based mental health screening, and a plan of care formulated toward each participant's service plan. It is expected that 600 participants will be connected with transportation vouchers to needed resources during the year.

Budget: The budgeted funds of $17,396 will be used to help pay for transportation vouchers to supportive services for indigent individuals.

Eligibility: Per 24 CFR 570.201, mental health and indigent services are eligible for CDBG-CV19 funding. Mental Health service for hardship citizens and disabled persons is considered by HUD as eligible activities.

Consolidated Plan: Mental Health services of benefit to indigent and homeless individuals are a priority community need.

Other Comments: COVID-19 funding is the remaining balance from prior years funding from the Department of Treasury.

AGREEMENT BETWEEN CITY OF MIDLAND, TEXAS AND CHURCH ON WHEELS, INC., FOR THE FACILITY FLOORING REPLACEMENT PROGRAM

This Agreement ("Agreement") made by and between the **CITY OF MIDLAND**, a Texas home rule municipal corporation ("City") and **CHURCH ON WHEELS, INC.** ("Corporation");

I. PURPOSE

The purpose of this Agreement is to state the terms and conditions by which Corporation shall perform the Facility Flooring Replacement Program utilizing Community Development Block Grant ("CDBG") funds as described in Exhibit "A", attached hereto and incorporated herein for all legal purposes. Any change in the performance schedule, purpose or the location of the operation must be approved in advance by City.

II. PAYMENT

Upon and after the receipt of a notice to proceed from City, Corporation is authorized to incur costs against a total amount of TWENTY-THREE THOUSAND DOLLARS ($23,000.00). Payments shall be made on a reimbursement basis to Corporation for services and expenses as shown in Exhibit "A", attached hereto and made a part hereof for all legal purposes. All payments shall be made to Corporation upon certification by Corporation and approval by the Community Development Division of City's Development Services Department and the City Manager. When reimbursements for personal services are requested, time sheets must be presented by Corporation to City, in a form suitable to City. Final payment on the program must be at least THREE THOUSAND DOLLARS ($3,000.00) and will not be made until all final program reporting is completed.

III. PROCUREMENT STANDARDS

Corporation will make program procurement in accordance with 24 CFR Part 84 and Part 85 and applicable Texas Statutes. At least ten (10) days before Corporation seeks competitive bids on procurement of over TEN THOUSAND DOLLARS ($10,000.00) and for any work contracts of over TWO THOUSAND DOLLARS ($2,000.00) of the above-described program, the plans and specifications and other bid documents shall be submitted to City and reviewed by City's Community Development Division for conformance with federal and City requirements.

IV. INDEMNITY

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

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

CORPORATION AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND SUPPLIERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS AGREEMENT. WHEN CITY SO DESIRES, CORPORATION SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR

WAIVED.

V. INSURANCE

A. Corporation shall carry insurance in the following types and amounts for the duration of this Agreement and furnish Certificates of Insurance along with copies of policy declaration pages and all policy endorsements as evidence hereof to City:

1. Statutory Workers' Compensation; said insurance shall waive subrogation in favor of City.

2. Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of $1,000,000. The policy must provide contractual liability coverage for liability assumed under this Agreement, products and completed operations coverage, independent contractor's coverage, and a waiver of a Transfer of Right of Recovery Against Others in favor of City. If this coverage is underwritten on a claim made basis, the retroactive date shall be coincident with the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. Corporation shall maintain coverage for the duration of this Agreement and for six months following completion of the construction improvements associated with this Agreement. Corporation shall pay for this extended reporting period coverage. Said insurance shall name City as an additional insured.

B. If insurance policies are not written for amounts specified in Subsection A, above, Corporation shall carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

C. Corporation shall provide City at least thirty (30) days written notice of erosion of the aggregate limit below the minimum required combined single limit coverage.

D. Corporation shall provide all provisions of this Agreement concerning liability, duty, standard of care, together with the indemnification or defense provisions herein, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies.

E. Corporation shall not commence work under this Agreement until it has obtained all required insurance and until such insurance has been reviewed by the City Attorney's Office of the City of Midland.

F. Corporation shall produce an endorsement to each affected policy that contains language similar to the following:

1. That names City of Midland, Texas, Attn.: CDBG Program Coordinator, 300 N. Loraine, P. O. Box 1152, Midland, Texas, 79702, as additional insured (except for Workers' Compensation and Employee's Liability coverage), with right of subrogation against City waived on each affected policy including Worker's Compensation.

2. That obligates the insurance company to notify City of any non-renewal, cancellation, or material change to the policy, at least thirty (30) calendar days before the change or cancellation.

3. That the "other" insurance clause shall not apply to City where City is an additional insured shown on the policy. It is intended that the policies required in this Agreement, covering both City and Corporation, shall be considered primary coverage, as applicable.

G. Corporation shall not cause any insurance to be canceled or permit any insurance to lapse during the term of this Agreement or the six-month period following completion, in the case of a claims-made policy.

H. City reserves the right to review the insurance requirements of this Article V during the effective period of this Agreement and to make reasonable adjustments to insurance coverages, their limits when deemed necessary and prudent by City based upon changes in statutory law, court decisions, or the claims history of the industry or financial condition of the insurance company as well as that of Corporation. City shall be entitled to review, upon request, and without expense to City, to receive copies of the requisite insurance policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter on any of such policies.

I. All certificates shall include a clause to the effect that the policy may not be canceled, reduced, restricted, or limited until thirty (30) calendar days after City has received written notice of such cancellation or change. During the term of this Agreement, Corporation shall have in effect a general liability insurance policy in an amount of not less than $1,000,000 combined single limit for bodily injury and property damage. This liability policy shall be endorsed to name the City of Midland as an additional insured. Corporation shall provide City with a Certificate of Insurance evidencing the required coverage upon execution of this Agreement.

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

VI. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Corporation shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Corporation 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 respondent superior shall not apply as between City and Corporation, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Corporation. No person performing any work hereunder 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. Corporation 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 Corporation's work. Corporation shall assume exclusive responsibility for the work. Corporation is entirely free to do the work in its own way.

VII. APPLICABLE LAWS, ORDINANCES

Corporation shall comply with all applicable laws, ordinances and codes of the United States, State of Texas and City and shall require all contractors and subcontractors to comply with the same. Corporation hereby agrees as follows:

A. Corporation will comply with the policies, guidelines and requirements of 24 CFR Part 84 and 85 and OMB Circulars A-87 and A-122, as they relate to the application, acceptance and use of federal funds for this federally assisted program. Corporation will also comply with the Single Audit provisions of OMB Circular A-133 and make all audits for fiscal years in which CDBG funds are expended available to City.

B. Corporation will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the applicant received federal financial assistance.

C. Corporation will comply with Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.602), which provides that no person in the United States shall, on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with

CDBG funds. Additionally, Corporation will comply with regulations at 24 CFR 570.613 concerning eligibility restrictions for certain resident aliens.

D. Corporation will comply with Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), which provides that it is the policy of the United States to provide for fair housing throughout the United States. It prohibits particular discriminatory acts regarding housing if the discrimination is based on race, color, religion, sex, national origin, family status, or mental and physical disability.

E. Corporation will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u), as amended, and the regulations issued pursuant thereto (24 CFR Part 135) which provides that to the greatest extent feasible opportunities for employment and other economic opportunities be directed to low and very low-income City residents and to business concerns which provide economic opportunity to low and very low-income persons.

F. Corporation will obtain and maintain documentation evidencing that program beneficiaries meet CDBG program income eligibility criteria, specifically as required by 24 CFR 570.208. Corporation shall further comply with the retention of records provisions of 24 CFR 570.502.

G. Corporation will ensure that subcontractors for work or construction activity under this Agreement shall comply with the equal opportunity requirements of Executive Order 11246, as amended.

H. Corporation will ensure that subcontractors for work or construction activity under this Agreement shall comply with 24 CFR Part 84 and 85and Section 110 of the Housing and Community Development Act of 1974 and the regulations issued pursuant thereto (24 CFR 570.603), which provide for adherence to certain labor standards.

I. No officer, employee or board member of Corporation shall have a financial interest, direct or indirect, in this Agreement or the monies transferred hereunder, or be financially interested, directly or indirectly in the sale to Corporation of any land, materials, supplies or services purchased with any funds transferred hereunder, except on behalf of Corporation as an officer, employee, member, or program participant. Corporation shall further comply with the conflict-of-interest provisions of 24 CFR 570.611 and 24 CFR Part 84 and Part 85.

J. Corporation will ensure that funds will not be used to directly or indirectly employ, award contracts to or otherwise engage the services of or fund any subcontractor during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

K. Corporation shall follow the provisions of 24 CFR Part 84 and Part 85 concerning

standards for financial management systems.

L. Corporation will comply with the property management and disposition requirements of 24 CFR Part 84 and 85 including copyright provisions therein.

M. Corporation certifies that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of Corporation, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Corporation shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

N. Corporation shall comply with and shall ensure that its subcontractors comply with the provisions of the Drug-Free Workplace Act, 41 U.S.C, 701, et seq.

O. Corporation shall follow the provisions of 24 CFR 570.614 Architectural Barriers Act and the Americans with Disabilities Act.

P. Corporation shall make available to City, as determined by City, information and/or data which document compliance, in all phases of its work, with the above paragraphs A through O. Corporation shall fully cooperate with City when City monitors the services and work performed under this Agreement, which City may do at any time during the term of this Agreement. Corporation shall maintain accounts and records adequate to identify and account for all cost pertaining to this Agreement. Records are to be retained in accordance with 24 CFR Part 84 and Part 85.

VIII. PROGRAM INCOME

It is agreed and understood that except in the disposition of CDBG acquired assets that there will be no program income generated as a result of this Agreement which requires compliance with 24 CFR 570.504.

IX. TRANSFER OF ASSETS

Corporation shall, upon termination or expiration of this Agreement, transfer to City all CDBG funds and all loans and accounts receivable attributable to the use of CDBG funds that Corporation has on hand at the time of termination. If Corporation ceases to use any asset acquired with CDBG funds for the purposes described in this Agreement, Corporation shall either pay to City the fair market value of the asset or transfer control of the asset to City.

X. RECOGNITION OF FUNDING

Corporation shall provide recognition of CDBG funding in its procurement announcements. Corporation shall post, in a publicly visible location where CDBG assisted activity is provided, an acknowledgment that the City of Midland Community Development Block Grant Program is contributing to the program. City's Community Development Office will determine if posting is adequate given the scale of the CDBG assisted activity.

XI. PROGRAM REPORTS

Monthly status reports are to be prepared by Corporation and submitted in a timely fashion to City. A final performance report shall be prepared and submitted promptly after program completion. An inventory of CDBG acquired assets shall be submitted to City, in a form suitable to City, on an annual basis and at the end of this Agreement.

XII. TERM OF AGREEMENT

The term of this Agreement shall begin October 1, 2024, and end September 30, 2025, unless an extension of time is granted by the City Council.

XIII. RELEASE

CORPORATION 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 CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.

XIV. GENERAL FUND

It is expressly understood that this Agreement in no way obligates the general fund

or any other monies or credits of City, and is, therefore, expressly contingent on federal funds of City's CDBG program.

XV. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, CORPORATION 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 THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. CORPORATION SPECIFICALLY AGREES THAT IF CORPORATION 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, CORPORATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CORPORATION MIGHT OTHERWISE BE ENTITLED.

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

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

XVI. DEFAULT PROVISION

In the event that either Corporation or City fails to perform or is unable to perform substantially its obligations under the terms of this Agreement, the non-defaulting party shall notify the defaulting party in writing of such default. Within five (5) days after receipt of such notification, Corporation and City shall meet to discuss the default, the reasons thereof and the methods to cure default. If the defaulting party has not substantially cured the default within ten (10) days after receipt of such notification, or City and Corporation have not agreed within such time upon a solution to the default, the non-defaulting party

may, at its option, pursue any remedies at law or in equity.

In any event this Agreement may be terminated by the mutual consent of Corporation and City in writing.

XVII. 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, Corporation, or its 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 and 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 Corporation will settle, the physical and mailing addresses of Corporation at the time and date the claim was presented and the physical and mailing addresses of Corporation for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Corporation 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 Corporation that its 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, Corporation's failure to comply with the requirements herein shall perpetually bar Corporation'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. Corporation agrees that the requirements of this Agreement are reasonable.

XVIII. SOVEREIGN IMMUNITY

By executing this Agreement, City is not waiving its right of sovereign 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 SOVEREIGN IMMUNITY.

XIX. THIRD-PARTY BENEFICIARY

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

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

XX. ASSIGNMENT

Corporation 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.

XXI. TERMINATION WITHOUT CAUSE

City shall have the right, at its sole option, to terminate this Agreement at any time, with or without cause, by giving 90 days written notice to Corporation of City's election to so terminate.

XXII. VENUE AND GOVERNING LAW

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. This Agreement 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 Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

XXIII. PROCUREMENT SUSPENSION AND DEBARMENT

City has found that Corporation has not been suspended or debarred from performing work on Federal contracts.

XXIV. FEDERAL WAGE REQUIREMENTS

If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations, including 29 C.F.R. Parts 1, 3, 5, 6, and 7, 18 U.S.C. §874 and 40 U.S.C. §3145, 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.

XXV. COMPLIANCE

Corporation agrees that it shall comply with Texas Government Code Section

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this the day of _____, 2024.

CITY OF MIDLAND, TEXAS

By:_____
Lori Merritt Blong, Mayor

CHURCH ON WHEELS, INC.

By:_____

Name:_____

Title:_____

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Isaac Garnett, Community Development Administrator

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of Church on Wheels, Inc., known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that s/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 _____, 2024.

_____
Notary Public, State of Texas

CDBG EXHIBIT A

NAME: Facility Flooring Replacement **Request: $23,000**

APPLICANT: Church on Wheels, inc.

Description: Breaking Bread Ministries of Midland requests funding for the replacement of flooring that is aged and not functional. The nutritional feeding programs at 410 E. Florida Ave. prepare and feed 90 meals per day and need safe and sanitary dining area.

Budget: The budgeted funds of $23,000 will be used to replace facility flooring that is old and in disrepair.

Eligibility: Per 24 CFR 570.201, Homeless/Substance Abuse services for citizens experiencing hardships and/or disabled persons is considered by HUD a high priority. Homeless service for indigent individuals is considered by HUD as a presumed benefit to low and moderate-income person's activity under its limited clientele provisions.

Consolidated Plan: Homeless services are an area of high priority and concentration of community need. All hardship individuals will have an evidence-based needs assessment screening, and a plan of care formulated toward each participant's service plan.

Other Comments: None

AGREEMENT BETWEEN CITY OF MIDLAND, TEXAS AND WEST TEXAS FOOD BANK FOR THE EMERGENCY FOOD BOX DISTRIBUTION PROGRAM

This Agreement ("Agreement") made by and between the **CITY OF MIDLAND**, a Texas home rule municipal corporation ("City") and **WEST TEXAS FOOD BANK** ("Corporation");

I. PURPOSE

The purpose of this Agreement is to state the terms and conditions by which Corporation shall perform the Emergency Food Box Distribution Program utilizing Community Development Block Grant ("CDBG") funds as described in Exhibit "A", attached hereto and incorporated herein for all legal purposes. Any change in the performance schedule, purpose or the location of the operation must be approved in advance by City.

II. PAYMENT

Upon and after the receipt of a notice to proceed from City, Corporation is authorized to incur costs against a total amount of EIGHTY-ONE THOUSAND DOLLARS ($81,000.00). Payments shall be made on a reimbursement basis to Corporation for services and expenses as shown in Exhibit "A", attached hereto and made a part hereof for all legal purposes. All payments shall be made to Corporation upon certification by Corporation and approval by the Community Development Division of City's Development Services Department and the City Manager. When reimbursements for personal services are requested, time sheets must be presented by Corporation to City, in a form suitable to City. Final payment on the program must be at least THREE THOUSAND DOLLARS ($3,000.00) and will not be made until all final program reporting is completed.

III. PROCUREMENT STANDARDS

Corporation will make program procurement in accordance with 24 CFR Part 84 and Part 85 and applicable Texas Statutes. At least ten (10) days before Corporation seeks competitive bids on procurement of over TEN THOUSAND DOLLARS ($10,000.00) and for any work contracts of over TWO THOUSAND DOLLARS ($2,000.00) of the above-described program, the plans and specifications and other bid documents shall be submitted to City and reviewed by City's Community Development Division for conformance with federal and City requirements.

IV. INDEMNITY

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

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CORPORATION AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND SUPPLIERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS AGREEMENT. WHEN CITY SO DESIRES, CORPORATION SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR

WAIVED.

V. INSURANCE

A. Corporation shall carry insurance in the following types and amounts for the duration of this Agreement and furnish Certificates of Insurance along with copies of policy declaration pages and all policy endorsements as evidence hereof to City:

1. Statutory Workers' Compensation; said insurance shall waive subrogation in favor of City.

2. Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of $1,000,000. The policy must provide contractual liability coverage for liability assumed under this Agreement, products and completed operations coverage, independent contractor's coverage, and a waiver of a Transfer of Right of Recovery Against Others in favor of City. If this coverage is underwritten on a claim made basis, the retroactive date shall be coincident with the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. Corporation shall maintain coverage for the duration of this Agreement and for six months following completion of the construction improvements associated with this Agreement. Corporation shall pay for this extended reporting period coverage. Said insurance shall name City as an additional insured.

B. If insurance policies are not written for amounts specified in Subsection A, above, Corporation shall carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

C. Corporation shall provide City at least thirty (30) days written notice of erosion of the aggregate limit below the minimum required combined single limit coverage.

D. Corporation shall provide all provisions of this Agreement concerning liability, duty, standard of care, together with the indemnification or defense provisions herein, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies.

E. Corporation shall not commence work under this Agreement until it has obtained all required insurance and until such insurance has been reviewed by the City Attorney's Office of the City of Midland.

F. Corporation shall produce an endorsement to each affected policy that contains language similar to the following:

1. That names City of Midland, Texas, Attn.: CDBG Program Coordinator, 300 N. Loraine, P. O. Box 1152, Midland, Texas, 79702, as additional insured (except for Workers' Compensation and Employee's Liability coverage), with right of subrogation against City waived on each affected policy including Worker's Compensation.

2. That obligates the insurance company to notify City of any non-renewal, cancellation, or material change to the policy, at least thirty (30) calendar days before the change or cancellation.

3. That the "other" insurance clause shall not apply to City where City is an additional insured shown on the policy. It is intended that the policies required in this Agreement, covering both City and Corporation, shall be considered primary coverage, as applicable.

G. Corporation shall not cause any insurance to be canceled or permit any insurance to lapse during the term of this Agreement or the six-month period following completion, in the case of a claims-made policy.

H. City reserves the right to review the insurance requirements of this Article V during the effective period of this Agreement and to make reasonable adjustments to insurance coverages, their limits when deemed necessary and prudent by City based upon changes in statutory law, court decisions, or the claims history of the industry or financial condition of the insurance company as well as that of Corporation. City shall be entitled to review, upon request, and without expense to City, to receive copies of the requisite insurance policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter on any of such policies.

I. All certificates shall include a clause to the effect that the policy may not be canceled, reduced, restricted, or limited until thirty (30) calendar days after City has received written notice of such cancellation or change. During the term of this Agreement, Corporation shall have in effect a general liability insurance policy in an amount of not less than $1,000,000 combined single limit for bodily injury and property damage. This liability policy shall be endorsed to name the City of Midland as an additional insured. Corporation shall provide City with a Certificate of Insurance evidencing the required coverage upon execution of this Agreement.

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

VI. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Corporation shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Corporation 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 respondent superior shall not apply as between City and Corporation, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Corporation. No person performing any work hereunder 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. Corporation 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 Corporation's work. Corporation shall assume exclusive responsibility for the work. Corporation is entirely free to do the work in its own way.

VII. APPLICABLE LAWS, ORDINANCES

Corporation shall comply with all applicable laws, ordinances and codes of the United States, State of Texas and City and shall require all contractors and subcontractors to comply with the same. Corporation hereby agrees as follows:

A. Corporation will comply with the policies, guidelines and requirements of 24 CFR Part 84 and 85 and OMB Circulars A-87 and A-122, as they relate to the application, acceptance and use of federal funds for this federally assisted program. Corporation will also comply with the Single Audit provisions of OMB Circular A-133 and make all audits for fiscal years in which CDBG funds are expended available to City.

B. Corporation will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the applicant received federal financial assistance.

C. Corporation will comply with Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.602), which provides that no person in the United States shall, on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be

subjected to discrimination under, any program or activity funded in whole or in part with CDBG funds. Additionally, Corporation will comply with regulations at 24 CFR 570.613 concerning eligibility restrictions for certain resident aliens.

D. Corporation will comply with Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), which provides that it is the policy of the United States to provide for fair housing throughout the United States. It prohibits particular discriminatory acts regarding housing if the discrimination is based on race, color, religion, sex, national origin, family status, or mental and physical disability.

E. Corporation will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u), as amended, and the regulations issued pursuant thereto (24 CFR Part 135) which provides that to the greatest extent feasible opportunities for employment and other economic opportunities be directed to low and very low-income City residents and to business concerns which provide economic opportunity to low and very low-income persons.

F. Corporation will obtain and maintain documentation evidencing that program beneficiaries meet CDBG program income eligibility criteria, specifically as required by 24 CFR 570.208. Corporation shall further comply with the retention of records provisions of 24 CFR 570.502.

G. Corporation will ensure that subcontractors for work or construction activity under this Agreement shall comply with the equal opportunity requirements of Executive Order 11246, as amended.

H. Corporation will ensure that subcontractors for work or construction activity under this Agreement shall comply with 24 CFR Part 84 and 85and Section 110 of the Housing and Community Development Act of 1974 and the regulations issued pursuant thereto (24 CFR 570.603), which provide for adherence to certain labor standards.

I. No officer, employee or board member of Corporation shall have a financial interest, direct or indirect, in this Agreement or the monies transferred hereunder, or be financially interested, directly or indirectly in the sale to Corporation of any land, materials, supplies or services purchased with any funds transferred hereunder, except on behalf of Corporation as an officer, employee, member, or program participant. Corporation shall further comply with the conflict-of-interest provisions of 24 CFR 570.611 and 24 CFR Part 84 and Part 85.

J. Corporation will ensure that funds will not be used to directly or indirectly employ, award contracts to or otherwise engage the services of or fund any subcontractor during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

K. Corporation shall follow the provisions of 24 CFR Part 84 and Part 85 concerning standards for financial management systems.

L. Corporation will comply with the property management and disposition requirements of 24 CFR Part 84 and 85 including copyright provisions therein.

M. Corporation certifies that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of Corporation, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Corporation shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

N. Corporation shall comply with and shall ensure that its subcontractors comply with the provisions of the Drug-Free Workplace Act, 41 U.S.C, 701, et seq.

O. Corporation shall follow the provisions of 24 CFR 570.614 Architectural Barriers Act and the Americans with Disabilities Act.

P. Corporation shall make available to City, as determined by City, information and/or data which document compliance, in all phases of its work, with the above paragraphs A through O. Corporation shall fully cooperate with City when City monitors the services and work performed under this Agreement, which City may do at any time during the term of this Agreement. Corporation shall maintain accounts and records adequate to identify and account for all cost pertaining to this Agreement. Records are to be retained in accordance with 24 CFR Part 84 and Part 85.

VIII. PROGRAM INCOME

It is agreed and understood that except in the disposition of CDBG acquired assets that there will be no program income generated as a result of this Agreement which requires compliance with 24 CFR 570.504.

IX. TRANSFER OF ASSETS

Corporation shall, upon termination or expiration of this Agreement, transfer to City all CDBG funds and all loans and accounts receivable attributable to the use of CDBG funds that Corporation has on hand at the time of termination. If Corporation ceases to use any asset acquired with CDBG funds for the purposes described in this Agreement, Corporation shall either pay to City the fair market value of the asset or transfer control of the asset to City.

X. RECOGNITION OF FUNDING

Corporation shall provide recognition of CDBG funding in its procurement announcements. Corporation shall post, in a publicly visible location where CDBG assisted activity is provided, an acknowledgment that the City of Midland Community Development Block Grant Program is contributing to the program. City's Community Development Office will determine if posting is adequate given the scale of the CDBG assisted activity.

XI. PROGRAM REPORTS

Monthly status reports are to be prepared by Corporation and submitted in a timely fashion to City. A final performance report shall be prepared and submitted promptly after program completion. An inventory of CDBG acquired assets shall be submitted to City, in a form suitable to City, on an annual basis and at the end of this Agreement.

XII. TERM OF AGREEMENT

The term of this Agreement shall begin October 1, 2024, and end September 30, 2025, unless an extension of time is granted by the City Council.

XIII. RELEASE

CORPORATION 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 CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.

XIV. GENERAL FUND

It is expressly understood that this Agreement in no way obligates the general fund or any other monies or credits of City, and is, therefore, expressly contingent on federal funds of City's CDBG program.

XV. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, CORPORATION 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 THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. CORPORATION SPECIFICALLY AGREES THAT IF CORPORATION 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, CORPORATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CORPORATION MIGHT OTHERWISE BE ENTITLED.

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

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

XVI. DEFAULT PROVISION

In the event that either Corporation or City fails to perform or is unable to perform substantially its obligations under the terms of this Agreement, the non-defaulting party shall notify the defaulting party in writing of such default. Within five (5) days after receipt of such notification, Corporation and City shall meet to discuss the default, the reasons thereof and the methods to cure default. If the defaulting party has not substantially cured the default within ten (10) days after receipt of such notification, or City and Corporation

have not agreed within such time upon a solution to the default, the non-defaulting party may, at its option, pursue any remedies at law or in equity.

In any event, this Agreement may be terminated by the mutual consent of Corporation and City in writing.

XVII. 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, Corporation, or its 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 and 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 Corporation will settle, the physical and mailing addresses of Corporation at the time and date the claim was presented and the physical and mailing addresses of Corporation for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Corporation 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 Corporation that its 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, Corporation's failure to comply with the requirements herein shall perpetually bar Corporation'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. Corporation agrees that the requirements of this Agreement are reasonable.

XVIII. SOVEREIGN IMMUNITY

By executing this Agreement, City is not waiving its right of sovereign 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 SOVEREIGN IMMUNITY.

XIX. THIRD-PARTY BENEFICIARY

City's approval of this Agreement does not create a third-party beneficiary. There

is no third-party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or other rights hereunder.

XX. ASSIGNMENT

Corporation 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.

XXI. TERMINATION WITHOUT CAUSE

City shall have the right, at its sole option, to terminate this Agreement at any time, with or without cause, by giving 90 days written notice to Corporation of City's election to so terminate.

XXII. VENUE AND GOVERNING LAW

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. This Agreement 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 Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

XXIII. PROCUREMENT SUSPENSION AND DEBARMENT

City has found that Corporation has not been suspended or debarred from performing work on Federal contracts.

XXIV. FEDERAL WAGE REQUIREMENTS

If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations, including 29 C.F.R. Parts 1, 3, 5, 6, and 7, 18 U.S.C. §874 and 40 U.S.C. §3145, 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.

XXV. COMPLIANCE

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this the day of _____, 2024.

CITY OF MIDLAND, TEXAS

By:_____
Lori Merritt Blong, Mayor

WEST TEXAS FOOD BANK

By:_____

Name:_____

Title:_____

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Isaac Garnett, Community Development
Administrator

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of WEST TEXAS FOOD BANK, known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that s/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 _____, 2024.

_____
Notary Public, State of Texas

CDBG EXIBIT A

NAME: Emergency Food Box Distribution **Request: $81,000**

APPLICANT: West Texas Food Bank

Description: WTFB has worked to feed hungry families who are seeking food. Currently, West Texas is experiencing a drastic increase in the demand for food due to the current economic conditions present in the City of Midland. The extremely high cost of food has increased the need for additional support for seniors and working families.

Budget: CDBG has budgeted $81,000 dollars to be used to purchase and distribute perishable food items. The meals are estimated at $8.00 per meal; personnel, transportation, and administrative overhead are not included in the grant.

Eligibility: Per 24 CFR 570.201, emergency services for citizens experiencing hardships and/or disabled persons is considered by HUD a high priority. Service for indigent, low-moderate income individuals is considered by HUD as a presumed benefit.

Consolidated Plan: Services are a high priority of community need. All hardship individuals will have an evidence-based needs assessment screening.

Other Comments: Clients that visit the pantry each receive a 25-pound pantry box with shelf-stable items, plus fresh produce, meat, breads and dairy. Pantry boxes cost roughly $25 each for the food.

AGREEMENT BETWEEN CITY OF MIDLAND, TEXAS AND THE SALVATION ARMY OF MIDLAND FOR THE HOMELESS NUTRITION CV19 PROGRAM

This Agreement ("Agreement") made by and between the **CITY OF MIDLAND**, a Texas home rule municipal corporation ("City") and the **SALVATION ARMY OF MIDLAND** ("Corporation");

I. PURPOSE

The purpose of this Agreement is to state the terms and conditions by which Corporation shall perform the Homeless Nutrition Program utilizing Community Development Block Grant ("CDBG") funds as described in Exhibit "A", attached hereto and incorporated herein for all legal purposes. Any change in the performance schedule, purpose or the location of the operation must be approved in advance by City.

II. PAYMENT

Upon and after the receipt of a notice to proceed from City, Corporation is authorized to incur costs against a total amount of ONE HUNDRED THOUSAND DOLLARS ($100,000.00). Payments shall be made on a reimbursement basis to Corporation for services and expenses as shown in Exhibit "A", attached hereto and made a part hereof for all legal purposes. All payments shall be made to Corporation upon certification by Corporation and approval by the Community Development Division of City's Development Services Department and the City Manager. When reimbursements for personal services are requested, time sheets must be presented by Corporation to City, in a form suitable to City. Final payment on the program must be at least THREE THOUSAND DOLLARS ($3,000.00) and will not be made until all final program reporting is completed.

III. PROCUREMENT STANDARDS

Corporation will make program procurement in accordance with 24 CFR Part 84 and Part 85 and applicable Texas Statutes. At least ten (10) days before Corporation seeks competitive bids on procurement of over TEN THOUSAND DOLLARS ($10,000.00) and for any work contracts of over TWO THOUSAND DOLLARS ($2,000.00) of the above-described program, the plans and specifications and other bid documents shall be submitted to City and reviewed by City's Community Development Division for conformance with federal and City requirements.

IV. INDEMNITY

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

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CORPORATION AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND SUPPLIERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS AGREEMENT. WHEN CITY SO DESIRES, CORPORATION SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED.

V. INSURANCE

A. Corporation shall carry insurance in the following types and amounts for the duration of this Agreement and furnish Certificates of Insurance along with copies of policy declaration pages and all policy endorsements as evidence hereof to City:

1. Statutory Workers' Compensation; said insurance shall waive subrogation in favor of City.

2. Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of $1,000,000. The policy must provide contractual liability coverage for liability assumed under this Agreement, products and completed operations coverage, independent contractor's coverage, and a waiver of a Transfer of Right of Recovery Against Others in favor of City. If this coverage is underwritten on a claim made basis, the retroactive date shall be coincident with the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. Corporation shall maintain coverage for the duration of this Agreement and for six months following completion of the construction improvements associated with this Agreement. Corporation shall pay for this extended reporting period coverage. Said insurance shall name City as an additional insured.

B. If insurance policies are not written for amounts specified in Subsection A, above, Corporation shall carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

C. Corporation shall provide City at least thirty (30) days written notice of erosion of the aggregate limit below the minimum required combined single limit coverage.

D. Corporation shall provide all provisions of this Agreement concerning liability, duty, standard of care, together with the indemnification or defense provisions herein, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies.

E. Corporation shall not commence work under this Agreement until it has obtained all required insurance and until such insurance has been reviewed by the City Attorney's Office of the City of Midland.

F. Corporation shall produce an endorsement to each affected policy that contains language similar to the following:

1. That names City of Midland, Texas, Attn.: CDBG Program Coordinator, 300 N. Loraine, P. O. Box 1152, Midland, Texas, 79702, as additional insured (except for Workers' Compensation and Employee's Liability coverage), with right of subrogation against City waived on each affected policy including Worker's Compensation.

2. That obligates the insurance company to notify City of any non-renewal, cancellation, or material change to the policy, at least thirty (30) calendar days before the change or cancellation.

3. That the "other" insurance clause shall not apply to City where City is an additional insured shown on the policy. It is intended that the policies required in this Agreement, covering both City and Corporation, shall be considered primary coverage, as applicable.

G. Corporation shall not cause any insurance to be canceled or permit any insurance to lapse during the term of this Agreement or the six-month period following completion, in the case of a claims-made policy.

H. City reserves the right to review the insurance requirements of this Article V during the effective period of this Agreement and to make reasonable adjustments to insurance coverages, their limits when deemed necessary and prudent by City based upon changes in statutory law, court decisions, or the claims history of the industry or financial condition of the insurance company as well as that of Corporation. City shall be entitled to review, upon request, and without expense to City, to receive copies of the requisite insurance policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter on any of such policies.

I. All certificates shall include a clause to the effect that the policy may not be canceled, reduced, restricted, or limited until thirty (30) calendar days after City has received written notice of such cancellation or change. During the term of this Agreement, Corporation shall have in effect a general liability insurance policy in an amount of not less than $1,000,000 combined single limit for bodily injury and property damage. This liability policy shall be endorsed to name the City of Midland as an additional insured. Corporation shall provide City with a Certificate of Insurance evidencing the required coverage upon execution of this Agreement.

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

VI. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Corporation shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Corporation 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 respondent superior shall not apply as between City and Corporation, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Corporation. No person performing any work hereunder 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. Corporation 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 Corporation's work. Corporation shall assume exclusive responsibility for the work. Corporation is entirely free to do the work in its own way.

VII. APPLICABLE LAWS, ORDINANCES

Corporation shall comply with all applicable laws, ordinances and codes of the United States, State of Texas and City and shall require all contractors and subcontractors to comply with the same. Corporation hereby agrees as follows:

A. Corporation will comply with the policies, guidelines and requirements of 24 CFR Part 84 and 85 and OMB Circulars A-87 and A-122, as they relate to the application, acceptance and use of federal funds for this federally assisted program. Corporation will also comply with the Single Audit provisions of OMB Circular A-133 and make all audits for fiscal years in which CDBG funds are expended available to City.

B. Corporation will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the applicant received federal financial assistance.

C. Corporation will comply with Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.602), which provides that no person in the United States shall, on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with

CDBG funds. Additionally, Corporation will comply with regulations at 24 CFR 570.613 concerning eligibility restrictions for certain resident aliens.

D. Corporation will comply with Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), which provides that it is the policy of the United States to provide for fair housing throughout the United States. It prohibits particular discriminatory acts regarding housing if the discrimination is based on race, color, religion, sex, national origin, family status, or mental and physical disability.

E. Corporation will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u), as amended, and the regulations issued pursuant thereto (24 CFR Part 135) which provides that to the greatest extent feasible opportunities for employment and other economic opportunities be directed to low and very low-income City residents and to business concerns which provide economic opportunity to low and very low-income persons.

F. Corporation will obtain and maintain documentation evidencing that program beneficiaries meet CDBG program income eligibility criteria, specifically as required by 24 CFR 570.208. Corporation shall further comply with the retention of records provisions of 24 CFR 570.502.

G. Corporation will ensure that subcontractors for work or construction activity under this Agreement shall comply with the equal opportunity requirements of Executive Order 11246, as amended.

H. Corporation will ensure that subcontractors for work or construction activity under this Agreement shall comply with 24 CFR Part 84 and 85and Section 110 of the Housing and Community Development Act of 1974 and the regulations issued pursuant thereto (24 CFR 570.603), which provide for adherence to certain labor standards.

I. No officer, employee or board member of Corporation shall have a financial interest, direct or indirect, in this Agreement or the monies transferred hereunder, or be financially interested, directly or indirectly in the sale to Corporation of any land, materials, supplies or services purchased with any funds transferred hereunder, except on behalf of Corporation as an officer, employee, member, or program participant. Corporation shall further comply with the conflict-of-interest provisions of 24 CFR 570.611 and 24 CFR Part 84 and Part 85.

J. Corporation will ensure that funds will not be used to directly or indirectly employ, award contracts to or otherwise engage the services of or fund any subcontractor during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

K. Corporation shall follow the provisions of 24 CFR Part 84 and Part 85 concerning

standards for financial management systems.

L. Corporation will comply with the property management and disposition requirements of 24 CFR Part 84 and 85 including copyright provisions therein.

M. Corporation certifies that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of Corporation, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Corporation shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

N. Corporation shall comply with and shall ensure that its subcontractors comply with the provisions of the Drug-Free Workplace Act, 41 U.S.C, 701, et seq.

O. Corporation shall follow the provisions of 24 CFR 570.614 Architectural Barriers Act and the Americans with Disabilities Act.

P. Corporation shall make available to City, as determined by City, information and/or data which document compliance, in all phases of its work, with the above paragraphs A through O. Corporation shall fully cooperate with City when City monitors the services and work performed under this Agreement, which City may do at any time during the term of this Agreement. Corporation shall maintain accounts and records adequate to identify and account for all cost pertaining to this Agreement. Records are to be retained in accordance with 24 CFR Part 84 and Part 85.

VIII. PROGRAM INCOME

It is agreed and understood that except in the disposition of CDBG acquired assets that there will be no program income generated as a result of this Agreement which requires compliance with 24 CFR 570.504.

IX. TRANSFER OF ASSETS

Corporation shall, upon termination or expiration of this Agreement, transfer to City all CDBG funds and all loans and accounts receivable attributable to the use of CDBG funds that Corporation has on hand at the time of termination. If Corporation ceases to use any asset acquired with CDBG funds for the purposes described in this Agreement, Corporation shall either pay to City the fair market value of the asset or transfer control of the asset to City.

X. RECOGNITION OF FUNDING

Corporation shall provide recognition of CDBG funding in its procurement announcements. Corporation shall post, in a publicly visible location where CDBG assisted activity is provided, an acknowledgment that the City of Midland Community Development Block Grant Program is contributing to the program. City's Community Development Office will determine if posting is adequate given the scale of the CDBG assisted activity.

XI. PROGRAM REPORTS

Monthly status reports are to be prepared by Corporation and submitted in a timely fashion to City. A final performance report shall be prepared and submitted promptly after program completion. An inventory of CDBG acquired assets shall be submitted to City, in a form suitable to City, on an annual basis and at the end of this Agreement.

XII. TERM OF AGREEMENT

The term of this Agreement shall begin October 1, 2024, and end September 30, 2025, unless an extension of time is granted by the City Council.

XIII. RELEASE

CORPORATION 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 CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.

XIV. GENERAL FUND

It is expressly understood that this Agreement in no way obligates the general fund

or any other monies or credits of City, and is, therefore, expressly contingent on federal funds of City's CDBG program.

XV. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, CORPORATION 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 THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. CORPORATION SPECIFICALLY AGREES THAT IF CORPORATION 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, CORPORATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CORPORATION MIGHT OTHERWISE BE ENTITLED.

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

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

XVI. DEFAULT PROVISION

In the event that either Corporation or City fails to perform or is unable to perform substantially its obligations under the terms of this Agreement, the non-defaulting party shall notify the defaulting party in writing of such default. Within five (5) days after receipt of such notification, Corporation and City shall meet to discuss the default, the reasons thereof and the methods to cure default. If the defaulting party has not substantially cured the default within ten (10) days after receipt of such notification, or City and Corporation have not agreed within such time upon a solution to the default, the non-defaulting party

may, at its option, pursue any remedies at law or in equity.

In any event this Agreement may be terminated by the mutual consent of Corporation and City in writing.

XVII. 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, Corporation, or its 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 and 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 Corporation will settle, the physical and mailing addresses of Corporation at the time and date the claim was presented and the physical and mailing addresses of Corporation for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Corporation 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 Corporation that its 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, Corporation's failure to comply with the requirements herein shall perpetually bar Corporation'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. Corporation agrees that the requirements of this Agreement are reasonable.

XVIII. SOVEREIGN IMMUNITY

By executing this Agreement, City is not waiving its right of sovereign 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 SOVEREIGN IMMUNITY.

XIX. THIRD-PARTY BENEFICIARY

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

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

XX. ASSIGNMENT

Corporation 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.

XXI. TERMINATION WITHOUT CAUSE

City shall have the right, at its sole option, to terminate this Agreement at any time, with or without cause, by giving 90 days written notice to Corporation of City's election to so terminate.

XXII. VENUE AND GOVERNING LAW

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. This Agreement 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 Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

XXIII. PROCUREMENT SUSPENSION AND DEBARMENT

City has found that Corporation has not been suspended or debarred from performing work on Federal contracts.

XXIV. FEDERAL WAGE REQUIREMENTS

If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations, including 29 C.F.R. Parts 1, 3, 5, 6, and 7, 18 U.S.C. §874 and 40 U.S.C. §3145, 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.

XXV. COMPLIANCE

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this the day of _____, 2024.

CITY OF MIDLAND, TEXAS

By:_____
Lori Merritt Blong, Mayor

THE SALVATION ARMY OF MIDLAND

By:_____

Name:_____

Title:_____

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Isaac Garnett, Community Development Administrator

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of The Salvation Army of Midland known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that s/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 _____, 2024.

_____
Notary Public, State of Texas

CDBG EXHIBIT A

NAME: Homeless Nutrition Program **Request: $100,000**

APPLICANT: The Midland Salvation Army

Description: The Salvation Army of Midland requests funding for the nutrition programs at the 600 E. Wall St. Center (Homeless Shelter). Approximately 47,000 meals are expected to be served during the program year. Three meals time will be available to persons wanting a hot meal.

Budget: CDBG funds would be used to pay for an average 150 meals per day with an estimated $8.00 cost per meal; personnel, transportation, equipment and administrative overhead are not included in the grant. The requested funds would be used to help pay for food and nonperishable items related to meal preparation. The Homeless and Indigent Program overall budget for the program year will be $839,835.00 primarily generated from contributions and federal grants for the homeless.

Eligibility: Per 24 CFR 570.20, Homeless service for citizens experiencing hardships and/or disabled persons is considered by HUD a high priority. Homeless service for indigent individuals is considered by HUD as a presumed benefit to low and moderate-income person's activity under its limited clientele provisions.

Consolidated Plan: Homeless services is an area of high priority and concentration of community need. All hardship individuals will have an evidence-based needs assessment screening and a plan of care formulated toward each participant's service plan.

Other Comments: COVID-19 funding has a remaining term of 12 months till sunset provision requires return to Department of Treasury.

AGREEMENT BETWEEN CITY OF MIDLAND, TEXAS AND MIDLAND HABITAT FOR HUMANITY FOR THE HABITAT FOR HUMANITY INFRASTRUCTURE IMPROVEMENTS PROJECT

This Agreement ("Agreement") made by and between the **CITY OF MIDLAND**, a Texas home rule municipal corporation ("City") and **MIDLAND HABITAT FOR HUMANITY** ("Corporation");

I. PURPOSE

The purpose of this Agreement is to state the terms and conditions by which Corporation shall perform the Habitat for Humanity Improvements Project utilizing Community Development Block Grant ("CDBG") funds as described in Exhibit "A", attached hereto and incorporated herein for all legal purposes. Any change in the performance schedule, purpose or the location of the operation must be approved in advance by City.

II. PAYMENT

Upon and after the receipt of a notice to proceed from City, Corporation is authorized to incur costs against a total amount of THREE HUNDRED EIGHTY-ONE THOUSAND DOLLARS ($381,000.00). Payments shall be made on a reimbursement basis to Corporation for services and expenses as shown in Exhibit "A", attached hereto and made a part hereof for all legal purposes. All payments shall be made to Corporation upon certification by Corporation and approval by the Community Development Division of City's Development Services Department and the City Manager. When reimbursements for personal services are requested, time sheets must be presented by Corporation to City, in a form suitable to City. Final payment on the program must be at least THREE THOUSAND DOLLARS ($3,000.00) and will not be made until all final program reporting is completed.

III. PROCUREMENT STANDARDS

Corporation will make program procurement in accordance with 24 CFR Part 84 and Part 85 and applicable Texas Statutes. At least ten (10) days before Corporation seeks competitive bids on procurement of over TEN THOUSAND DOLLARS ($10,000.00) and for any work contracts of over TWO THOUSAND DOLLARS ($2,000.00) of the above-described program, the plans and specifications and other bid documents shall be submitted to City and reviewed by City's Community Development Division for conformance with federal and City requirements.

IV. INDEMNITY

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

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

CORPORATION AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND SUPPLIERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS AGREEMENT. WHEN CITY SO DESIRES, CORPORATION SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR

WAIVED.

V. INSURANCE

A. Corporation shall carry insurance in the following types and amounts for the duration of this Agreement and furnish Certificates of Insurance along with copies of policy declaration pages and all policy endorsements as evidence hereof to City:

1. Statutory Workers' Compensation; said insurance shall waive subrogation in favor of City.

2. Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of $1,000,000. The policy must provide contractual liability coverage for liability assumed under this Agreement, products and completed operations coverage, independent contractor's coverage, and a waiver of a Transfer of Right of Recovery Against Others in favor of City. If this coverage is underwritten on a claim made basis, the retroactive date shall be coincident with the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. Corporation shall maintain coverage for the duration of this Agreement and for six months following completion of the construction improvements associated with this Agreement. Corporation shall pay for this extended reporting period coverage. Said insurance shall name City as an additional insured.

B. If insurance policies are not written for amounts specified in Subsection A, above, Corporation shall carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

C. Corporation shall provide City at least thirty (30) days written notice of erosion of the aggregate limit below the minimum required combined single limit coverage.

D. Corporation shall provide all provisions of this Agreement concerning liability, duty, standard of care, together with the indemnification or defense provisions herein, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies.

E. Corporation shall not commence work under this Agreement until it has obtained all required insurance and until such insurance has been reviewed by the City Attorney's Office of the City of Midland.

F. Corporation shall produce an endorsement to each affected policy that contains language similar to the following:

1. That names City of Midland, Texas, Attn.: CDBG Program Coordinator, 300 N. Loraine, P. O. Box 1152, Midland, Texas, 79702, as additional insured (except for Workers' Compensation and Employee's Liability coverage), with right of subrogation against City waived on each affected policy including Worker's Compensation.

2. That obligates the insurance company to notify City of any non-renewal, cancellation, or material change to the policy, at least thirty (30) calendar days before the change or cancellation.

3. That the "other" insurance clause shall not apply to City where City is an additional insured shown on the policy. It is intended that the policies required in this Agreement, covering both City and Corporation, shall be considered primary coverage, as applicable.

G. Corporation shall not cause any insurance to be canceled or permit any insurance to lapse during the term of this Agreement or the six-month period following completion, in the case of a claims-made policy.

H. City reserves the right to review the insurance requirements of this Article V during the effective period of this Agreement and to make reasonable adjustments to insurance coverages, their limits when deemed necessary and prudent by City based upon changes in statutory law, court decisions, or the claims history of the industry or financial condition of the insurance company as well as that of Corporation. City shall be entitled to review, upon request, and without expense to City, to receive copies of the requisite insurance policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter on any of such policies.

I. All certificates shall include a clause to the effect that the policy may not be canceled, reduced, restricted, or limited until thirty (30) calendar days after City has received written notice of such cancellation or change. During the term of this Agreement, Corporation shall have in effect a general liability insurance policy in an amount of not less than $1,000,000 combined single limit for bodily injury and property damage. This liability policy shall be endorsed to name the City of Midland as an additional insured. Corporation shall provide City with a Certificate of Insurance evidencing the required coverage upon execution of this Agreement.

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

VI. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Corporation shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Corporation 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 respondent superior shall not apply as between City and Corporation, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Corporation. No person performing any work hereunder 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. Corporation 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 Corporation's work. Corporation shall assume exclusive responsibility for the work. Corporation is entirely free to do the work in its own way.

VII. APPLICABLE LAWS, ORDINANCES

Corporation shall comply with all applicable laws, ordinances and codes of the United States, State of Texas and City and shall require all contractors and subcontractors to comply with the same. Corporation hereby agrees as follows:

A. Corporation will comply with the policies, guidelines and requirements of 24 CFR Part 84 and 85 and OMB Circulars A-87 and A-122, as they relate to the application, acceptance and use of federal funds for this federally assisted program. Corporation will also comply with the Single Audit provisions of OMB Circular A-133 and make all audits for fiscal years in which CDBG funds are expended available to City.

B. Corporation will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the applicant received federal financial assistance.

C. Corporation will comply with Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.602), which provides that no person in the United States shall, on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be

subjected to discrimination under, any program or activity funded in whole or in part with CDBG funds. Additionally, Corporation will comply with regulations at 24 CFR 570.613 concerning eligibility restrictions for certain resident aliens.

D. Corporation will comply with Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), which provides that it is the policy of the United States to provide for fair housing throughout the United States. It prohibits particular discriminatory acts regarding housing if the discrimination is based on race, color, religion, sex, national origin, family status, or mental and physical disability.

E. Corporation will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u), as amended, and the regulations issued pursuant thereto (24 CFR Part 135) which provides that to the greatest extent feasible opportunities for employment and other economic opportunities be directed to low and very low-income City residents and to business concerns which provide economic opportunity to low and very low-income persons.

F. Corporation will obtain and maintain documentation evidencing that program beneficiaries meet CDBG program income eligibility criteria, specifically as required by 24 CFR 570.208. Corporation shall further comply with the retention of records provisions of 24 CFR 570.502.

G. Corporation will ensure that subcontractors for work or construction activity under this Agreement shall comply with the equal opportunity requirements of Executive Order 11246, as amended.

H. Corporation will ensure that subcontractors for work or construction activity under this Agreement shall comply with 24 CFR Part 84 and 85and Section 110 of the Housing and Community Development Act of 1974 and the regulations issued pursuant thereto (24 CFR 570.603), which provide for adherence to certain labor standards.

I. No officer, employee or board member of Corporation shall have a financial interest, direct or indirect, in this Agreement or the monies transferred hereunder, or be financially interested, directly or indirectly in the sale to Corporation of any land, materials, supplies or services purchased with any funds transferred hereunder, except on behalf of Corporation as an officer, employee, member, or program participant. Corporation shall further comply with the conflict-of-interest provisions of 24 CFR 570.611 and 24 CFR Part 84 and Part 85.

J. Corporation will ensure that funds will not be used to directly or indirectly employ, award contracts to or otherwise engage the services of or fund any subcontractor during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

K. Corporation shall follow the provisions of 24 CFR Part 84 and Part 85 concerning standards for financial management systems.

L. Corporation will comply with the property management and disposition requirements of 24 CFR Part 84 and 85 including copyright provisions therein.

M. Corporation certifies that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of Corporation, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Corporation shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

N. Corporation shall comply with and shall ensure that its subcontractors comply with the provisions of the Drug-Free Workplace Act, 41 U.S.C, 701, et seq.

O. Corporation shall follow the provisions of 24 CFR 570.614 Architectural Barriers Act and the Americans with Disabilities Act.

P. Corporation shall make available to City, as determined by City, information and/or data which document compliance, in all phases of its work, with the above paragraphs A through O. Corporation shall fully cooperate with City when City monitors the services and work performed under this Agreement, which City may do at any time during the term of this Agreement. Corporation shall maintain accounts and records adequate to identify and account for all cost pertaining to this Agreement. Records are to be retained in accordance with 24 CFR Part 84 and Part 85.

VIII. PROGRAM INCOME

It is agreed and understood that except in the disposition of CDBG acquired assets that there will be no program income generated as a result of this Agreement which requires compliance with 24 CFR 570.504.

IX. TRANSFER OF ASSETS

Corporation shall, upon termination or expiration of this Agreement, transfer to City all CDBG funds and all loans and accounts receivable attributable to the use of CDBG funds that Corporation has on hand at the time of termination. If Corporation ceases to use any asset acquired with CDBG funds for the purposes described in this Agreement, Corporation shall either pay to City the fair market value of the asset or transfer control of the asset to City.

X. RECOGNITION OF FUNDING

Corporation shall provide recognition of CDBG funding in its procurement announcements. Corporation shall post, in a publicly visible location where CDBG assisted activity is provided, an acknowledgment that the City of Midland Community Development Block Grant Program is contributing to the program. City's Community Development Office will determine if posting is adequate given the scale of the CDBG assisted activity.

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Monthly status reports are to be prepared by Corporation and submitted in a timely fashion to City. A final performance report shall be prepared and submitted promptly after program completion. An inventory of CDBG acquired assets shall be submitted to City, in a form suitable to City, on an annual basis and at the end of this Agreement.

XII. TERM OF AGREEMENT

The term of this Agreement shall begin October 1, 2024, and end September 30, 2025, unless an extension of time is granted by the City Council.

XIII. RELEASE

CORPORATION 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 CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.

XIV. GENERAL FUND

It is expressly understood that this Agreement in no way obligates the general fund or any other monies or credits of City, and is, therefore, expressly contingent on federal funds of City's CDBG program.

XV. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, CORPORATION 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 THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. CORPORATION SPECIFICALLY AGREES THAT IF CORPORATION 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, CORPORATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CORPORATION MIGHT OTHERWISE BE ENTITLED.

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

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

XVI. DEFAULT PROVISION

In the event that either Corporation or City fails to perform or is unable to perform substantially its obligations under the terms of this Agreement, the non-defaulting party shall notify the defaulting party in writing of such default. Within five (5) days after receipt of such notification, Corporation and City shall meet to discuss the default, the reasons thereof and the methods to cure default. If the defaulting party has not substantially cured the default within ten (10) days after receipt of such notification, or City and Corporation

have not agreed within such time upon a solution to the default, the non-defaulting party may, at its option, pursue any remedies at law or in equity.

In any event, this Agreement may be terminated by the mutual consent of Corporation and City in writing.

XVII. 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, Corporation, or its 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 and 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 Corporation will settle, the physical and mailing addresses of Corporation at the time and date the claim was presented and the physical and mailing addresses of Corporation for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Corporation 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 Corporation that its 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, Corporation's failure to comply with the requirements herein shall perpetually bar Corporation'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. Corporation agrees that the requirements of this Agreement are reasonable.

XVIII. SOVEREIGN IMMUNITY

By executing this Agreement, City is not waiving its right of sovereign 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 SOVEREIGN IMMUNITY.

XIX. THIRD-PARTY BENEFICIARY

City's approval of this Agreement does not create a third-party beneficiary. There

is no third-party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or other rights hereunder.

XX. ASSIGNMENT

Corporation 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.

XXI. TERMINATION WITHOUT CAUSE

City shall have the right, at its sole option, to terminate this Agreement at any time, with or without cause, by giving 90 days written notice to Corporation of City's election to so terminate.

XXII. VENUE AND GOVERNING LAW

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. This Agreement 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 Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

XXIII. PROCUREMENT SUSPENSION AND DEBARMENT

City has found that Corporation has not been suspended or debarred from performing work on Federal contracts.

XXIV. FEDERAL WAGE REQUIREMENTS

If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations, including 29 C.F.R. Parts 1, 3, 5, 6, and 7, 18 U.S.C. §874 and 40 U.S.C. §3145, 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.

XXV. COMPLIANCE

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this the day of _____, 2024.

CITY OF MIDLAND, TEXAS

By:_____
Lori Merritt Blong, Mayor

MIDLAND HABITAT FOR HUMANITY

By:_____

Name:_____

Title:_____

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Isaac Garnett, Community Development Administrator

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of MIDLAND HABITAT FOR HUMANITY, known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that s/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 _____, 2024.

_____
Notary Public, State of Texas

CDBG EXHIBIT A

NAME: Habitat for Humanity Infrastructure Improvements **Request: $381,000**

APPLICANT: Midland Habitat for Humanity Inc.

Description: Midland Habitat for humanity Inc. infrastructure project plans would provide for the utilities, curbs, gutters, ADA ramps and roads improvements for affordable housing. The objective of the project is to help revitalize the redevelopment of east Midland neighborhoods with 70 affordable housing units.

Budget: The budgeted funds of $381,000 will be used to complete the infrastructure necessary for housing development.

Eligibility: Per 24 CFR 570.201, Infrastructure development is needed for a L/M Income Housing Development.

Consolidated Plan: Neighborhood infrastructure is needed for a L/M income Housing.

Other Comments: The infrastructure project is located within a low-moderate income census tract and the CDBG target area.

AGREEMENT BETWEEN CITY OF MIDLAND, TEXAS AND THRIVING UNITED, INC., FOR THE PEER SUPPORT SPECIALIST PROGRAM

This Agreement ("Agreement") made by and between the **CITY OF MIDLAND**, a Texas home rule municipal corporation ("City") and **THRIVING UNITED, INC.** ("Corporation");

I. PURPOSE

The purpose of this Agreement is to state the terms and conditions by which Corporation shall perform the Peer Support Specialist Program utilizing Community Development Block Grant ("CDBG") funds as described in Exhibit "A", attached hereto and incorporated herein for all legal purposes. Any change in the performance schedule, purpose or the location of the operation must be approved in advance by City.

II. PAYMENT

Upon and after the receipt of a notice to proceed from City, Corporation is authorized to incur costs against a total amount of EIGHTY-THREE THOUSAND DOLLARS ($83,000.00). Payments shall be made on a reimbursement basis to Corporation for services and expenses as shown in Exhibit "A", attached hereto and made a part hereof for all legal purposes. All payments shall be made to Corporation upon certification by Corporation and approval by the Community Development Division of City's Development Services Department and the City Manager. When reimbursements for personal services are requested, time sheets must be presented by Corporation to City, in a form suitable to City. Final payment on the program must be at least THREE THOUSAND DOLLARS ($3,000.00) and will not be made until all final program reporting is completed.

III. PROCUREMENT STANDARDS

Corporation will make program procurement in accordance with 24 CFR Part 84 and Part 85 and applicable Texas Statutes. At least ten (10) days before Corporation seeks competitive bids on procurement of over TEN THOUSAND DOLLARS ($10,000.00) and for any work contracts of over TWO THOUSAND DOLLARS ($2,000.00) of the above-described program, the plans and specifications and other bid documents shall be submitted to City and reviewed by City's Community Development Division for conformance with federal and City requirements.

IV. INDEMNITY

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

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

CORPORATION AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND SUPPLIERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS AGREEMENT. WHEN CITY SO DESIRES, CORPORATION SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED.

V. INSURANCE

A. Corporation shall carry insurance in the following types and amounts for the duration of this Agreement and furnish Certificates of Insurance along with copies of policy declaration pages and all policy endorsements as evidence hereof to City:

1. Statutory Workers' Compensation; said insurance shall waive subrogation in favor of City.

2. Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of $1,000,000. The policy must provide contractual liability coverage for liability assumed under this Agreement, products and completed operations coverage, independent contractor's coverage, and a waiver of a Transfer of Right of Recovery Against Others in favor of City. If this coverage is underwritten on a claim made basis, the retroactive date shall be coincident with the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. Corporation shall maintain coverage for the duration of this Agreement and for six months following completion of the construction improvements associated with this Agreement. Corporation shall pay for this extended reporting period coverage. Said insurance shall name City as an additional insured.

B. If insurance policies are not written for amounts specified in Subsection A, above, Corporation shall carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

C. Corporation shall provide City at least thirty (30) days written notice of erosion of the aggregate limit below the minimum required combined single limit coverage.

D. Corporation shall provide all provisions of this Agreement concerning liability, duty, standard of care, together with the indemnification or defense provisions herein, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies.

E. Corporation shall not commence work under this Agreement until it has obtained all required insurance and until such insurance has been reviewed by the City Attorney's Office of the City of Midland.

F. Corporation shall produce an endorsement to each affected policy that contains language similar to the following:

1. That names City of Midland, Texas, Attn.: CDBG Program Coordinator, 300

N. Loraine, P. O. Box 1152, Midland, Texas, 79702, as additional insured (except for Workers' Compensation and Employee's Liability coverage), with right of subrogation against City waived on each affected policy including Worker's Compensation.

2. That obligates the insurance company to notify City of any non-renewal, cancellation, or material change to the policy, at least thirty (30) calendar days before the change or cancellation.

3. That the "other" insurance clause shall not apply to City where City is an additional insured shown on the policy. It is intended that the policies required in this Agreement, covering both City and Corporation, shall be considered primary coverage, as applicable.

G. Corporation shall not cause any insurance to be canceled or permit any insurance to lapse during the term of this Agreement or the six-month period following completion, in the case of a claims-made policy.

H. City reserves the right to review the insurance requirements of this Article V during the effective period of this Agreement and to make reasonable adjustments to insurance coverages, their limits when deemed necessary and prudent by City based upon changes in statutory law, court decisions, or the claims history of the industry or financial condition of the insurance company as well as that of Corporation. City shall be entitled to review, upon request, and without expense to City, to receive copies of the requisite insurance policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter on any of such policies.

I. All certificates shall include a clause to the effect that the policy may not be canceled, reduced, restricted, or limited until thirty (30) calendar days after City has received written notice of such cancellation or change. During the term of this Agreement, Corporation shall have in effect a general liability insurance policy in an amount of not less than $1,000,000 combined single limit for bodily injury and property damage. This liability policy shall be endorsed to name the City of Midland as an additional insured. Corporation shall provide City with a Certificate of Insurance evidencing the required coverage upon execution of this Agreement.

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

VI. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Corporation shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Corporation 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 respondent superior shall not apply as between City and Corporation, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Corporation. No person performing any work hereunder 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. Corporation 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 Corporation's work. Corporation shall assume exclusive responsibility for the work. Corporation is entirely free to do the work in its own way.

VII. APPLICABLE LAWS, ORDINANCES

Corporation shall comply with all applicable laws, ordinances and codes of the United States, State of Texas and City and shall require all contractors and subcontractors to comply with the same. Corporation hereby agrees as follows:

A. Corporation will comply with the policies, guidelines and requirements of 24 CFR Part 84 and 85 and OMB Circulars A-87 and A-122, as they relate to the application, acceptance and use of federal funds for this federally assisted program. Corporation will also comply with the Single Audit provisions of OMB Circular A-133 and make all audits for fiscal years in which CDBG funds are expended available to City.

B. Corporation will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the applicant received federal financial assistance.

C. Corporation will comply with Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.602), which provides that no person in the United States shall, on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with

CDBG funds. Additionally, Corporation will comply with regulations at 24 CFR 570.613 concerning eligibility restrictions for certain resident aliens.

D. Corporation will comply with Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), which provides that it is the policy of the United States to provide for fair housing throughout the United States. It prohibits particular discriminatory acts regarding housing if the discrimination is based on race, color, religion, sex, national origin, family status, or mental and physical disability.

E. Corporation will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u), as amended, and the regulations issued pursuant thereto (24 CFR Part 135) which provides that to the greatest extent feasible opportunities for employment and other economic opportunities be directed to low and very low-income City residents and to business concerns which provide economic opportunity to low and very low-income persons.

F. Corporation will obtain and maintain documentation evidencing that program beneficiaries meet CDBG program income eligibility criteria, specifically as required by 24 CFR 570.208. Corporation shall further comply with the retention of records provisions of 24 CFR 570.502.

G. Corporation will ensure that subcontractors for work or construction activity under this Agreement shall comply with the equal opportunity requirements of Executive Order 11246, as amended.

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I. No officer, employee or board member of Corporation shall have a financial interest, direct or indirect, in this Agreement or the monies transferred hereunder, or be financially interested, directly or indirectly in the sale to Corporation of any land, materials, supplies or services purchased with any funds transferred hereunder, except on behalf of Corporation as an officer, employee, member, or program participant. Corporation shall further comply with the conflict-of-interest provisions of 24 CFR 570.611 and 24 CFR Part 84 and Part 85.

J. Corporation will ensure that funds will not be used to directly or indirectly employ, award contracts to or otherwise engage the services of or fund any subcontractor during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

K. Corporation shall follow the provisions of 24 CFR Part 84 and Part 85 concerning

standards for financial management systems.

L. Corporation will comply with the property management and disposition requirements of 24 CFR Part 84 and 85 including copyright provisions therein.

M. Corporation certifies that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of Corporation, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Corporation shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

N. Corporation shall comply with and shall ensure that its subcontractors comply with the provisions of the Drug-Free Workplace Act, 41 U.S.C, 701, et seq.

O. Corporation shall follow the provisions of 24 CFR 570.614 Architectural Barriers Act and the Americans with Disabilities Act.

P. Corporation shall make available to City, as determined by City, information and/or data which document compliance, in all phases of its work, with the above paragraphs A through O. Corporation shall fully cooperate with City when City monitors the services and work performed under this Agreement, which City may do at any time during the term of this Agreement. Corporation shall maintain accounts and records adequate to identify and account for all cost pertaining to this Agreement. Records are to be retained in accordance with 24 CFR Part 84 and Part 85.

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Corporation shall provide recognition of CDBG funding in its procurement announcements. Corporation shall post, in a publicly visible location where CDBG assisted activity is provided, an acknowledgment that the City of Midland Community Development Block Grant Program is contributing to the program. City's Community Development Office will determine if posting is adequate given the scale of the CDBG assisted activity.

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Monthly status reports are to be prepared by Corporation and submitted in a timely fashion to City. A final performance report shall be prepared and submitted promptly after program completion. An inventory of CDBG acquired assets shall be submitted to City, in a form suitable to City, on an annual basis and at the end of this Agreement.

XII. TERM OF AGREEMENT

The term of this Agreement shall begin October 1, 2024, and end September 30, 2025, unless an extension of time is granted by the City Council.

XIII. RELEASE

CORPORATION 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 CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.

XIV. GENERAL FUND

It is expressly understood that this Agreement in no way obligates the general fund

or any other monies or credits of City, and is, therefore, expressly contingent on federal funds of City's CDBG program.

XV. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, CORPORATION 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 THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. CORPORATION SPECIFICALLY AGREES THAT IF CORPORATION 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, CORPORATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CORPORATION MIGHT OTHERWISE BE ENTITLED.

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

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

XVI. DEFAULT PROVISION

In the event that either Corporation or City fails to perform or is unable to perform substantially its obligations under the terms of this Agreement, the non-defaulting party shall notify the defaulting party in writing of such default. Within five (5) days after receipt of such notification, Corporation and City shall meet to discuss the default, the reasons thereof and the methods to cure default. If the defaulting party has not substantially cured the default within ten (10) days after receipt of such notification, or City and Corporation have not agreed within such time upon a solution to the default, the non-defaulting party

may, at its option, pursue any remedies at law or in equity.

In any event, this Agreement may be terminated by the mutual consent of Corporation and City in writing.

XVII. 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, Corporation, or its 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 and 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 Corporation will settle, the physical and mailing addresses of Corporation at the time and date the claim was presented and the physical and mailing addresses of Corporation for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Corporation 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 Corporation that its 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, Corporation's failure to comply with the requirements herein shall perpetually bar Corporation'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. Corporation agrees that the requirements of this Agreement are reasonable.

XVIII. SOVEREIGN IMMUNITY

By executing this Agreement, City is not waiving its right of sovereign 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 SOVEREIGN IMMUNITY.

XIX. THIRD-PARTY BENEFICIARY

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

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

XX. ASSIGNMENT

Corporation 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.

XXI. TERMINATION WITHOUT CAUSE

City shall have the right, at its sole option, to terminate this Agreement at any time, with or without cause, by giving 90 days written notice to Corporation of City's election to so terminate.

XXII. VENUE AND GOVERNING LAW

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. This Agreement 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 Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

XXIII. PROCUREMENT SUSPENSION AND DEBARMENT

City has found that Corporation has not been suspended or debarred from performing work on Federal contracts.

XXIV. FEDERAL WAGE REQUIREMENTS

If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations, including 29 C.F.R. Parts 1, 3, 5, 6, and 7, 18 U.S.C. §874 and 40 U.S.C. §3145, 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.

XXV. COMPLIANCE

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this the day of _____, 2024.

CITY OF MIDLAND, TEXAS

By:_____
Lori Merritt Blong, Mayor

THRIVING UNITED, INC.

By:_____

Name:_____

Title:_____

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Isaac Garnett, Community Development Administrator

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of THRIVING UNITED, INC., known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that s/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 _____, 2024.

_____
Notary Public, State of Texas

CDBG EXIBIT A

NAME: Peer Support Specialist **Request: $83,000**

APPLICANT: Thriving Untied Inc.

Description: Evidence-based practices will be provided with peer-support, substance abuse recovery and outreach services to vulnerable individuals including homeless people. Service work will support recovery services, mental health service and housing stabilization to bridge the gap between people and services within our community.

Budget: The budgeted funds will be used to help pay staff salaries for community outreach towards individuals with substance abuse, and homelessness conditions.

Eligibility: Per 24 CFR 570.201, Homeless/Substance Abuse services for citizens experiencing hardships and/or disabled persons is considered by HUD a high priority. Indigent individuals are considered by HUD as a presumed benefit to low and moderate-income activity under its limited clientele provisions.

Consolidated Plan: Homeless services are an area of high priority and concentration of community need. All hardship individuals will have evidence-based needs assessment screening, and a plan of care formulated toward each participant's service plan.

Other Comments: Grant recipients programming has a focus on substance abuse and homelessness outreach services.

AGREEMENT BETWEEN CITY OF MIDLAND, TEXAS AND MISSION HEALTH CARE, INC., FOR THE MISSION CENTER TAKE HOME TERRIFIC MEAL PROGRAM

This Agreement made by and between the **CITY OF MIDLAND**, a Texas home rule municipal corporation ("City") and **MISSION HEALTH CARE, INC.** ("Corporation");

I. PURPOSE

The purpose of this Agreement is to state the terms and conditions by which Corporation shall perform the Mission Center Take Home Terrific Meal Program utilizing Community Development Block Grant ("CDBG") funds as described in Exhibit "A", attached hereto, and incorporated herein for all legal purposes. Any change in the performance schedule, purpose or the location of the operation must be approved in advance by City.

II. PAYMENT

Upon and after the receipt of a notice to proceed from City, Corporation is authorized to incur costs against a total amount of FORTY-ONE THOUSAND ONE DOLLARS ($41,100.00). Payments shall be made on a reimbursement basis to Corporation for services and expenses as shown in Exhibit "A", attached hereto and made a part hereof for all legal purposes. All payments shall be made to Corporation upon certification by Corporation and approval by the Community Development Division of City's Development Services Department and the City Manager. When reimbursements for personal services are requested, time sheets must be presented by Corporation to City, in a form suitable to City. Final payment on the program must be at least THREE THOUSAND DOLLARS ($3,000.00) and will not be made until all final program reporting is completed.

III. PROCUREMENT STANDARDS

Corporation will make program procurement in accordance with 24 CFR Part 84 and Part 85 and applicable Texas Statutes. At least ten (10) days before Corporation seeks competitive bids on procurement of over TEN THOUSAND DOLLARS ($10,000.00) and for any work contracts of over TWO THOUSAND DOLLARS ($2,000.00) of the above-described program, the plans and specifications and other bid documents shall be submitted to City and reviewed by City's Community Development Division for conformance with federal and City requirement.

IV. INDEMNITY

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

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

CORPORATION AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND SUPPLIERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS AGREEMENT. WHEN CITY SO DESIRES, CORPORATION SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED.

V. INSURANCE

A. Corporation shall carry insurance in the following types and amounts for the duration of this Agreement and furnish Certificates of Insurance along with copies of policy declaration pages and all policy endorsements as evidence hereof to City:

1. Statutory Workers' Compensation; said insurance shall waive subrogation in favor of City;

2. Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of $1,000,000. The policy must provide contractual liability coverage for liability assumed under this Agreement, products and completed operations coverage, independent contractors coverage, and a waiver of a Transfer of Right of Recovery Against Others in favor of City. If this coverage is underwritten on a claims made basis, the retroactive date shall be coincident with the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. Corporation shall maintain coverage for the duration of this Agreement and for six months following completion of the construction improvements associated with this Agreement. Corporation shall pay for this extended reporting period coverage. Said insurance shall name City as an additional insured.

B. If insurance policies are not written for amounts specified in Subsection A, above, Corporation shall carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

C. Corporation shall provide City at least thirty (30) days written notice of erosion of the aggregate limit below the minimum required combined single limit coverage.

D. Corporation shall provide all provisions of this Agreement concerning liability, duty, standard of care, together with the indemnification or defense provisions herein, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies.

E. Corporation shall not commence work under this Agreement until it has obtained all required insurance and until such insurance has been reviewed by the City Attorney's Office of the City of Midland.

F. Corporation shall produce an endorsement to each affected policy that contains language similar to the following:

1. That names City of Midland, Texas, Attn.: CDBG Program Coordinator, 300 N. Loraine, P. O. Box 1152, Midland, Texas, 79702, as additional insured (except for Workers' Compensation and Employee's Liability coverage), with right of subrogation against City waived on each affected policy including Worker's Compensation.

2. That obligates the insurance company to notify City of any non-renewal, cancellation, or material change to the policy, at least thirty (30) calendar days before the change or cancellation.

3. That the "other" insurance clause shall not apply to City where City is an additional insured shown on the policy. It is intended that the policies required in this Agreement, covering both City and Corporation, shall be considered primary coverage, as applicable.

G. Corporation shall not cause any insurance to be canceled or permit any insurance to lapse during the term of this Agreement or the six-month period following completion, in the case of a claims-made policy.

H. City reserves the right to review the insurance requirements of this Article V during the effective period of this Agreement and to make reasonable adjustments to insurance coverages, their limits when deemed necessary and prudent by City based upon changes in statutory law, court decisions, or the claims history of the industry or financial condition of the insurance company as well as that of Corporation. City shall be entitled to review, upon request, and without expense to City, to receive copies of the requisite insurance policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter on any of such policies.

I. All certificates shall include a clause to the effect that the policy may not be canceled, reduced, restricted, or limited until thirty (30) calendar days after City has received written notice of such cancellation or change. During the term of this Agreement, Corporation shall have in effect a general liability insurance policy in an amount of not less than $1,000,000 combined single limit for bodily injury and property damage. This liability policy shall be endorsed to name the City of Midland as an additional insured. Corporation shall provide City with a Certificate of Insurance evidencing the required coverage upon execution of this Agreement.

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

VI. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Corporation shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Corporation 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 respondent superior shall not apply as between City and Corporation, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Corporation. No person performing any work hereunder 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. Corporation 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 Corporation's work. Corporation shall assume exclusive responsibility for the work. Corporation is entirely free to do the work in its own way.

VII. APPLICABLE LAWS, ORDINANCES

Corporation shall comply with all applicable laws, ordinances and codes of the United States, State of Texas and City and shall require all contractors and subcontractors to comply with the same. Corporation hereby agrees as follows:

A. Corporation will comply with the policies, guidelines, and requirements of 24 CFR Part 84 and 85 and OMB Circulars A-87 and A-122, as they relate to the application, acceptance and use of federal funds for this federally assisted program. Corporation will also comply with the Single Audit provisions of OMB Circular A-133 and make the all audits for fiscal years in which CDBG funds are expended available to City.

B. Corporation will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the applicant received federal financial assistance.

C. Corporation will comply with Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.602), which provides that no person in the United States shall, on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with

CDBG funds. Additionally, Corporation will comply with regulations at 24 CFR 570.613 concerning eligibility restrictions for certain resident aliens.

D. Corporation will comply with Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), which provides that it is the policy of the United States to provide for fair housing throughout the United States. It prohibits particular discriminatory acts regarding housing if the discrimination is based on race, color, religion, sex, national origin, family status, or mental and physical disability.

E. Corporation will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u), as amended, and the regulations issued pursuant thereto (24 CFR Part 135) which provides that to the greatest extent feasible opportunities for employment and other economic opportunities be directed to low and very low-income City residents and to business concerns which provide economic opportunity to low and very low-income persons.

F. Corporation will obtain and maintain documentation evidencing that program beneficiaries meet CDBG program income eligibility criteria, specifically as required by 24 CFR 570.208. Corporation shall further comply with the retention of records provisions of 24 CFR 570.502.

G. Corporation will ensure that subcontractors for work or construction activity under this Agreement shall comply with the equal opportunity requirements of Executive Order 11246, as amended.

H. Corporation will ensure that subcontractors for work or construction activity under this Agreement shall comply with 24 CFR Part 84 and 85and Section 110 of the Housing and Community Development Act of 1974 and the regulations issued pursuant thereto (24 CFR 570.603), which provide for adherence to certain labor standards.

I. No officer, employee or board member of Corporation shall have a financial interest, direct or indirect, in this Agreement or the monies transferred hereunder, or be financially interested, directly or indirectly in the sale to Corporation of any land, materials, supplies or services purchased with any funds transferred hereunder, except on behalf of Corporation as an officer, employee, member, or program participant. Corporation shall further comply with the conflict-of-interest provisions of 24 CFR 570.611 and 24 CFR Part 84 and Part 85.

J. Corporation will ensure that funds will not be used to directly or indirectly employ, award contracts to or otherwise engage the services of or fund any subcontractor during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

K. Corporation shall follow the provisions of 24 CFR Part 84 and Part 85 concerning

standards for financial management systems.

L. Corporation will comply with the property management and disposition requirements of 24 CFR Part 84 and 85 including copyright provisions therein.

M. Corporation certifies that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of Corporation, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Corporation shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

N. Corporation shall comply with and shall ensure that its subcontractors comply with the provisions of the Drug-Free Workplace Act, 41 U.S.C, 701, et seq.

O. Corporation shall follow the provisions of 24 CFR 570.614 Architectural Barriers Act and the Americans with Disabilities Act.

P. Corporation shall make available to City, as determined by City, information and/or data which document compliance, in all phases of its work, with the above paragraphs A through O. Corporation shall fully cooperate with City when City monitors the services and work performed under this Agreement, which City may do at any time during the term of this Agreement. Corporation shall maintain accounts and records adequate to identify and account for all cost pertaining to this Agreement. Records are to be retained in accordance with 24 CFR Part 84 and Part 85.

VIII. PROGRAM INCOME

It is agreed and understood that except in the disposition of CDBG acquired assets that there will be no program income generated as a result of this Agreement which requires compliance with 24 CFR 570.504.

IX. TRANSFER OF ASSETS

Corporation shall upon termination or expiration of this Agreement transfer to City all CDBG funds and all loans and accounts receivable attributable to the use of CDBG funds that Corporation has on hand at the time of termination. If Corporation ceases to use any asset acquired with CDBG funds for the purposes described in this Agreement, Corporation shall either pay to City the fair market value of the asset or transfer control of the asset to City.

X. RECOGNITION OF FUNDING

Corporation shall provide recognition of CDBG funding in its procurement announcements. Corporation shall post, in a publicly visible location where CDBG assisted activity is provided, an acknowledgment that the City of Midland Community Development Block Grant Program is contributing to the program. City's Community Development Office will determine if posting is adequate given the scale of the CDBG assisted activity.

XI. PROGRAM REPORTS

Monthly status reports are to be prepared by Corporation and submitted in a timely fashion to City. A final performance report shall be prepared and submitted promptly after program completion. An inventory of CDBG acquired assets shall be submitted to City, in a form suitable to City, on an annual basis and at the end of the Agreement.

XII. TERM OF AGREEMENT

The term of this Agreement shall begin October 1, 2024, and end September 30, 2025, unless an extension of time is granted by the City Council.

XIII. RELEASE

CORPORATION 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 CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.

XIV. GENERAL FUND

It is expressly understood that this Agreement in no way obligates the general fund

or any other monies or credits of City, and is, therefore, expressly contingent on federal funds of City's CDBG program.

XV. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, CORPORATION 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. CORPORATION SPECIFICALLY AGREES THAT IF CORPORATION 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, CORPORATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CORPORATION MIGHT OTHERWISE BE ENTITLED.

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

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

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In the event that either Corporation or City fails to perform or is unable to perform substantially its obligations under the terms of this Agreement, the non-defaulting party shall notify the defaulting party in writing of such default. Within five (5) days after receipt of such notification, Corporation and City shall meet to discuss the default, the reasons thereof and the methods to cure default. If the defaulting party has not substantially cured the default within ten (10) days after receipt of such notification, or City and Corporation have not agreed within such time upon a solution to the default, the non-defaulting party

may, at its option, pursue any remedies at law or in equity.

In any event this Agreement may be terminated by the mutual consent of Corporation and City in writing.

XVII. 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, Corporation or its 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 and 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 Corporation will settle, the physical and mailing addresses of Corporation at the time and date the claim was presented and the physical and mailing addresses of Corporation for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Corporation 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 Corporation that its 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, Corporation's failure to comply with the requirements herein shall perpetually bar Corporation'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. Corporation agrees that the requirements of this Agreement are reasonable.

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By executing this Agreement, City is not waiving its right of sovereign 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 SOVEREIGN IMMUNITY.

XIX. THIRD-PARTY BENEFICIARY

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

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

XX. ASSIGNMENT

Corporation 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.

XXI. TERMINATION WITHOUT CAUSE

City shall have the right, at its sole option, to terminate this Agreement at any time, with or without cause, by giving 90 days written notice to Corporation of City's election to so terminate.

XXII. VENUE AND GOVERNING LAW

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. This Agreement 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 Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

XXIII. PROCUREMENT SUSPENSION AND DEBARMENT

City has found that Corporation has not been suspended or debarred from performing work on Federal contracts.

XXIV. FEDERAL WAGE REQUIREMENTS

If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations, including 29 C.F.R. Parts 1, 3, 5, 6, and 7, 18 U.S.C. §874 and 40 U.S.C. §3145, 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.

XXV. COMPLIANCE

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this the day of _____, 2024.

CITY OF MIDLAND, TEXAS

By:_____
Lori Merritt Blong, Mayor

MISSION HEALTH CARE, INC.

By:_____

Name:_____

Title:_____

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Isaac Garnett, Community Development
Administrator

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of MISSION HEALTH CARE, INC., known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that s/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 _____, 2024.

_____
Notary Public, State of Texas

CDBG EXHIBIT A

NAME: Take Home Terrific Program **Request: $41,100**

APPLICANT: Mission Center Adult Day Service

Description: Mission Center Adult Day Service requests funds to support the continuation of program – Take Home Terrific Program. Take Home is an evening meal delivery service for individuals who have some type of mobility dysfunction or health issue that would keep them from meeting their nutritional needs. After an initial assessment, participants will receive meals during the week with extra meals provided for weekend needs on request. Participants will also receive a monthly wellness check. It is expected that 50 clients will be assisted during the year.

Budget: The budgeted funds of $41,100 will be used to pay for food supplies and staff preparation time and wages. The program budget for the 12-month period is projected to be $99,000.

Eligibility: Per 24 CFR 570.201, public services are eligible for CDBG funding. A public service for senior citizens and disabled persons is considered by HUD as a presumed benefit to low- and moderate-income activity under its limited clientele provisions.

Consolidated Plan: Public services of benefit to the elderly and handicapped individuals are a priority community need.

Other Comments: As an ongoing program, this request is subject to the potential need for the operator to secure replacement funding.

AGREEMENT BETWEEN CITY OF MIDLAND, TEXAS AND CASA DE AMIGOS OF MIDLAND, TEXAS, INCORPORATED FOR THE SE SENIOR CENTER NUTRITION PROGRAM

This Agreement ("Agreement") made by and between the **CITY OF MIDLAND**, a Texas home rule municipal corporation ("City") and **CASA DE AMIGOS OF MIDLAND, TEXAS, INCORPORATED** ("Corporation");

I. PURPOSE

The purpose of this Agreement is to state the terms and conditions by which Corporation shall perform the SE Senior Center Nutrition Program utilizing Community Development Block Grant ("CDBG") funds as described in Exhibit "A", attached hereto and incorporated herein for all legal purposes. Any change in the performance schedule, purpose or the location of the operation must be approved in advance by City.

II. PAYMENT

Upon and after the receipt of a notice to proceed from City, Corporation is authorized to incur costs against a total amount of SEVENTY THOUSAND DOLLARS ($70,000.00). Payments shall be made on a reimbursement basis to Corporation for services and expenses as shown in Exhibit "A", attached hereto and made a part hereof for all legal purposes. All payments shall be made to Corporation upon certification by Corporation and approval by the Community Development Division of City's Development Services Department and the City Manager. When reimbursements for personal services are requested, time sheets must be presented by Corporation to City, in a form suitable to City. Final payment on the program must be at least THREE THOUSAND DOLLARS ($3,000.00) and will not be made until all final program reporting is completed.

III. PROCUREMENT STANDARDS

Corporation will make program procurement in accordance with 24 CFR Part 84 and Part 85 and applicable Texas Statutes. At least ten (10) days before Corporation seeks competitive bids on procurement of over TEN THOUSAND DOLLARS ($10,000.00) and for any work contracts of over TWO THOUSAND DOLLARS ($2,000.00) of the above-described program, the plans and specifications and other bid documents shall be submitted to City and reviewed by City's Community Development Division for conformance with federal and City requirements.

IV. INDEMNITY

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

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

CORPORATION AGREES THAT IT WILL INDEMNIFY AND SAVE CITY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND SUPPLIERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS AGREEMENT. WHEN CITY SO DESIRES, CORPORATION SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED.

V. INSURANCE

A. Corporation shall carry insurance in the following types and amounts for the duration of this Agreement and furnish Certificates of Insurance along with copies of policy declaration pages and all policy endorsements as evidence hereof to City:

1. Statutory Workers' Compensation; said insurance shall waive subrogation in favor of City.

2. Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of $1,000,000. The policy must provide contractual liability coverage for liability assumed under this Agreement, products and completed operations coverage, independent contractor's coverage, and a waiver of a Transfer of Right of Recovery Against Others in favor of City. If this coverage is underwritten on a claim made basis, the retroactive date shall be coincident with the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. Corporation shall maintain coverage for the duration of this Agreement and for six months following completion of the construction improvements associated with this Agreement. Corporation shall pay for this extended reporting period coverage. Said insurance shall name City as an additional insured.

B. If insurance policies are not written for amounts specified in Subsection A, above, Corporation shall carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

C. Corporation shall provide City at least thirty (30) days written notice of erosion of the aggregate limit below the minimum required combined single limit coverage.

D. Corporation shall provide all provisions of this Agreement concerning liability, duty, standard of care, together with the indemnification or defense provisions herein, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies.

E. Corporation shall not commence work under this Agreement until it has obtained all required insurance and until such insurance has been reviewed by the City Attorney's Office of the City of Midland.

F. Corporation shall produce an endorsement to each affected policy that contains language similar to the following:

1. That names City of Midland, Texas, Attn.: CDBG Program Coordinator, 300

N. Loraine, P. O. Box 1152, Midland, Texas, 79702, as additional insured (except for Workers' Compensation and Employee's Liability coverage), with right of subrogation against City waived on each affected policy including Worker's Compensation.

2. That obligates the insurance company to notify City of any non-renewal, cancellation, or material change to the policy, at least thirty (30) calendar days before the change or cancellation.

3. That the "other" insurance clause shall not apply to City where City is an additional insured shown on the policy. It is intended that the policies required in this Agreement, covering both City and Corporation, shall be considered primary coverage, as applicable.

G. Corporation shall not cause any insurance to be canceled or permit any insurance to lapse during the term of this Agreement or the six-month period following completion, in the case of a claims-made policy.

H. City reserves the right to review the insurance requirements of this Article V during the effective period of this Agreement and to make reasonable adjustments to insurance coverages, their limits when deemed necessary and prudent by City based upon changes in statutory law, court decisions, or the claims history of the industry or financial condition of the insurance company as well as that of Corporation. City shall be entitled to review, upon request, and without expense to City, to receive copies of the requisite insurance policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter on any of such policies.

I. All certificates shall include a clause to the effect that the policy may not be canceled, reduced, restricted, or limited until thirty (30) calendar days after City has received written notice of such cancellation or change. During the term of this Agreement, Corporation shall have in effect a general liability insurance policy in an amount of not less than $1,000,000 combined single limit for bodily injury and property damage. This liability policy shall be endorsed to name the City of Midland as an additional insured. Corporation shall provide City with a Certificate of Insurance evidencing the required coverage upon execution of this Agreement.

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

VI. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Corporation shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Corporation 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 respondent superior shall not apply as between City and Corporation, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Corporation. No person performing any work hereunder 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. Corporation 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 Corporation's work. Corporation shall assume exclusive responsibility for the work. Corporation is entirely free to do the work in its own way.

VII. APPLICABLE LAWS, ORDINANCES

Corporation shall comply with all applicable laws, ordinances and codes of the United States, State of Texas and City and shall require all contractors and subcontractors to comply with the same. Corporation hereby agrees as follows:

A. Corporation will comply with the policies, guidelines and requirements of 24 CFR Part 84 and 85 and OMB Circulars A-87 and A-122, as they relate to the application, acceptance and use of federal funds for this federally assisted program. Corporation will also comply with the Single Audit provisions of OMB Circular A-133 and make all audits for fiscal years in which CDBG funds are expended available to City.

B. Corporation will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the applicant received federal financial assistance.

C. Corporation will comply with Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.602), which provides that no person in the United States shall, on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with CDBG funds. Additionally, Corporation will comply with regulations at 24 CFR 570.613

concerning eligibility restrictions for certain resident aliens.

D. Corporation will comply with Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), which provides that it is the policy of the United States to provide for fair housing throughout the United States. It prohibits particular discriminatory acts regarding housing if the discrimination is based on race, color, religion, sex, national origin, family status, or mental and physical disability.

E. Corporation will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u), as amended, and the regulations issued pursuant thereto (24 CFR Part 135) which provides that to the greatest extent feasible opportunities for employment and other economic opportunities be directed to low and very low-income City residents and to business concerns which provide economic opportunity to low and very low-income persons.

F. Corporation will obtain and maintain documentation evidencing that program beneficiaries meet CDBG program income eligibility criteria, specifically as required by 24 CFR 570.208. Corporation shall further comply with the retention of records provisions of 24 CFR 570.502.

G. Corporation will ensure that subcontractors for work or construction activity under this Agreement shall comply with the equal opportunity requirements of Executive Order 11246, as amended.

H. Corporation will ensure that subcontractors for work or construction activity under this Agreement shall comply with 24 CFR Part 84 and 85and Section 110 of the Housing and Community Development Act of 1974 and the regulations issued pursuant thereto (24 CFR 570.603), which provide for adherence to certain labor standards.

I. No officer, employee or board member of Corporation shall have a financial interest, direct or indirect, in this Agreement or the monies transferred hereunder, or be financially interested, directly or indirectly in the sale to Corporation of any land, materials, supplies or services purchased with any funds transferred hereunder, except on behalf of Corporation as an officer, employee, member, or program participant. Corporation shall further comply with the conflict-of-interest provisions of 24 CFR 570.611 and 24 CFR Part 84 and Part 85.

J. Corporation will ensure that funds will not be used to directly or indirectly employ, award contracts to or otherwise engage the services of or fund any subcontractor during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

K. Corporation shall follow the provisions of 24 CFR Part 84 and Part 85 concerning standards for financial management systems.

L. Corporation will comply with the property management and disposition requirements of 24 CFR Part 84 and 85 including copyright provisions therein.

M. Corporation certifies that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of Corporation, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Corporation shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

N. Corporation shall comply with and shall ensure that its subcontractors comply with the provisions of the Drug-Free Workplace Act, 41 U.S.C, 701, et seq.

O. Corporation shall follow the provisions of 24 CFR 570.614 Architectural Barriers Act and the Americans with Disabilities Act.

P. Corporation shall make available to City, as determined by City, information and/or data which document compliance, in all phases of its work, with the above paragraphs A through O. Corporation shall fully cooperate with City when City monitors the services and work performed under this Agreement, which City may do at any time during the term of this Agreement. Corporation shall maintain accounts and records adequate to identify and account for all cost pertaining to this Agreement. Records are to be retained in accordance with 24 CFR Part 84 and Part 85.

VIII. PROGRAM INCOME

It is agreed and understood that except in the disposition of CDBG acquired assets that there will be no program income generated as a result of this Agreement which requires compliance with 24 CFR 570.504.

IX. TRANSFER OF ASSETS

Corporation shall, upon termination or expiration of this Agreement, transfer to City all CDBG funds and all loans and accounts receivable attributable to the use of CDBG funds that Corporation has on hand at the time of termination. If Corporation ceases to use any asset acquired with CDBG funds for the purposes described in this Agreement, Corporation shall either pay to City the fair market value of the asset or transfer control of the asset to City.

X. RECOGNITION OF FUNDING

Corporation shall provide recognition of CDBG funding in its procurement announcements. Corporation shall post, in a publicly visible location where CDBG assisted activity is provided, an acknowledgment that the City of Midland Community Development Block Grant Program is contributing to the program. City's Community Development Office will determine if posting is adequate given the scale of the CDBG assisted activity.

XI. PROGRAM REPORTS

Monthly status reports are to be prepared by Corporation and submitted in a timely fashion to City. A final performance report shall be prepared and submitted promptly after program completion. An inventory of CDBG acquired assets shall be submitted to City, in a form suitable to City, on an annual basis and at the end of the Agreement.

XII. TERM OF AGREEMENT

The term of this Agreement shall begin October 1, 2024, and end September 30, 2025, unless an extension of time is granted by the City Council.

XIII. RELEASE

CORPORATION 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 CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.

XIV. GENERAL FUND

It is expressly understood that this Agreement in no way obligates the general fund or any other monies or credits of City, and is, therefore, expressly contingent on federal

funds of City's CDBG program.

XV. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, CORPORATION 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 THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. CORPORATION SPECIFICALLY AGREES THAT IF CORPORATION 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, CORPORATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CORPORATION MIGHT OTHERWISE BE ENTITLED.

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

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

XVI. DEFAULT PROVISION

In the event that either Corporation or City fails to perform or is unable to perform substantially its obligations under the terms of this Agreement, the non-defaulting party shall notify the defaulting party in writing of such default. Within five (5) days after receipt of such notification, Corporation and City shall meet to discuss the default, the reasons thereof and the methods to cure default. If the defaulting party has not substantially cured the default within ten (10) days after receipt of such notification, or City and Corporation have not agreed within such time upon a solution to the default, the non-defaulting party may, at its option, pursue any remedies at law or in equity.

In any event this Agreement may be terminated by the mutual consent of Corporation and City in writing.

XVII. 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, Corporation, or its 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 and 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 Corporation will settle, the physical and mailing addresses of Corporation at the time and date the claim was presented and the physical and mailing addresses of Corporation for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Corporation 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 Corporation that its 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, Corporation's failure to comply with the requirements herein shall perpetually bar Corporation'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. Corporation agrees that the requirements of this Agreement are reasonable.

XVIII. SOVEREIGN IMMUNITY

By executing this Agreement, City is not waiving its right of sovereign 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 SOVEREIGN IMMUNITY.

XIX. THIRD-PARTY BENEFICIARY

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

XX. ASSIGNMENT

Corporation 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.

XXI. TERMINATION WITHOUT CAUSE

City shall have the right, at its sole option, to terminate this Agreement at any time, with or without cause, by giving 90 days written notice to Corporation of City's election to so terminate.

XXII. VENUE AND GOVERNING LAW

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. This Agreement 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 Agreement, without regard to conflict of laws and rules that would direct application of the laws of another jurisdiction.

XXIII. PROCUREMENT SUSPENSION AND DEBARMENT

City has found that Corporation has not been suspended or debarred from performing work on Federal contracts.

XXIV. FEDERAL WAGE REQUIREMENTS

If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations, including 29 C.F.R. Parts 1, 3, 5, 6, and 7, 18 U.S.C. §874 and 40 U.S.C. §3145, 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.

XXV. COMPLIANCE

Corporation agrees that it shall comply with Texas Government Code Section

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this the day of _____, 2024.

CITY OF MIDLAND, TEXAS

By:_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Isaac Garnett, Community Development Administrator

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

CASA DE AMIGOS OF MIDLAND, TEXAS, INCORPORATED

By:_____

Name:_____

Title:_____

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of CASA DE AMIGOS OF MIDLAND, TEXAS, INCORPORATED, known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that s/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 _____, 2024.

_____
Notary Public, State of Texas

CDBG EXHIBIT A

NAME: SE Senior Center Nutrition Program **Request: $70,000**

APPLICANT: Casa de Amigos

Description: Casa de Amigos requests funding for the nutrition programs at the Southeast Senior Citizen Center (1803 E Indiana) and at the Casa de Amigos (1101 E Garden Lane). Approximately 240 seniors are expected to benefit from the lunchtime meal program and take-home food boxes in order to supplement their nutritional needs. Two jobs will be retained during the program year. Meals are contracted daily with a local catering company and reviewed by a certified nutritionist.

Budget: CDBG funds would be used to pay for an average of 120 meals per day. The estimated $8.00 cost per meal includes all costs in providing the meals: personnel, supplies, transportation, food, equipment, and administrative overhead.

Eligibility: Per 24 CFR 570.201, a public service for senior citizens is considered by the U.S. Department of Housing and Urban Development as a presumed benefit to low and moderate-income person's activity under its limited clientele provisions. This request will be subject to the 15% limitation on funds allocated for public services.

Consolidated Plan: Public services of benefit to the elderly and handicapped individuals are a priority community need.

Other Comments: As an ongoing program, this request is subject to the potential need for the operator to secure replacement funding. CDBG assistance has been provided continuously for senior citizen programming in Midland since 1986. Casa de Amigos has administered CDBG funds for the SE Nutrition Program since 2020.

City Council Meeting

Item Number: 17

Meeting Date: October 22, 2024

To: City Council / City Manager

From: Madelim Jaquez, Planner

Subject: MOTION APPROVING, WITH STAFF'S RECOMMENDED CONDITIONS, A PRELIMINARY PLAT OF ENTRADA BUSINESS PARK ADDITION, SECTION 4, BEING A PLAT OF A 146.12-ACRE TRACT OF LAND OUT OF THE SOUTHWEST QUARTER OF SECTIONS 17 AND 20, BLOCK 40, T-2-S, T&P RR CO. SURVEY, IN PART, AND A REPLAT OF LOT 2, BLOCK 3, ENTRADA BUSINESS PARK ADDITION, SECTION 3, IN PART, COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF SOUTH FM 1788 AND WEST INTERSTATE 20) (DISTRICT: NONE) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

Josh Wallender with Parkhill, on behalf of Entrada Business Center, LTD, is requesting to plat a property located at 10001 West Interstate 20 into nine lots for commercial purposes.

Recommended City Council Action:

Approve

Fiscal Impact:

None.

Strategic Priority:

Quality of Life and Place

Discussion:

Current Zoning:

ETJ, Extraterritorial Jurisdiction.

This request has been routed to all respective departments for internal review. The comments are below.

BUILDING CODE: (Approved)

ETJ, no jurisdiction

ENGINEERING: (Approved with Conditions)

IMPACT FEES: There are no impact fees associated with this plat. Plat outside designated service areas. [For Applicant's Information Only.]

ROW: Refer to transportation's comments, if any. [For Applicant's Information Only.]

PAVING: FM 1788 and W I-20 Frontage road are TxDOT facility, built and maintained by TxDOT, no improvements required. W CR 133, okay as is. No public paving improvements required. [For Applicant's Information Only.]

WATER: 12" water exists North of tract, okay as is. 12" water exists West of tract, okay as is. No public water improvements required. [For Applicant's Information Only.]

FIRE HYDRANTS: Required as needed to meet NFPA, IFC & City Fire Code; and/or comply with directives of City Fire Marshal. After January 14, 2020 - Fire hydrants shall be spaced no more than 500' apart, Pressure Indicator Rings are to be installed and will require the developers/contractors to pay for the flow test. [For Applicant's Information Only.]

PRO RATA: None. [For Applicant's Information Only.]

SEWER: None existing. Construct wastewater to City standards along entire platted frontage, or request a deferral. [Reference Midland City Code Sect. 11-2-3(G)1 & 11-2-4(A)2(a)]

DRAINAGE: Existing site is developed; If proposing to re-develop site drainage can be reviewed with building permit. [For Applicant's Information Only.]

EASEMENTS: Show existing and proposed. [For Applicant's Information Only.]

DIMENSION: * * * OTHER: * * *

TRANSPORTATION: (Approved with Conditions)

Driveway permitting within city limits on I-20, LP 250, SH 191, and FM 1788 is under the jurisdiction of TxDOT. A copy of an approved TxDOT driveway permit must be provided to the City with the building permit application before a City building permit can be issued.

Access spacing will be required to adhere to the TxDOT Access Management Standards along the state highway. [Reference City Code Section 9-4-5(D).]

Depending on the nature and scale of the proposed development, a Traffic Impact Analysis MAY be required prior to approval of construction drawings. [For the Applicant's information only.]

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. [For the Applicant's information only.]

FIRE: (Approved)

ETJ; No comments

OIL AND GAS: (Approved)

Not in the City limits- no oil or gas jurisdiction.

GIS: (Approved)

Tract 1 can be Common Area: A. Label directionality of surrounding streets. (S F M 1788 and W I 20 E) Distances needed for Lot 2A and the adjoining street (see markup) Provide recording information for easement in Entrada Business Park Sec 3, Block 3, Lot 1. Will Access Easement be vacated and rededicated with this plat? (see markup) Legal description should specify the acreage out of Sections 17 and 20 being platted (can be a combined acreage). Legal can say "Being a plat of X.XX acres out of Sections 17 and 20, Block 40, T-2-S, T&P RR Co Survey, and a replat of Lot 2, Block 3, Entrada Business Park Addition, Sec 3, Midland County, Texas." Plat encroaches into Voltagrid Addition by approximately 8' and plat does not close. Please check calls. Confirm with engineering if Drainage Easements should be separated from Drainage Basin Easements.

PUBLIC WORKS: (Approved)

The county has nothing to add since sketch.

HEALTH DEPARTMENT: (Approved)

The plat shows a sanitary sewer line (easement) proposed on the plat, so no need for a septic system on this plat.

PLANNING: (Approved with conditions)

The Planning and Zoning Commission recommended approval of this request on October 7, 2024.

The legal description should read “being a plat of Entrada Business Park Addition, Section 4, being a plat of a 146.12-acre tract of land located in the southwest quarter of Sections 17 and 20, Block 40, T-2-S, T&P. RR. Co. Survey, in part, and a replat of Lot 2, Block 3, Entrada Business Park Addition, Section 3, County of Midland, Texas.” [Informational]

Staff recommends approval of the Preliminary Plat of Entrada Business Park Addition, Section 4, subject to conditions A and B.

A. **Public improvements must be completed or a request for a deferral letter must be submitted by Final Plat submittal. [11-2-3(G)1]**

B. **Approval of this preliminary plat is subject to the Final plat including all plat comments, conditions, and requirements must be satisfied by all pertinent City departments before filing for recording with the County Clerk of Midland County, Texas. [11-2]**

Attachments:

Application
Preliminary Plat
Maps
PowerPoint Presentation.

Jose E. Ort

City Manager’s Office

MIDLAND
Planning Division

Preliminary Plat Application

Project Number: Sub-24-0764

Case Number: P-24-2085

Proposed Subdivision Plat Name: Entrada Business Park Addition Section 4

Legal Description (attached sealed Metes and Bounds): Being 152.788 Acres located in Sections 17 & 20, Block 40, T-2-S, T&P RR Co Survey, Midland County, Texas

Property Owner			
Printed Name: Entrada Business Center, LTD.		Phone (432) 683-2950 Email	
Address P.O. Box 50820	City Midland	State TX	Zip 79710

Developer *(if different than Owner)*			
Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Representative *(if acting as Agent, see affidavit on page 2)*			
Firm: Parkhill Printed Name: Josh Wallender		Phone (432) 697-1447 Email jwallender@parkhill.com	
Address 1700 West Wall Street Suite 100	City Midland	State TX	Zip 79701

Current Zoning: ETJ

Reason for Platting: Development of lots for Commercial purposes

Plat Information	Total Acreage: 152.788
Type: ☐ Single-Family Residential ☐ Multi-Family Residential ☒ Commercial ☒ Extraterritorial Jurisdiction (ETJ)	
Number of Lots: 9	Number of Multi-family Dwelling Units:

Submittal and Fees

Items to be submitted with this application form:

- 1 FOLDED Copy of Dimensioned Plat
- 1 Extra Copy (11x17)
- Digital Files (JPEG & PDF)
- Application Fee – Payable to the 'City of Midland'

Request for a Development Agreement

Do you expect to request a development agreement with the City? ☐ Yes ☐ No

If yes, contact the City Engineer at (432) 685-7286

Provisions
A plat application will not be considered filed pursuant to Section 212.009 of the Texas Local Government Code until all required documents and fees have been submitted and ***all of the terms and conditions of the Subdivision Ordinance, including all necessary studies, plans and supporting information are accepted and approved,*** or the applicant has filed a waiver request for sections from which the plat deviates. Once a plat meets the requirements to be considered filed with the City, the application will be placed on the Planning and Zoning Commission agenda for consideration under the time requirements set out in Section 212.009.

Signature *(by property owner only – authorized agent must sign affidavit below)*

Property Owner (signature): Brandon Black | Digitally signed by Brandon Black Date: 2024.09.11 14:46:06 -05'00' | Date: 09/10/2024

Property Owner (printed) : Brandon Black

The Preliminary Plat 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 Subdivision 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 Shelby Freeman who, being by me duly sworn, upon oath says: That (s)he is the owner of _____ or is authorized by Entrada Business Center, LTD. 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.

Shelby Freeman
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 9th day of September, 20 24, to certify which witness my hand and seal of office.

AMY LEWIS
Notary Public, State of Texas
Comm. Expires 10-16-2026
Notary ID 131761985

Amy Lewis
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

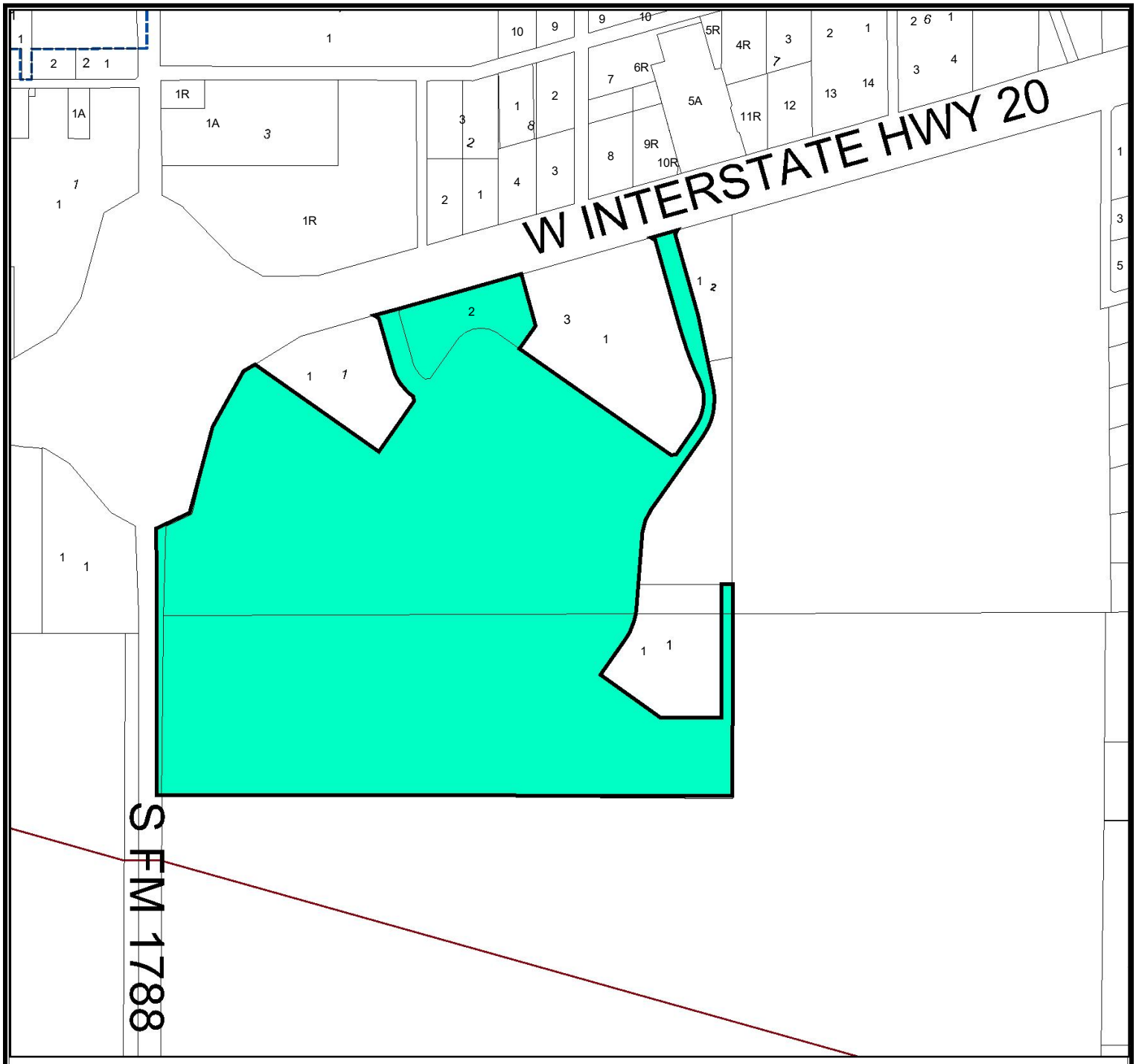
FOR OFFICE USE ONLY

☑ Property Owner Authorization
☑ 1 Copy of Dimensioned Plat
☑ Plat in Digital Format (PDF/JPEG)
☐ Application Fee
☑ 1 Copy of Plat (11x17)
Check # Invoice

RECEIVED
SEP 11 2024
BY: .....

Received By: Brett Mary | Date:

****Application will not be considered for scheduling until reviewed by a planner.****



Location Map

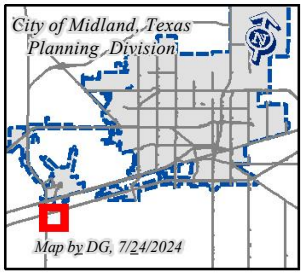
SUB-24-0764 **Scale: 1" = 600'**

Proposed Plat of Entrada Business Park Addition, Section 4, being a plat of a 152.788-acre tract of land located in the southwest quarter of Sections 17 and 20, Block 40, T-2-S, T&P. RR. Co. Survey, in part, and a replat of Lot 2, Block 3, Entrada Business Park Addition, Section 3, County of Midland, Texas.

Generally located on the southeast corner of the intersection of South FM 1788 and West Interstate 20 (Extraterritorial Jurisdiction)

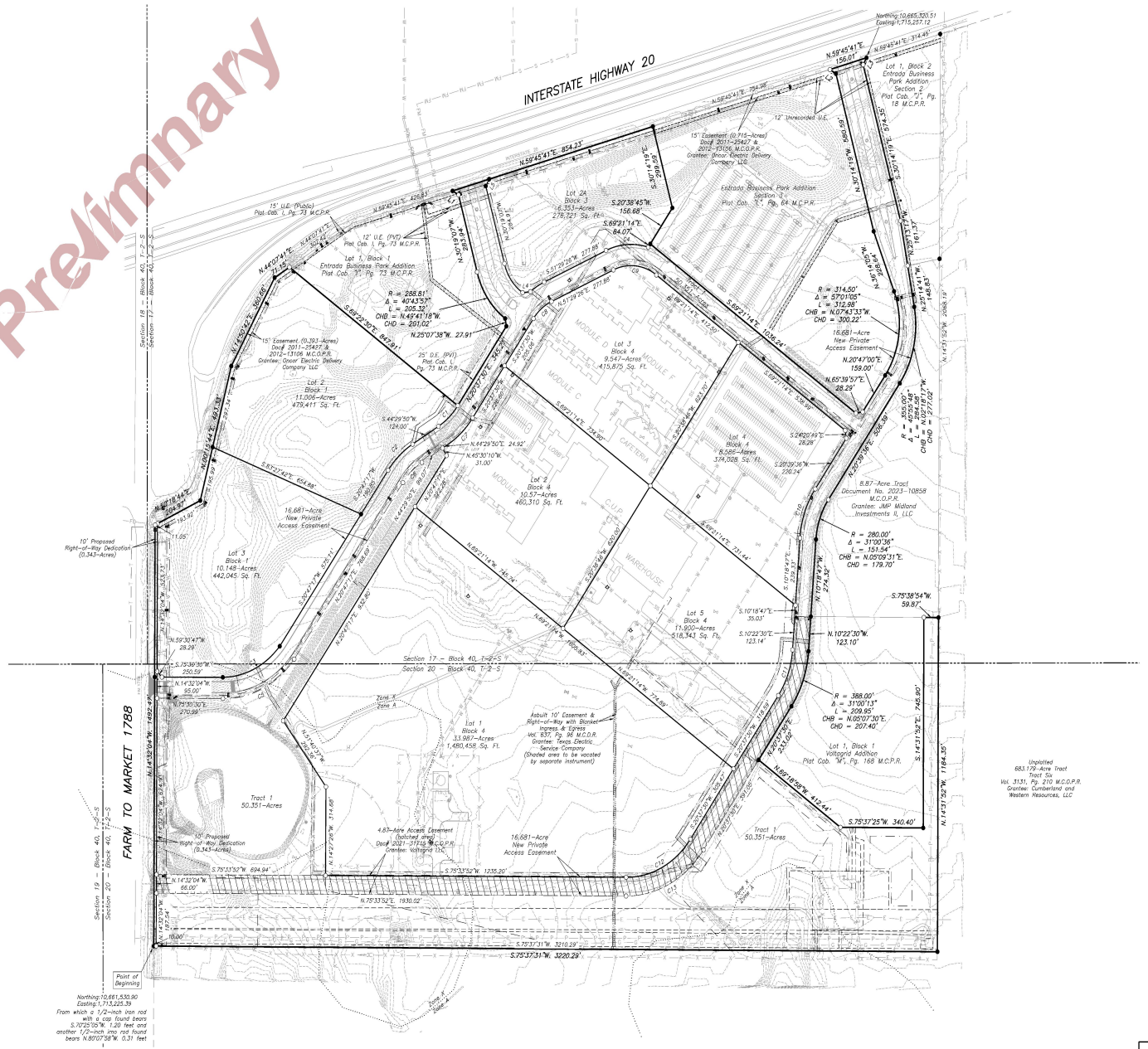
LEGEND

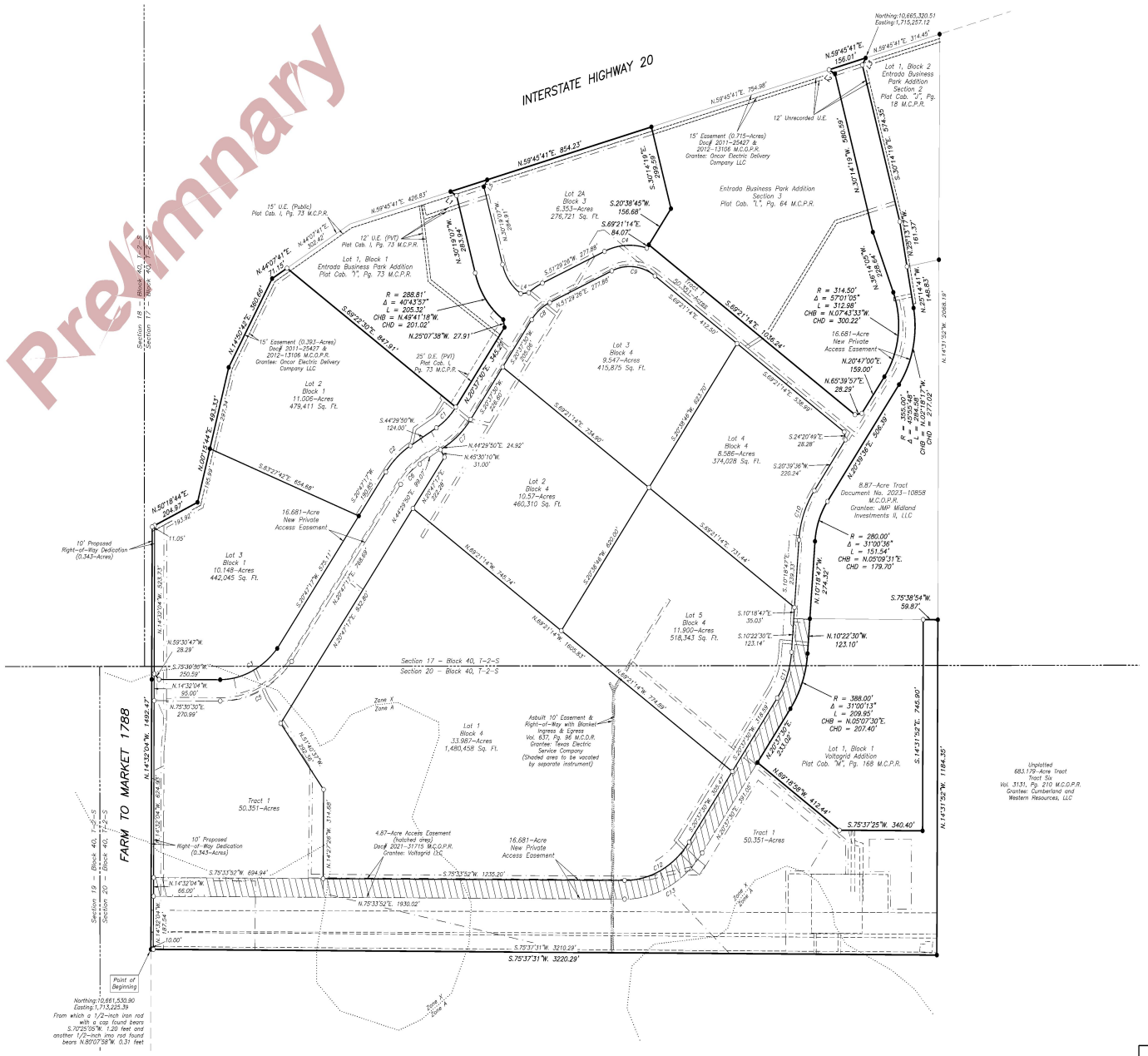
- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

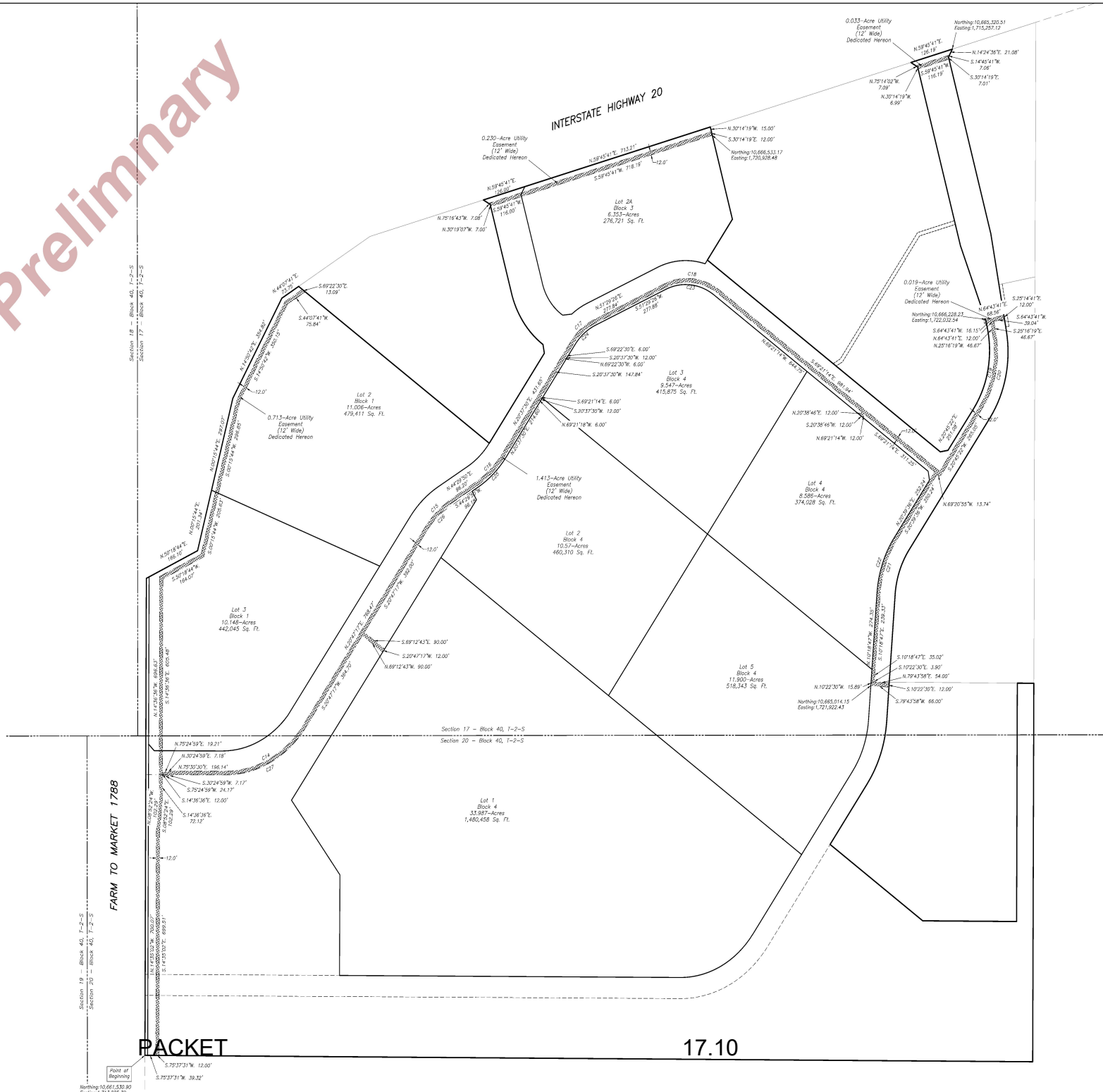


©THE CITY OF MIDLAND - 2021
THIS DATA IS NOT A SUBSTITUTION FOR A [illegible] NOR IS IT DESIGNED TO BE USED AS THE ONLY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

October 22, 2024


INTERSTATE HIGHWAY 20
FARM TO MARKET 1788
Northing:10,665,320.51
Easting:1,715,257.12
Lot 1, Block 2
Entrada Business Park Addition
Section 2
Plat Cab. "I", Pg. 18 M.C.P.R.
N.59°45'41"E. 314.49'
N.59°45'41"E. 156.01'
12' Unrecorded U.E.
15' Easement (0.715-Acres)
Doc# 2011-25427 &
2012-13106 M.C.O.P.R.
Grantee: Xcel Energy Delivery Company LLC
Entrada Business Park Addition
Section 3
Plat Cab. "L", Pg. 64 M.C.P.R.
Lot 2A
Block 3
6.353-Acres
276,721 Sq. Ft.
S.20°38'45"W. 156.68'
S.69°21'14"E. 84.07'
N.59°45'41"E. 854.23'
N.59°45'41"E. 784.28'
15' Easement (0.391-Acres)
Doc# 2011-25427 &
2012-13106 M.C.O.P.R.
Grantee: Xcel Energy Delivery Company LLC
15' (Public)
Plat Cab. I, Pg. 73 M.C.P.R.
12' U.E. (PVT)
Plat Cab. I, Pg. 73 M.C.P.R.
Lot 1, Block 1
Entrada Business Park Addition
Plat Cab. "I", Pg. 73 M.C.P.R.
N.44°07'41"E. 71.10'
R = 288.81'
Δ = 40°43'57"
L = 205.32'
CHD = N.69°41'18"W.
CHD = 201.02'
N.25°07'38"W. 27.91'
S.89°22'30"E. 842.91'
N.14°52'44"E. 180.68'
15' Easement (0.391-Acres)
Doc# 2011-25427 &
2012-13106 M.C.O.P.R.
Grantee: Xcel Energy Delivery Company LLC
25' D.E. (PVT)
Plat Cab. I,
Pg. 73 M.C.P.R.
Lot 2
Block 1
11.006-Acres
479,411 Sq. Ft.
N.14°52'44"E. 483.39'
N.14°52'44"E. 27.34'
N.89°18'44"E. 1264.93'
N.89°18'44"E. 193.33'
1.05'
10' Proposed
Right-of-Way Dedication
(0.343-Acres)
S.87°37'32"E. 654.86'
16,681-Acre
New Private
Access Easement
Lot 3
Block 1
10.148-Acres
442,045 Sq. Ft.
S.00°22'30"E. 1320.00'
S.00°22'30"E. 1320.00'
S.00°22'30"E. 1320.00'


INTERSTATE HIGHWAY 20
FARM TO MARKET 1788
Lot 1, Block 2 Entrada Business Park Addition Section 2 Plat Cab. "I", Pg. 18 M.C.P.R.
Entrada Business Park Addition Section 3 Plat Cab. "L", Pg. 64 M.C.P.R.
Lot 1, Block 1 Entrada Business Park Addition Plat Cab. "I", Pg. 73 M.C.P.R.
Lot 2A Block 3 6.353–Acres 276,721 Sq. Ft.
Lot 1 Block 1 11.006–Acres 479,411 Sq. Ft.
Lot 2 Block 1 10.148–Acres 442,045 Sq. Ft.
Lot 3 Block 4 9.547–Acres 415,875 Sq. Ft.
Lot 4 Block 4 8.586–Acres 374,028 Sq. Ft.
Lot 2 Block 4 10.57–Acres 460,310 Sq. Ft.
Lot 5 Block 4 11.900–Acres 518,343 Sq. Ft.
Lot 3 Block 1 10.148–Acres 442,045 Sq. Ft.
Lot 1 Block 4 33.987–Acres 1,480,458 Sq. Ft.
Lot 1, Block 1 Voltagrid Addition Plat Cab. "M", Pg. 168 M.C.P.R.
Tract 1 50.351–Acres
8.87–Acre Tract Document No. 2023–10858 M.C.O.P.R. Grantee: JMP Midland Investments II, LLC
Unplatted 683.179–Acre Tract Tract 5a Vol. 3131, Pg. 210 M.C.O.P.R. Grantee: Cumberland and Western Resources, LLC
16.681–Acre New Private Access Easement
4.87–Acre Access Easement (hatched area) Doc# 2021–31715 M.C.O.P.R. Grantee: Voltagrid LLC
Point of Beginning
Northing:10,661,530.90 Easting:1,715,225.39
From which a 1/2–inch iron rod with a cap found bears S.70°25'15"W. 1.20 feet and another 1/2–inch iron rod found bears N.89°07'58"W. 0.31 feet
Northing:10,665,320.51 Easting:1,715,257.12
Section 18 – Block 40, T–2–S
Section 17 – Block 40, T–2–S
Section 19 – Block 40, T–2–S
Section 20 – Block 40, T–2–S
Section 17 – Block 40, T–2–S
Section 20 – Block 40, T–2–S
N.59°45'41"E. 854.23'
N.59°45'41"E. 754.98'
N.59°45'41"E. 426.83'
N.59°45'41"E. 314.46'
N.59°45'41"E. 156.01'
S.20°38'45"W. 156.68'
S.69°21'14"E. 84.07'
S.69°21'14"E. 1036.24'
S.69°21'14"E. 412.50'
S.69°21'14"E. 538.59'
S.69°21'14"E. 734.60'
S.69°21'14"E. 331.44'
S.69°21'14"E. 1805.83'
S.69°21'14"E. 734.69'
S.75°38'54"W. 59.87'
S.75°37'25"W. 340.40'
S.75°37'31"W. 3220.29'
S.75°37'31"W. 3210.29'
S.75°33'52"W. 1235.20'
S.75°33'52"W. 694.94'
N.75°33'52"E. 1930.02'
N.89°18'18"W. 412.44'
N.89°18'44"E. 1324.97'
N.89°18'44"E. 1324.97'
N.89°18'44"E. 1324.97



Preliminary

PRELIMINARY ENTRADA BUSINESS PARK ADDITION

Being a replat of Lot 1, Block 3, Entrada Business Park Addition, Section 3 as shown on the plat recorded in Plat Cabinet L, Pg. 64 M.C.P.R. and a portion of that certain 200.501-Acre Tract recorded in Vol. 2625, Pg. 192 (Doc# 2006-848) M.C.O.P.R. in Sections 17 & 20, Block 40, T-2-S, T.&P. RR. Co. Survey, Midland County, Texas.

0' 100' 200' 400'
Original Scale: 1" = 200'

LEGEND:

- = Found Monument.
- = Set 1/2" iron rod with a plastic cap marked "PARKHILL RPLS 6889"
- M.C.O.R. = Midland County Deed Records
- M.C.O.P.R. = Midland County Official Public Records
- M.C.P.R. = Midland County Plat Records
- = Plat Limits Boundary Line
- = Tract/Deed/Plat Adjoiner Lines
- = Section/Abstract Line
- = Proposed Easement Line
- = Proposed Access Right-of-Way Easement
- = Existing Easement Line

PLAT NOTES:

1. Selling a portion of this addition by metes and bounds may be a violation of City ordinance and state law and subject to fines and withholding of utilities and building permits.
2. Approval of a site plan by the City of Midland may be required before these lots may be developed or before a building permit may be obtained.
3. 1/2" iron rod with plastic cap set at each corner unless otherwise specified.
4. A blanket easement of ingress and egress is hereby granted for Entrada Businesses Center Addition to the City of Midland for garbage and trash collection and location and maintenance of trash containers, save and except those areas occupied by a building or structure. Said easement is conditioned such that no construction shall commence on said lot until exact location of said containers and the easements in connection therewith have been selected and approved by the director of utilities.
5. All driveway locations along state highway right-of-way shall be approved by the Texas Department of Transportation.

FLOOD ZONE INFORMATION

Based on the U.S. Department of Housing and Urban Development, Federal Insurance Administration Flood Hazard Boundary Map, Community Number 4812395, Map Number 48329C0200F, Panel 200 of 525, revised September 16, 2005, portion of the surveyed property is located in a Special Flood Hazard Area. According to the map, the current flood zone classification for the surveyed property is Zone X and Zone A.

CURVE TABLE

CURVE	RADIUS	ARC LENGTH	CHORD BEARING	CHORD LENGTH	DELTA ANGLE
C14	147.70'	325.45'	N.49°49'51"E.	313.20'	53°17'46"
C15	343.00'	140.34'	N.32°34'36"E.	139.36'	23°26'30"
C16	317.51'	132.29'	N.32°33'40"E.	131.34'	23°52'20"
C17	198.00'	106.66'	N.35°03'28"E.	105.38'	30°51'56"
C18	208.22'	210.20'	N.80°02'42"E.	201.39'	57°50'26"
C19	283.60'	227.83'	N.02°15'29"W.	221.75'	46°01'41"
C20	295.60'	237.47'	S.02°15'29"E.	231.13'	46°01'41"
C21	334.00'	180.73'	S.05°09'31"W.	178.53'	31°00'10"
C22	346.00'	187.22'	N.05°09'31"E.	184.95'	31°00'10"
C23	196.22'	197.95'	S.80°00'51"W.	189.66'	57°48'04"
C24	186.00'	100.20'	S.36°03'28"W.	98.99'	30°51'56"
C25	329.51'	137.29'	S.32°33'40"W.	136.30'	23°52'20"
C26	331.00'	135.40'	S.32°34'31"W.	134.46'	23°26'13"
C27	359.70'	336.80'	S.49°47'49"W.	324.63'	53°38'52"

PACKET 17.10 October 22, 2024

PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS

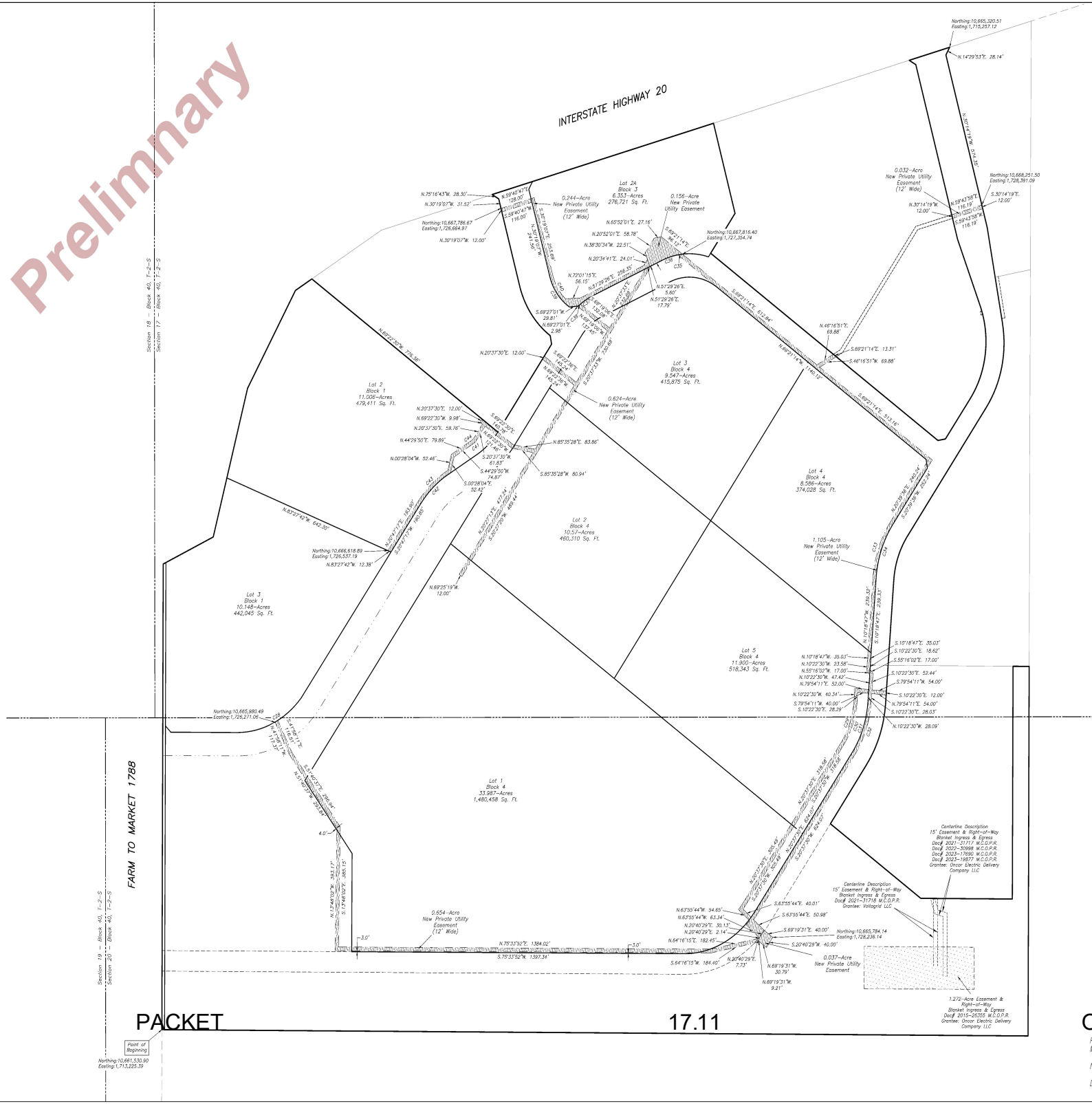
NO. _____

DATE _____

SHEET 2 OF 5

Parkhill

TBPELS FIRM REGISTRATION NO. 10194091



Prelimina

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ENTRADA BUSINESS PARK ADDITION

Being a replat of Lot 1, Block 3, Entrada Business Park Addition, Section 3 as shown on the plat recorded in Plat Cabinet L, Pg. 64 M.C.P.R. and a portion of that certain 200.501-Acre Tract recorded in Vol. 2625, Pg. 192 (Doc# 2006-848) M.C.O.P.R. in Sections 17 & 20, Block 40, T-2-S, T.&P. RR. Co. Survey, Midland County, Texas.

0' 100' 200' 400'

Original Scale: 1" = 200'

LEGEND:

- ● = Found Monument.
- ○ = Set 1/2" iron rod with a plastic cap marked "PARKHILL RPLS 6889"
- M.C.O.R. = Midland County Deed Records
- M.C.O.P.R. = Midland County Official Public Records
- M.C.P.R. = Midland County Plat Records
- = Plat Limits Boundary Line
- = Tract/Deed/Plat Adjoiner Lines
- = Section/Abstract Line
- = Proposed Easement Line
- = Proposed Access Right-of-Way Easement
- = Existing Easement Line

PLAT NOTES:

1. Selling a portion of this addition by metes and bounds may be a violation of City ordinance and state law and subject to fines and withholding of utilities and building permits.
2. Approval of a site plan by the City of Midland may be required before these lots may be developed or before a building permit may be obtained.
3. 1/2" iron rod with plastic cap set at each corner unless otherwise specified.
4. A blanket easement of ingress and egress is hereby granted for Entrada Businesses Center Addition to the City of Midland for garbage and trash collection and location and maintenance of trash containers, save and except those areas occupied by a building or structure. Said easement is conditioned such that no construction shall commence on said lot until exact location of said containers and the easements in connection therewith have been selected and approved by the director of utilities.
5. All driveway locations along state highway right-of-way shall be approved by the Texas Department of Transportation.

FLOOD ZONE INFORMATION

Based on the U.S. Department of Housing and Urban Development, Federal Insurance Administration Flood Hazard Boundary Map, Community Number 4812396, Map Number 48329C0200F, Panel 200 of 525, revised September 16, 2005, portion of the surveyed property is located in a Special Flood Hazard Area. According to the map, the current flood zone classification for the surveyed property is Zone X and Zone A.

CURVE TABLE

CURVE	RADIUS	ARC LENGTH	CHORD BEARING	CHORD LENGTH	DELTA ANGLE
C28	308.31'	12.00'	N.47°17'38"E.	12.00'	2°13'49"
C29	270.01'	146.10'	N.05°07'51"E.	144.33'	31°00'13"
C30	280.01'	152.60'	S.05°07'31"W.	150.74'	31°00'13"
C31	322.00'	174.24'	N.05°07'31"E.	172.12'	31°00'13"
C32	334.00'	180.73'	S.05°07'31"W.	178.54'	31°00'13"
C33	358.00'	193.71'	N.05°09'31"E.	191.36'	31°00'10"
C34	346.00'	187.22'	S.05°09'31"W.	184.95'	31°00'10"
C35	245.00'	17.56'	N.67°31'10"E.	17.55'	4°06'42"
C36	255.00'	62.56'	S.58°31'08"W.	62.40'	14°03'23"
C37	255.00'	50.09'	S.45°18'05"W.	54.99'	12°22'43"
C38	255.00'	10.51'	S.37°58'52"W.	10.51'	2°21'42"
C39	172.81'	130.46'	N.50°19'26"W.	127.38'	4°15'16"
C40	160.81'	94.85'	S.45°52'50"E.	93.48'	33°47'43"
C41	223.51'	17.88'	S.42°12'21"W.	17.87'	4°34'59"
C42	333.00'	137.80'	S.32°38'34"W.	136.82'	23°42'33"
C43	345.00'	149.76'	N.33°13'24"E.	148.58'	24°52'14"
C44	211.51'	14.91'	N.42°28'42"E.	14.90'	4°02'17"

SHEET 3 OF 5

Parkhill

TBPELS FIRM REGISTRATION NO. 10194091

PACKET 17.11 October 22, 2024

PLAT FILED FOR RECORD MIDLAND COUNTY, TEXAS

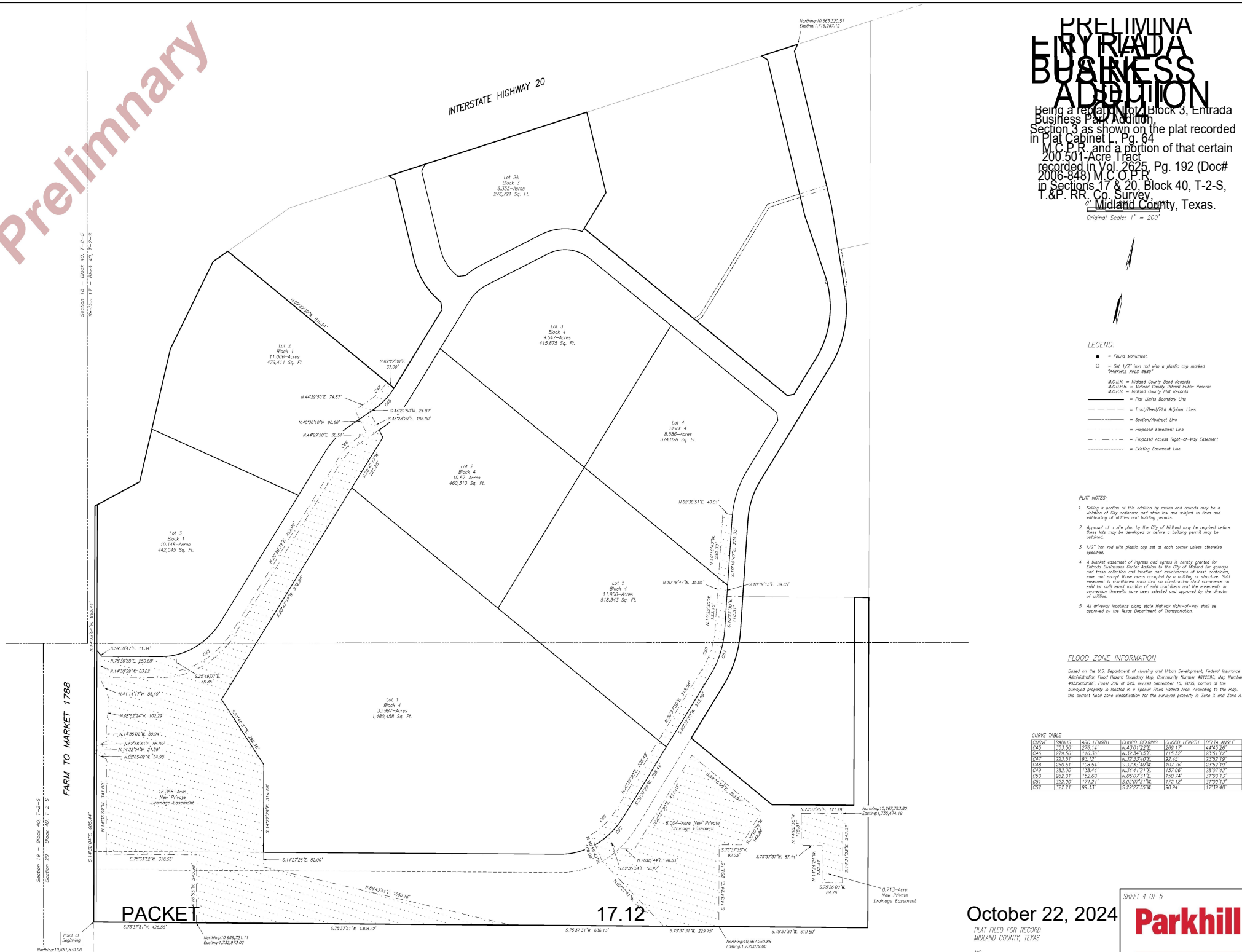
NO. _____

DATE _____

PRELIMINARY ENTRADA BUSINESS PARK ADDITION

Being a replat of Lot 1, Block 3, Entrada Business Park Addition, Section 3 as shown on the plat recorded in Plat Cabinet L, Pg. 64 M.C.P.R. and a portion of that certain 200.501-Acre Tract recorded in Vol. 2625, Pg. 192 (Doc# 2006-848) M.C.O.P.R. in Sections 17 & 20, Block 40, T-2-S, T.&P. RR. Co. Survey, Midland County, Texas.

Original Scale: 1" = 200'



LEGEND:

- ● = Found Monument.
- ○ = Set 1/2" iron rod with a plastic cap marked "PARKHILL RPLS 6889"
- M.C.D.R. = Midland County Deed Records
- M.C.O.P.R. = Midland County Official Public Records
- M.C.P.R. = Midland County Plat Records
- = Plat Limits Boundary Line
- = Tract/Deed/Plat Adjoiner Lines
- = Section/Abstract Line
- = Proposed Easement Line
- = Proposed Access Right-of-Way Easement
- = Existing Easement Line

PLAT NOTES:

1. Selling a portion of this addition by metes and bounds may be a violation of City ordinance and state law and subject to fines and withholding of utilities and building permits.
2. Approval of a site plan by the City of Midland may be required before these lots may be developed or before a building permit may be obtained.
3. 1/2" iron rod with plastic cap set at each corner unless otherwise specified.
4. A blanket easement of ingress and egress is hereby granted for Entrada Businesses Center Addition to the City of Midland for garbage and trash collection and location and maintenance of trash containers, save and except those areas occupied by a building or structure. Said easement is conditioned such that no construction shall commence on said lot until exact location of said containers and the easements in connection therewith have been selected and approved by the director of utilities.
5. All driveway locations along state highway right-of-way shall be approved by the Texas Department of Transportation.

FLOOD ZONE INFORMATION

Based on the U.S. Department of Housing and Urban Development, Federal Insurance Administration Flood Hazard Boundary Map, Community Number 4812395, Map Number 48329C0200F, Panel 200 of 525, revised September 16, 2005, portion of the surveyed property is located in a Special Flood Hazard Area. According to the map, the current flood zone classification for the surveyed property is Zone X and Zone A.

CURVE TABLE

CURVE	RADIUS	ARC LENGTH	CHORD BEARING	CHORD LENGTH	DELTA ANGLE
C45	353.50'	276.14'	N.43°01'22"E.	269.13'	44°45'26"
C46	279.50'	116.36'	N.32°34'15"E.	115.52'	23°51'12"
C47	223.51'	93.12'	N.32°33'40"E.	92.45'	23°52'19"
C48	260.51'	108.54'	S.32°33'40"W.	107.76'	23°52'19"
C49	282.00'	138.44'	N.34°41'21"E.	137.06'	28°07'42"
C50	282.01'	152.60'	N.05°07'31"E.	150.74'	31°00'13"
C51	322.00'	174.24'	S.05°07'31"W.	172.12'	31°00'13"
C52	322.21'	99.33'	S.29°27'35"W.	98.94'	17°39'48"

SHEET 4 OF 5

Parkhill

TBPELS FIRM REGISTRATION NO. 10194091

PACKET 17.12

October 22, 2024

PLAT FILED FOR RECORD MIDLAND COUNTY, TEXAS

NO. _____

DATE _____

Prelimnary

PRELIMINARY
ENTRADA BUSINESS ADDITION

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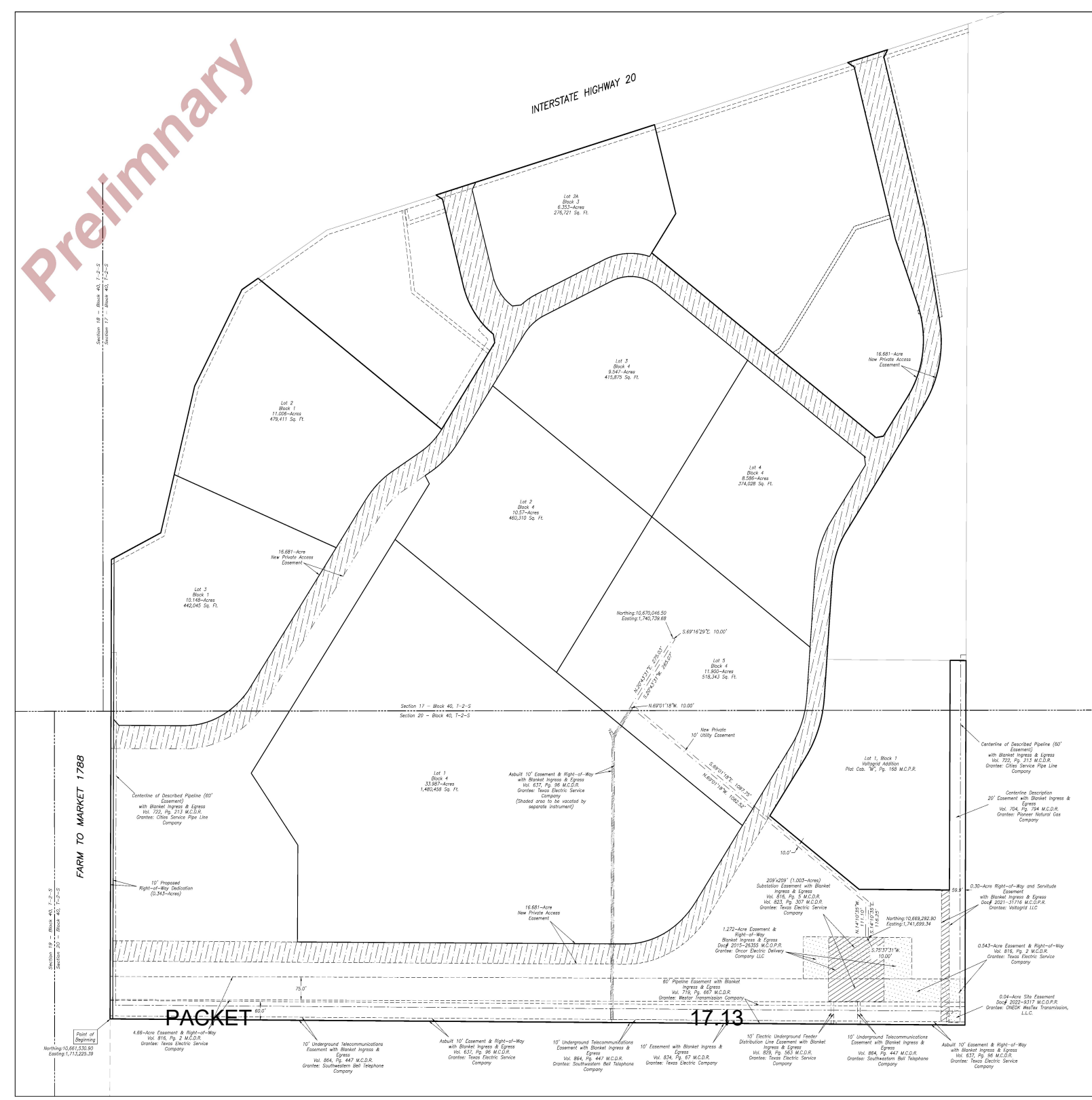
0' 200' 400'
Original Scale: 1" = 200'



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PACKET 17.13

October 22, 2024

PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS

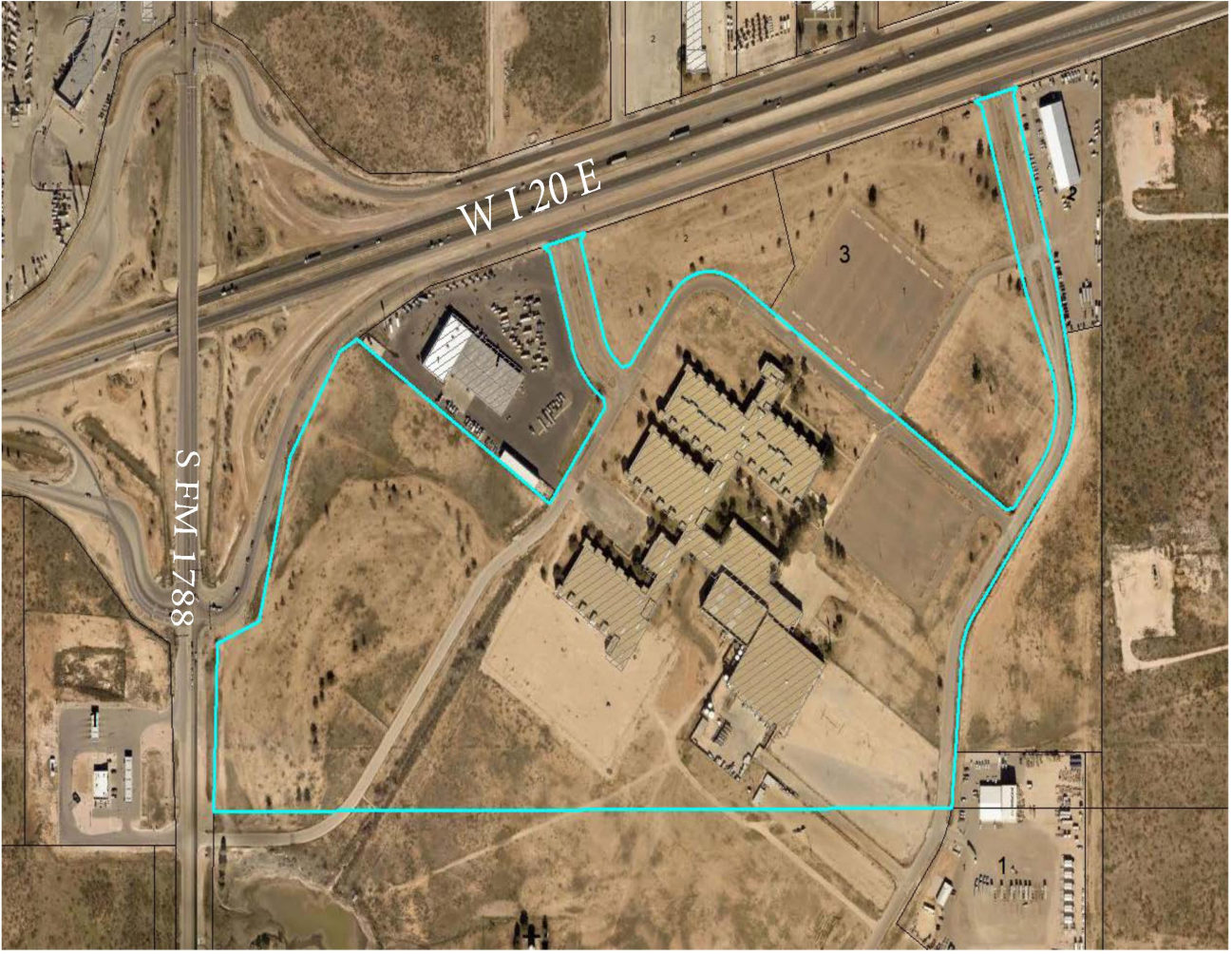
NO. _____

DATE _____

SHEET 5 OF 5

Parkhill

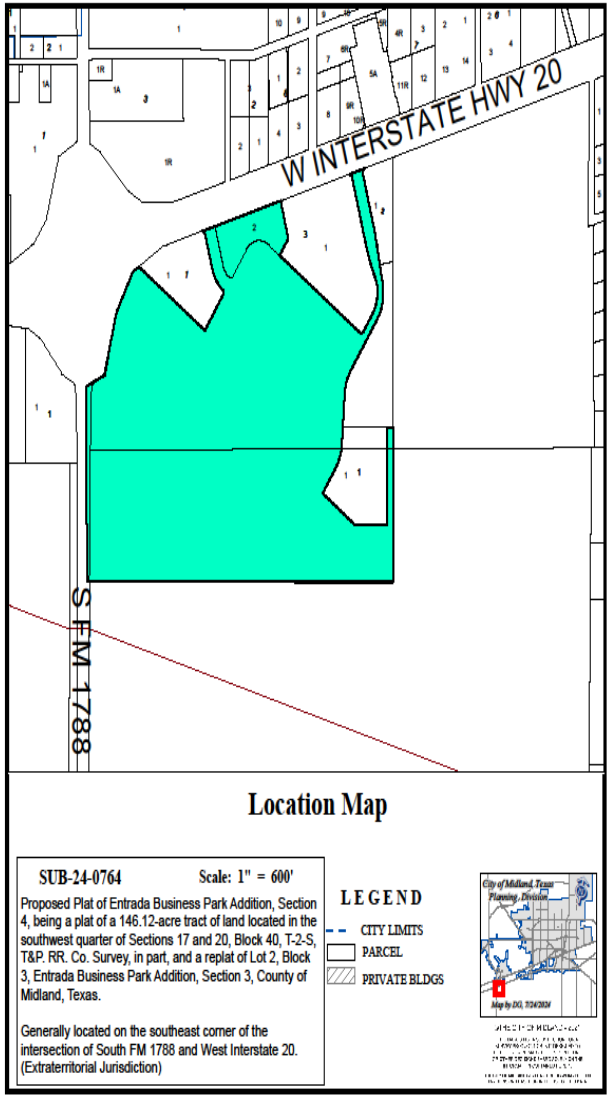
TBPELS FIRM REGISTRATION NO. 10194091


W I 20 E
S FM 1788
3
2
1

MIDLAND
Be the Energy!
Entrada Business Park
Addition, Section 4
PRELIMINARY PLAT
October 22, 2024
Visit Our Website
MIDLANDTEXAS.GOV

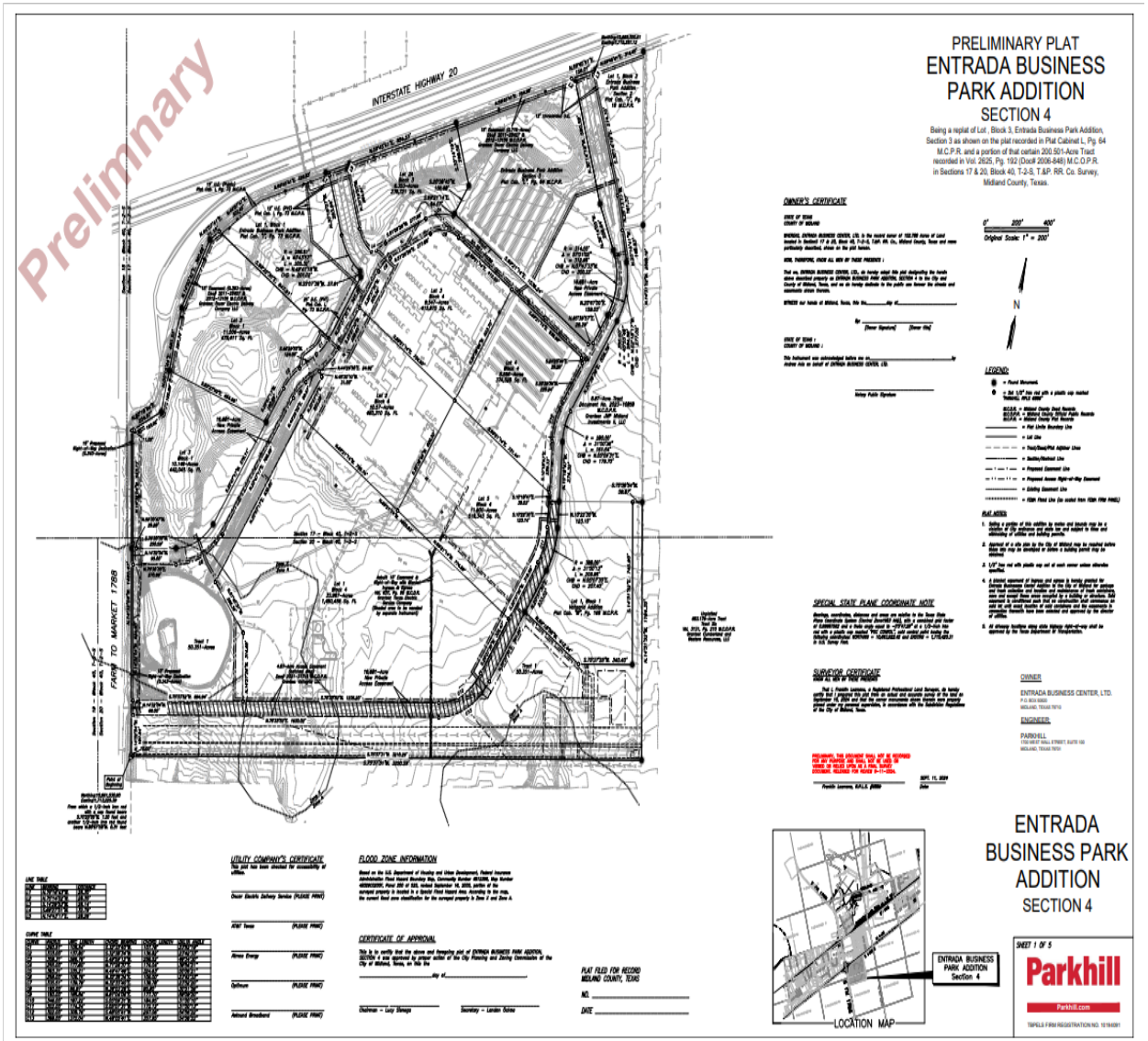
Application Summary

- **Property Owner & Developer:** Entrada Business Center, LTD.
- **Representative:** Josh Wallender with Parkhill
- Plat
- **Address:** 10001 West Interstate 20 Midland, Tx 79706 (ETJ)



Plat Details

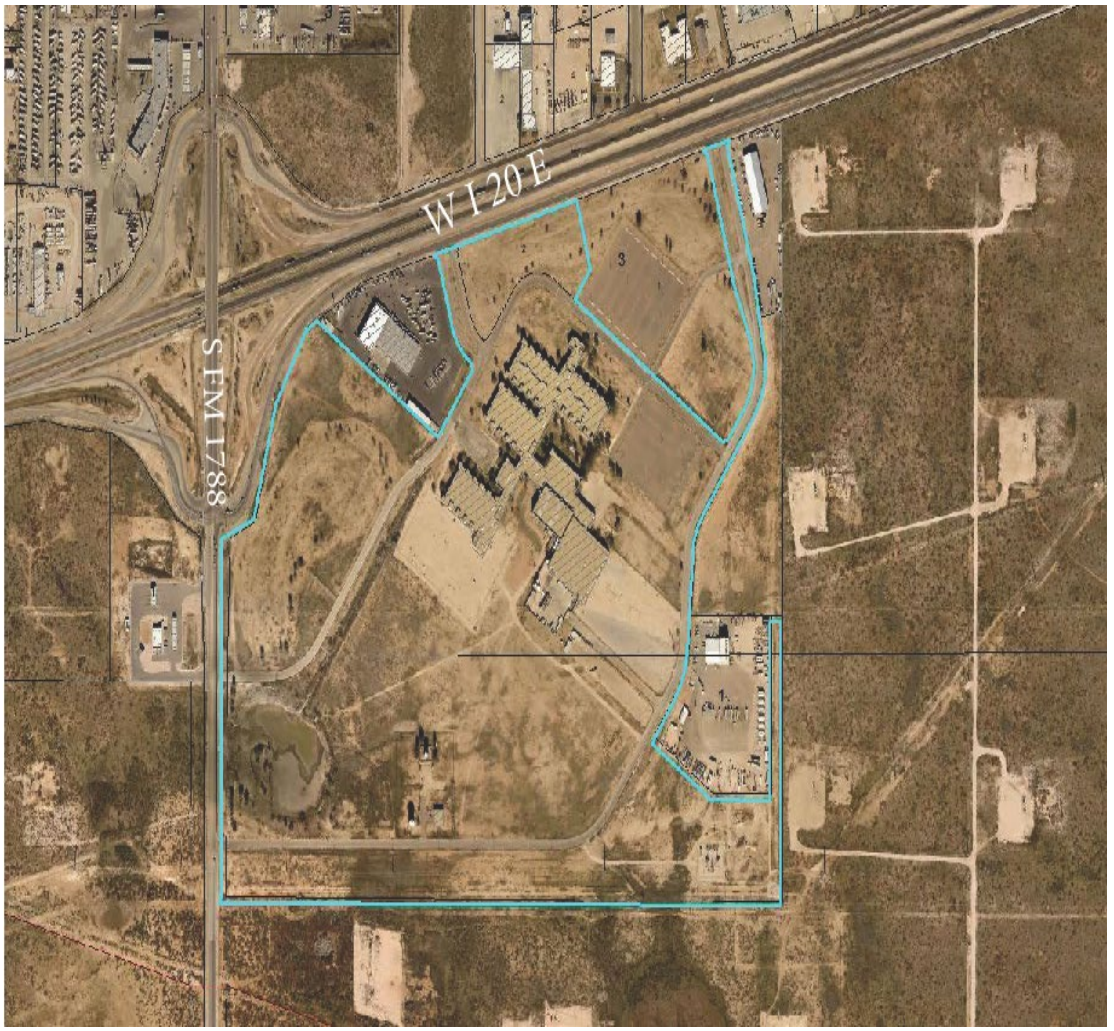
- **Acreage:** 146.12-acre tract
- **Number of lots:** 9 lots
- **Reason for Request:** For the development of lots for commercial purposes



MIDLAND
Be the Energy!

Land Use

- **Current Use of the Property:** Commercial
- **Proposed Use of the Property:** Commercial
- **Surrounding Uses:**
  - North: Commercial (ETJ)
  - South: Vacant
  - East: Vacant
  - West: Commercial (ETJ)

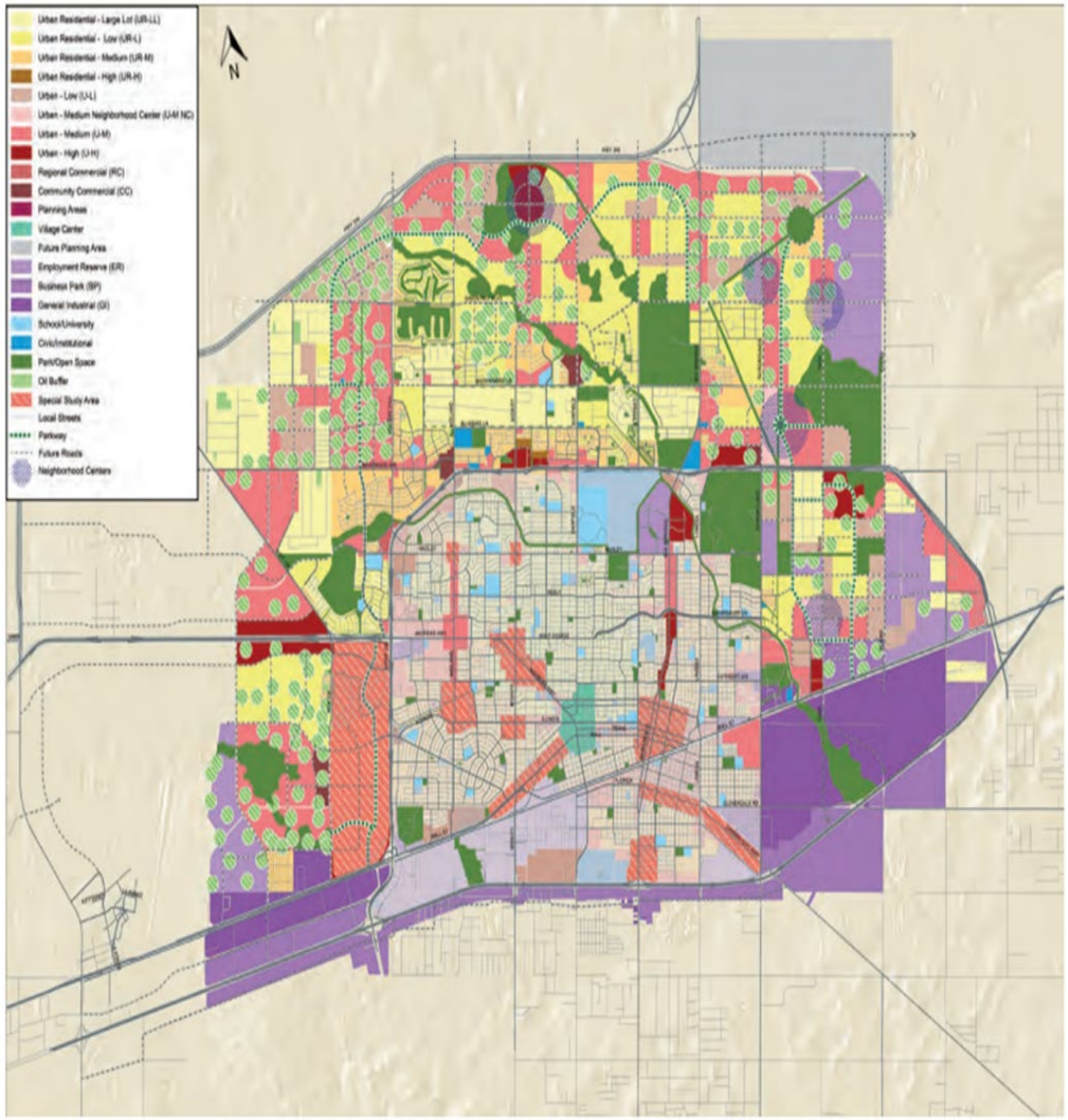


Site Photo

On Interstate 20, Looking south

Comprehensive Plan

- **TCT Land Use Designation:** Not designated



Staff's Recommendation

- No objections received.
- The Planning & Zoning Commission recommended approval of this plat on October 7, 2024.
- Staff recommends approval of the Preliminary Plat of Entrada Business Park Addition, Section 4, subject to conditions A and B.
- Conditions:

A. Public improvements must be completed or a request for a deferral letter must be submitted by Final Plat submittal. [11-2-3(G)1]
B. Approval of this preliminary plat is subject to the Final plat including all plat comments, conditions, and requirements must be satisfied by all pertinent City departments before filing for recording with the County Clerk of Midland County, Texas. [11-2]

MISSION

Deliver exceptional services and promote a high quality of life and place for ALL our citizens.

City Council Meeting

Item Number: 18

Meeting Date: October 22, 2024

To: City Council / City Manager

From: Britton Murry, Planner

Subject: **MOTION APPROVING, WITH STAFF'S RECOMMENDED CONDITIONS, A PRELIMINARY PLAT OF GOLD SANDS ADDITION, BEING A 125.04-ACRE TRACT OF LAND OUT OF THE SOUTHEAST PART OF SECTION 24, BLOCK 40, T-2-S, T&P RR CO. SURVEY, COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH COUNTY ROAD 1232, APPROXIMATELY ONE-HALF MILE NORTH OF WEST COUNTY ROAD 140) (DISTRICT: NONE) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)**

Purpose:

Magrym Consulting, on behalf of Gold Sands Development Group, LLC, is requesting to plat property located on the east side of South County Road 1232 into 38 lots to obtain addresses and septic permits for commercial use.

Recommended City Council Action:

Approve

Fiscal Impact:

None.

Discussion:

BUILDING CODE: (Approved)

ETJ, no jurisdiction

SURVEYOR: (Approved)

No comments

ENGINEERING: (Approved with Conditions)

IMPACT FEES: There are no impact fees associated with this plat. Plat outside designated service areas. [For Applicant's Information Only.]

ROW: Refer to transportation's comments, if any. [For Applicant's Information Only.]

PAVING: Deferral request for paving improvements were administratively approved on 9/16/2024. [For Applicant's Information Only.]

WATER: Deferral request for water improvements were administratively approved on 9/16/2024. [For Applicant's Information Only.]

FIRE HYDRANTS: Required as needed to meet NFPA, IFC & City Fire Code; and/or comply with directives of City Fire Marshal. After January 14, 2020 - Fire hydrants shall be spaced no more than 500' apart, Pressure Indicator Rings are to be installed and will require the developers/contractors to pay for the flow test. [For Applicant's Information Only.]

PRO RATA: None. [For Applicant's Information Only.]

SEWER: Deferral request for wastewater improvements were administratively approved on 9/16/2024. [For Applicant's Information Only.]

DRAINAGE: Drainage study has been submitted and is in review. [For Applicant's Information Only.]

EASEMENTS: Show existing and proposed. [For Applicant's Information Only.]

DIMENSION: * * *

OTHER: * * *

TRANSPORTATION: (Approved with Conditions)

Remove 60 ft public Right-of-Way dedication since it doesn't connect to existing public right-of-way. 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. [For the Applicant's information only.]

FIRE: (Approved)

No comments

OIL AND GAS: (Approved)

Not in the City limits- no oil or gas jurisdiction.

GIS: (Approved)

Boundary does not close using metes and bounds. Streets need names. Directionality for Lots. Curve directionalities needed along Antelope Tr on visual. Antelope Tr is S C R 1232. Can write as S C R 1232 (Antelope Trail). Lots 13-17 of Block 1 can be Lots 1-5 (Plat name was changed so lot numbers can be reverted to 1-5). Block 6, Lots 1-7 can be Block 5, Lots 6-11. Block 6, Lot 8 can be Block 6, Lot 1. Private drainage easement in Block 2, Lot 5 needs calls and/or distances. (If this is a drainage basin please label as drainage basin easement.) Ponds may need drainage basin easement.

PUBLIC WORKS: (Approved)

No comments

CRMWD: (Approved)

We do not have any comments on this plat.

HEALTH DEPARTMENT: (Approved)

Yes, the health department will review applications from the 38 proposed lots of Gold Sands Addition, PLAT OF A 125 ACRE TRACT OF LAND OUT OF SOUTHEAST PART OF SECTION 24, BLOCK 40, T-2-S, T. & P. RR. CO. SURVEY each lot is 2 acre or above, property owner must contact the pipeline company to get the setback to their pipeline before any excavation can occur, to ensure the proposed plans on the application for the septic system will meet the setbacks from the water well on the property and the water wells on the adjacent properties.

PLANNING: (Approved)

This plat is greater than 25 acres; therefore, approval from Council is required. [Midland City Code § 11-2-3(D)11(a)6]

MCAD shows the owner of this property “TAWBAC LCC.” Please verify ownership [Midland City Code 11-2-3(A)1(a)(2)]

Staff recommends approval of the Preliminary Plat of Gold Sands Addition, subject to conditions A through C.

Conditions:

A. **Approval by the City Council shall be required prior to consideration of a final plat by the Commission on which any preliminary plat is ten hectares (25 acres) or more in area and is located in any survey section (approximately one square mile) which does not contain a publicly owned site, or sites intended for both a public school and park, or public site reservation therefor; [11-2-3(D)11(a)(6)].**

B. Proof of ownership must be provided at final plat submittal. [11-2-3(H)3(m)(1)]

C. Approval of this preliminary plat is subject to the Final plat including all plat comments, conditions, and requirements must be satisfied by all pertinent City departments before filing for recording with the County Clerk of Midland County, Texas. [11-2]

Attachments:

Proposed Preliminary Plat
Application
Location Map
Zoning Map
Aerial Photo
PowerPoint Presentation

City Manager's Office

MIDLAND
Planning Division

Preliminary Plat Application

Project Number: SUB-24-0765

Case Number:

Proposed Subdivision Plat Name: *Gold Sands Addition*

Legal Description (attached sealed Metes and Bounds): *BEING A 125.04 ACRE TRACT OF LAND IN THE SOUTHEAST PART OF SECTION 24, BLOCK 40, T-2-S, T & P, RR CO. SURVEY, MIDLAND COUNTY, TEXAS*

Property Owner Printed Name: *GOLD SANDS DEVELOPMENT GROUP, LLC*		Phone *(432) 684-5548* Email *brandonadams@a-jconstruction.net*	
Address *3203 S. COUNTY RD. 1200*	City *Midland*	State *TX*	Zip *79706*

Developer *(if different than Owner)* Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Representative *(if acting as Agent, see affidavit on page 2)* Firm: *Magrym Consulting* Printed Name: *Eduardo L. Aleman*		Phone *(432) 684-5548* Email *Ed.aleman@magrym.com*	
Address *800 N. Marienfeld Suite 100*	City *Midland*	State *TX*	Zip *79701*

Current Zoning:

Reason for Platting: *To obtain address and septic permits*

Plat Information	Total Acreage: *125.04*
Type: ☐ Single-Family Residential ☑ Commercial	☐ Multi-Family Residential ☐ Extraterritorial Jurisdiction (ETJ)
Number of Lots: *38*	Number of Multi-Family Dwelling Units:

Submittal and Fees

Items to be submitted with this application form:

- 1 FOLDED Copy of Dimensioned Plat
- 1 Extra Copy (11x17)
- Digital Files (JPEG & PDF)
- Application Fee – Payable to the 'City of Midland'

Request for a Development Agreement

Do you expect to request a development agreement with the City? ☐ Yes ☐ No

If yes, contact the City Engineer at (432) 685-7286

Provisions
A plat application will not be considered filed pursuant to Section 212.009 of the Texas Local Government Code until all required documents and fees have been submitted and ***all of the terms and conditions of the Subdivision Ordinance, including all necessary studies, plans and supporting information are accepted and approved,*** or the applicant has filed a waiver request for sections from which the plat deviates. Once a plat meets the requirements to be considered filed with the City, the application will be placed on the Planning and Zoning Commission agenda for consideration under the time requirements set out in Section 212.009.

Signature *(by property owner only – authorized agent must sign affidavit below)*

Property Owner (signature): Brandon Adams | Date: 9/4/2024

Property Owner (printed) : Brandon Adams

The Preliminary Plat 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 Subdivision 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 Ed Aleman who being by me duly sworn upon oath says That (s)he is authorized by Brandon Adams 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

Eduardo J Aleman
Authorized Agent (signature)

Subscribed and sworn to before me, this 4th day of September, 20 24, to certify which witness my hand and seal of office

HUNTER WAYNE HALL
Notary Public, State of Texas
Comm. Expires 06-06-2024
Notary ID 132509132

NOTARY PUBLIC, MIDLAND COUNTY TEXAS

FOR OFFICE USE ONLY

☑ Property Owner Authorization ☑ 1 Copy of Dimensioned Plat ☑ Plat in Digital Format (PDF/JPEG)

☐ Application Fee ☑ 1 Copy of Plat (11x17)

Check #_____

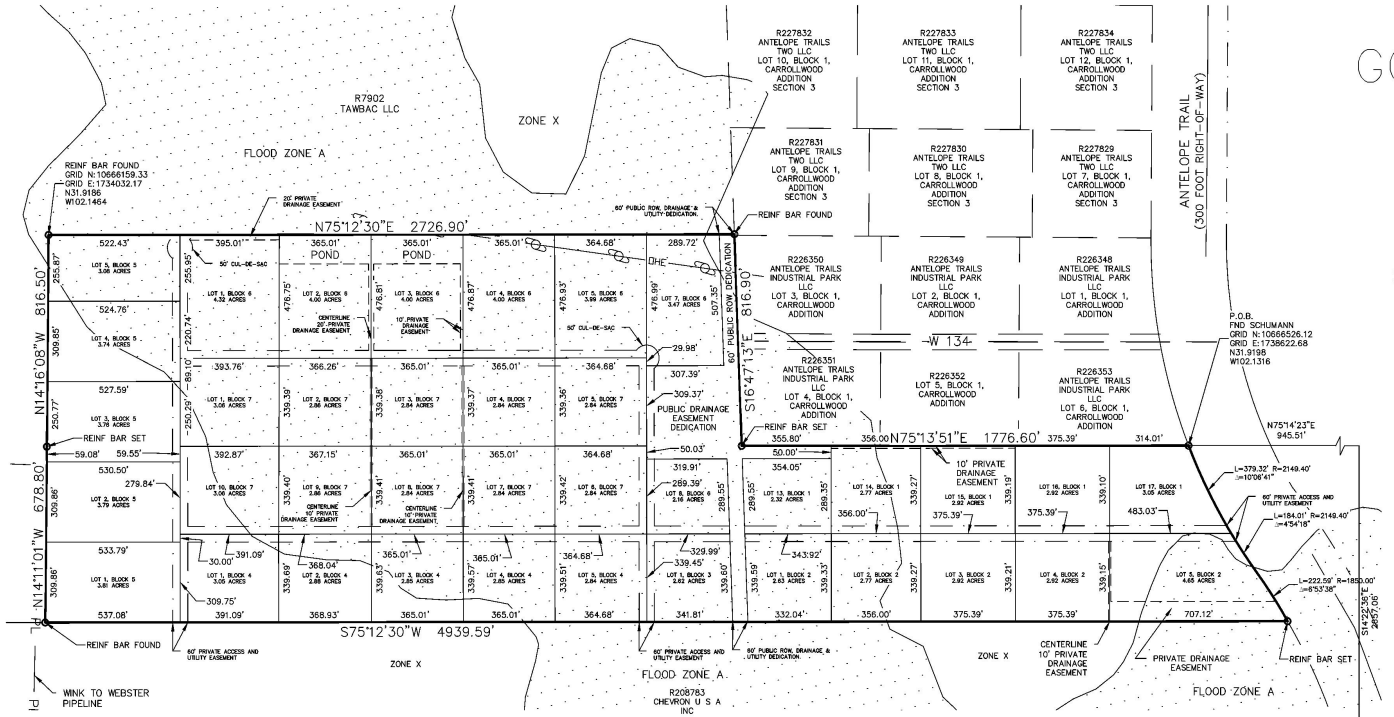
Received By: Madeline Dayvez | Date: RECEIVED BY:

****Application will not be considered for scheduling until reviewed by a planner.****

PRELIMINARY

GOLD SANDS ADDITION

BEING A 125.04 ACRE TRACT OF LAND
IN THE SOUTHEAST PART OF
SECTION 24, BLOCK 40, T-2-S, T & P, RR CO. SURVEY,
MIDLAND COUNTY, TEXAS



STATE OF TEXAS §
COUNTY OF MIDLAND §

WHEREAS, GOLD SANDS DEVELOPMENT GROUP, LLC , WE ARE THE RECORD OWNER(S) OF A TRACT OF LAND SITUATED IN THE SOUTHEAST PART OF SECTION 24, BLOCK 40, T-2-S, T & P, RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND MORE PARTICULARLY DESCRIBED HEREON.

FIELD NOTE DESCRIPTION OF A 125.04 ACRE TRACT OF LAND, OUT OF THE SOUTHEAST PART OF SECTION 24, BLOCK 40, T-2-S, T & P, RR CO. SURVEY, MIDLAND COUNTY, TEXAS: SAID 125.04 ACRE TRACT DESCRIBED MORE FULLY BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A REINF BAR FOUND (N:10666526.12, E:1738622.68) MARKED "SCHUMANN" IN THE WEST RIGHT-OF-WAY LINE OF ANTELOPE TRAIL FOR THE MOST SOUTHERLY NORTHEAST CORNER OF THIS TRACT, FROM WHICH THE SE CORNER OF SAID SECTION 24 BEARS NORTH 75°14'23" EAST 945.51 FEET AND SOUTH 14°22'36" EAST 2657.06 FEET;

THENCE 344.29' ALONG A CURVE WITH A RADIUS OF 2149.40' AND A DELTA ANGLE OF 9°10'39", AND A CHORD BEARING OF SOUTH 40°48'47" EAST 343.92 FEET TO A POINT FOR AN EXTERIOR CORNER OF THIS TRACT;

THENCE 70.42' ALONG A CURVE WITH A RADIUS OF 2149.40' AND A DELTA ANGLE OF 1°52'37", AND A CHORD BEARING OF SOUTH 46°20'26" EAST 70.41 FEET TO A POINT FOR AN EXTERIOR CORNER OF THIS TRACT;

THENCE 222.59' ALONG A CURVE WITH A RADIUS OF 1850.00' AND A DELTA ANGLE OF 6°53'38", AND A CHORD BEARING OF SOUTH 47°47'47" EAST 222.46 FEET TO A REINF BAR SET FOR THE SOUTHEAST CORNER OF THIS TRACT;

THENCE SOUTH 75°12'30" WEST 4939.59 FEET TO A REINF BAR FOUND FOR THE SOUTHWEST CORNER OF THIS TRACT;

THENCE NORTH 14°11'01" WEST 678.80 FEET TO A REINF BAR SET FOR AN EXTERIOR CORNER OF THIS TRACT;

THENCE NORTH 14°16'08" WEST 816.50 FEET TO A REINF BAR FOUND FOR THE NORTHEAST CORNER OF THIS TRACT;

THENCE NORTH 75°12'30" EAST 2726.90 FEET TO A REINF BAR FOUND FOR THE MOST NORTHERLY NORTHEAST CORNER OF THIS TRACT AND ALSO BEING THE SOUTHWEST CORNER OF CARROLLWOOD ADDITION SECTION 3;

THENCE SOUTH 16°47'13" EAST 816.90 FEET TO A REINF BAR SET FOR AN INTERIOR CORNER OF THIS TRACT AND BEING THE SOUTHWEST CORNER OF CARROLLWOOD ADDITION, AS RECORDED IN CABINET K, PAGE 231, PLAT RECORDS OF MIDLAND COUNTY, TEXAS;

THENCE NORTH 75°13'51" EAST 1776.60 FEET TO THE PLACE OF BEGINNING.

BEARINGS AND DISTANCES SHOWN ARE BASED ON GPS OBSERVATIONS AND CONFORM TO THE "TEXAS COORDINATE SYSTEM" TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.

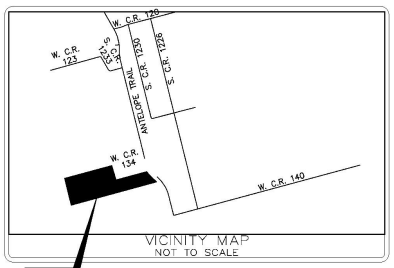
CERTIFICATE OF APPROVAL

FOR APPROVAL BY THE THE CITY PLANNING AND ZONING COMMISSION:

THIS IS TO CERTIFY THAT THE ABOVE AND FOREGOING PLAT OF GOLD SANDS ADDITION, WAS APPROVED BY PROPER ACTION OF THE CITY PLANNING AND ZONING COMMISSION OF THE CITY OF MIDLAND, ON THIS ___ DAY OF _____, 2024.

SIGNED: _____
CHAIRMAN: LUCY SISNIEGA

ATTEST: _____
SECRETARY: LANDON OCHOA



LEGEND:

- MONUMENT AS DESCRIBED
- PROPERTY LINE
- ADJOINING PROPERTIES
- SECTION LINE
- UTILITY EASEMENT

NOTES:

1. BEARINGS, DISTANCES AND ACREAGE SHOWN ARE BASED ON GPS OBSERVATIONS AND CONFORM TO THE "TEXAS COORDINATE SYSTEM" TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.

2. MONUMENTS ARE A 1/2 INCH REINFORCING BAR SET WITH YELLOW PLASTIC CAP STAMPED "SCHUMANN ENGINEERING" UNLESS OTHERWISE NOTED.

3. 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.

4. THE INSTALLATION OF PUBLIC IMPROVEMENTS MAY BE REQUIRED BY THE CITY OF MIDLAND AS SUCH TIME AS: (1) ANY LOT IS RE-PLATTED FOR SUBDIVISION INTO MORE THAN ONE TRACT OR (2) THE PROPERTY IS REZONED FOR A MORE INTENSIVE USE.

5. MAJORITY OF THIS PROPERTY IS IN ZONE A ACCORDING TO FEMA MAP PANEL 48329C0200F WITH AN EFFECTIVE DATE OF 9/16/2005.

6. ANY PERSON WHO DESIRES TO ERECT A NEW STRUCTURE OR REBUILD, REPLACE OR ENLARGE AN EXISTING STRUCTURE, ESTABLISH A NEW USE OR SUBSTANTIALLY CHANGE AN EXISTING USE IN THE AOZ-4 MUST APPLY FOR AND RECEIVE A PERMIT. A PERMIT SHALL BE GRANTED UNLESS THE NEW STRUCTURE OR THE NEW USE WOULD BE A HEIGHT HAZARD OR A PROHIBITED LAND USE AS SET FORTH IN SECTIONS 11-11-8, 11-11-9, AND TABLE 1 OF THIS CHAPTER OR WOULD OTHERWISE VIOLATE THIS CHAPTER. APPLICATIONS FOR PERMITS SHALL BE SUBMITTED TO AND ISSUED BY THE CITY OF MIDLAND BUILDING OFFICIAL.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT I DO HEREBY ADOPT THIS PLAT DESIGNATING THE HEREINABOVE DESCRIBED PROPERTY AS GOLD SANDS ADDITION, AN ADDITION OF 125.04 ACRES IN MIDLAND COUNTY, TEXAS, AND DO HEREBY DEDICATE TO THE PUBLIC USE FOREVER THE STREETS, ALLEY, AND EASEMENTS, (AND PARKWAYS) SHOWN HEREON.

WITNESS MY HAND AT MIDLAND, TEXAS, THIS ____ DAY OF _____, 2024.

_____
GOLD SANDS DEVELOPMENT GROUP, LLC

STATE OF TEXAS §
COUNTY OF MIDLAND §

THIS PLAT WAS ACKNOWLEDGED BEFORE ME ON THIS_____DAY OF_____, 2024, BY GOLD SANDS DEVELOPMENT GROUP, LLC.

_____
NOTARY PUBLIC
MIDLAND COUNTY, TEXAS

OWNER(S):

GOLD SANDS DEVELOPMENT GROUP, LLC
3203 S. COUNTY RD. 1200
MIDLAND, TX 79706-3974
brandonadams@a-jconstruction.net

THAT I, RJ DAUM. A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT I PREPARED THIS PLAT FROM AN ACTUAL AND ACCURATE SURVEY OF THE LAND AND THAT THE CORNER MONUMENTS SHOWN THEREON WERE PROPERLY PLACED UNDER MY PERSONAL SUPERVISION, IN ACCORDANCE WITH THE SUBDIVISION REGULATIONS OF THE CITY OF MIDLAND, TEXAS.

_____
RJ DAUM
TEXAS RPLS 4826

PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS
NO. _____ CABINET ____
DATE _____ PAGE ____

THIS PLAT HAS BEEN CHECKED FOR ACCESSIBILITY OF UTILITIES:

SIGNED: _____
ONCOR ELECTRIC DELIVER COMPANY

SIGNED: _____
AT&T TEXAS

SIGNED: _____
ATMOS ENERGY

SIGNED: _____
OPTIMUM COMMUNICATIONS

SIGNED: _____
ASTOUND COMMUNICATIONS

PACKET

October 22, 2024

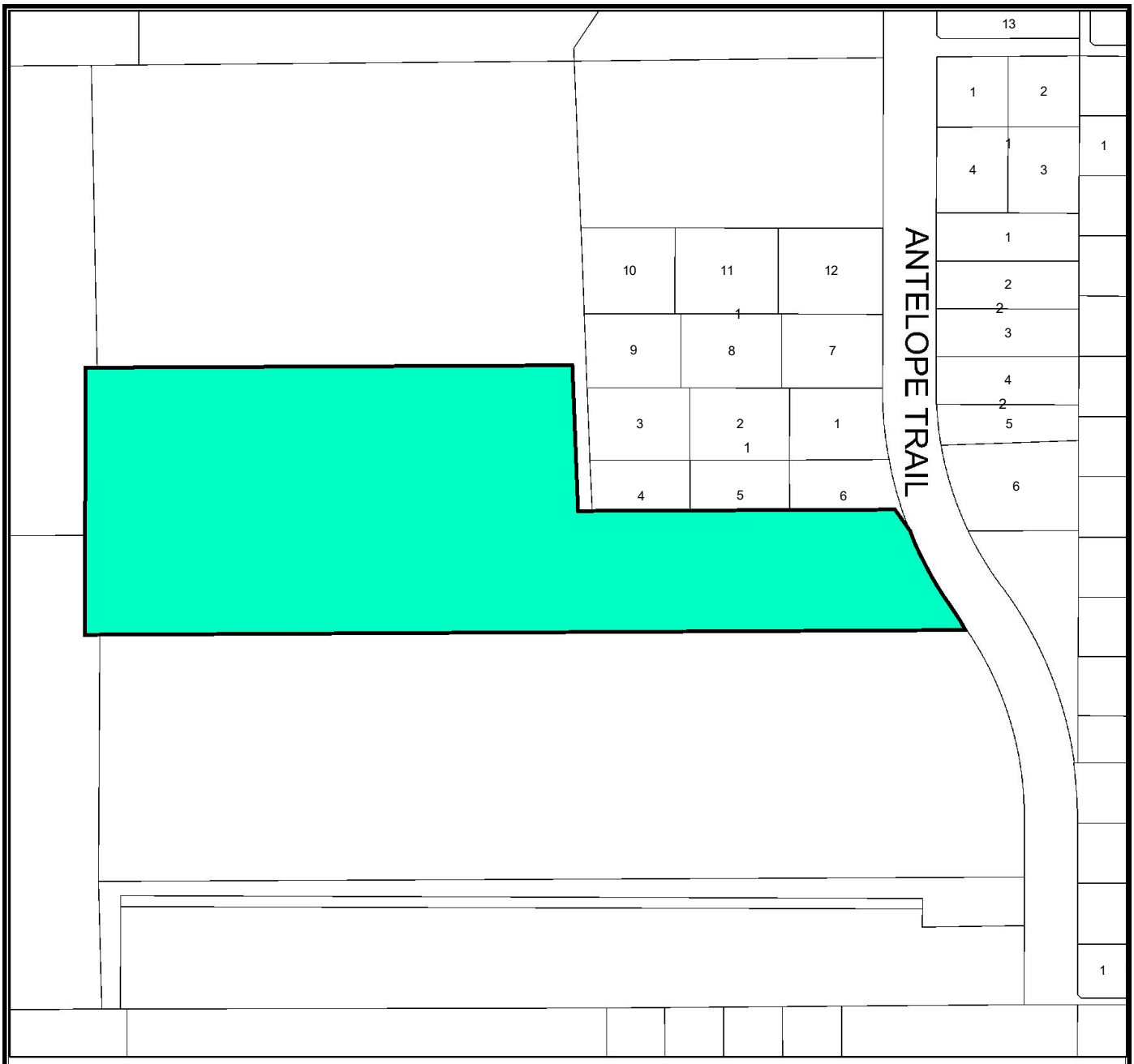
GRAPHIC SCALE
0 350 700
(1 INCH = 350' FEET)

NO.	DATE	DESCRIPTION	BY

DRAWN BY: JG | DATE: 07/09/2024
CHECKED BY: ED/RJ | PROJECT NO.: 80314
JOB NO.: 80,314 | SHEET: 1 OF 1

MAGRYM
800 N. MARIENFELD STREET SUITE 100 MIDLAND, TEXAS 79701
TEXAS PEBM No. 10149500
Office (432) 684-5548

GOLD SANDS ADDITION



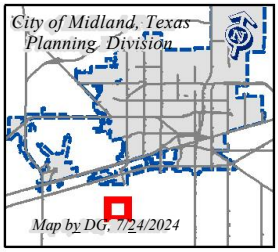
Location Map

SUB-24-0765 **Scale: 1" = 600'**

Proposed Plat of Gold Sands Addition, being a 125.04-acre tract located in the southeast part of Section 24, Block 40, T-2-S, T&P RR Co Survey, County of Midland, Texas. Generally located on the east side of South County Road 1232, approximately half a mile north of West County Road 140. (Extraterritorial Jurisdiction)

L E G E N D

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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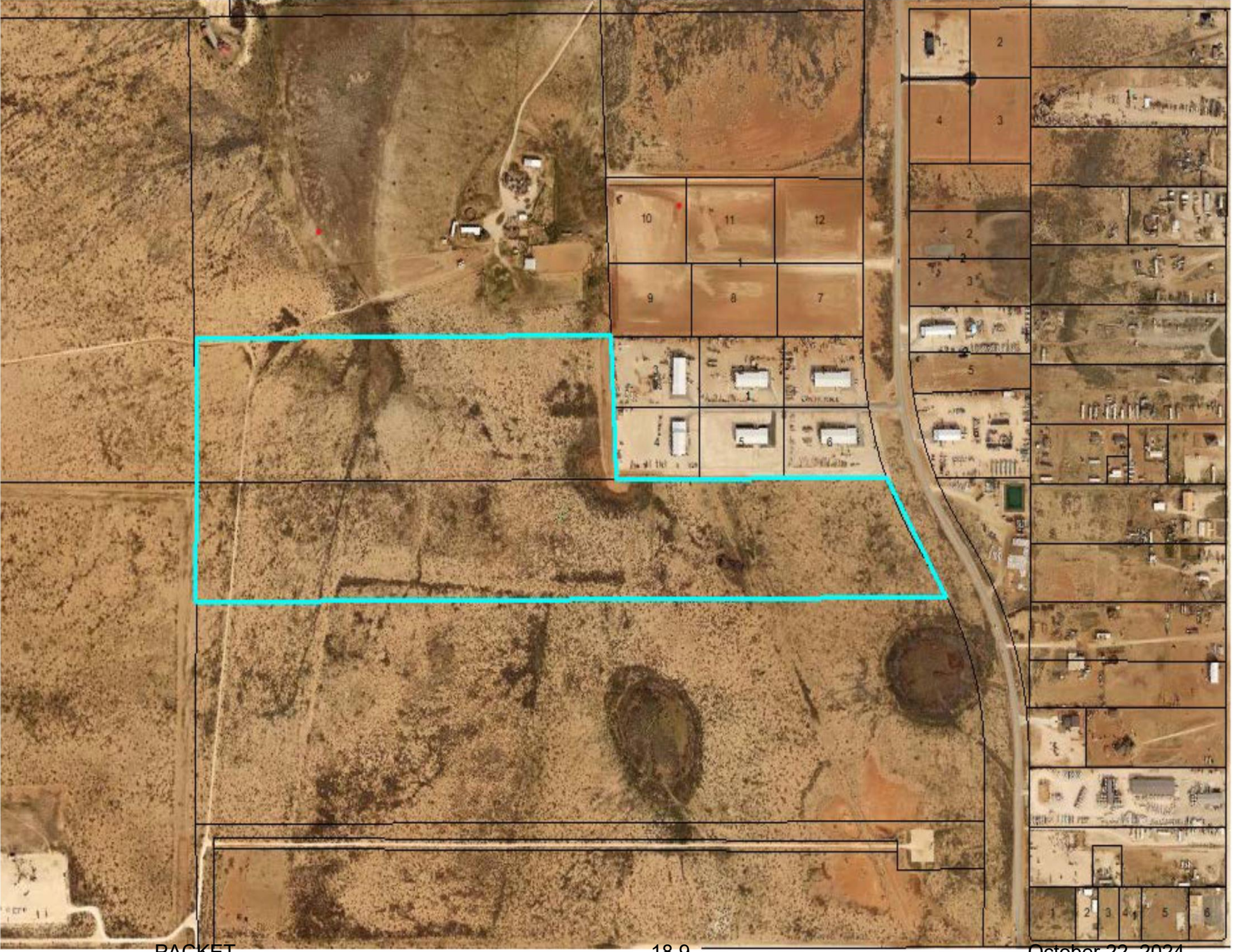
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.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Gold Sands Addition

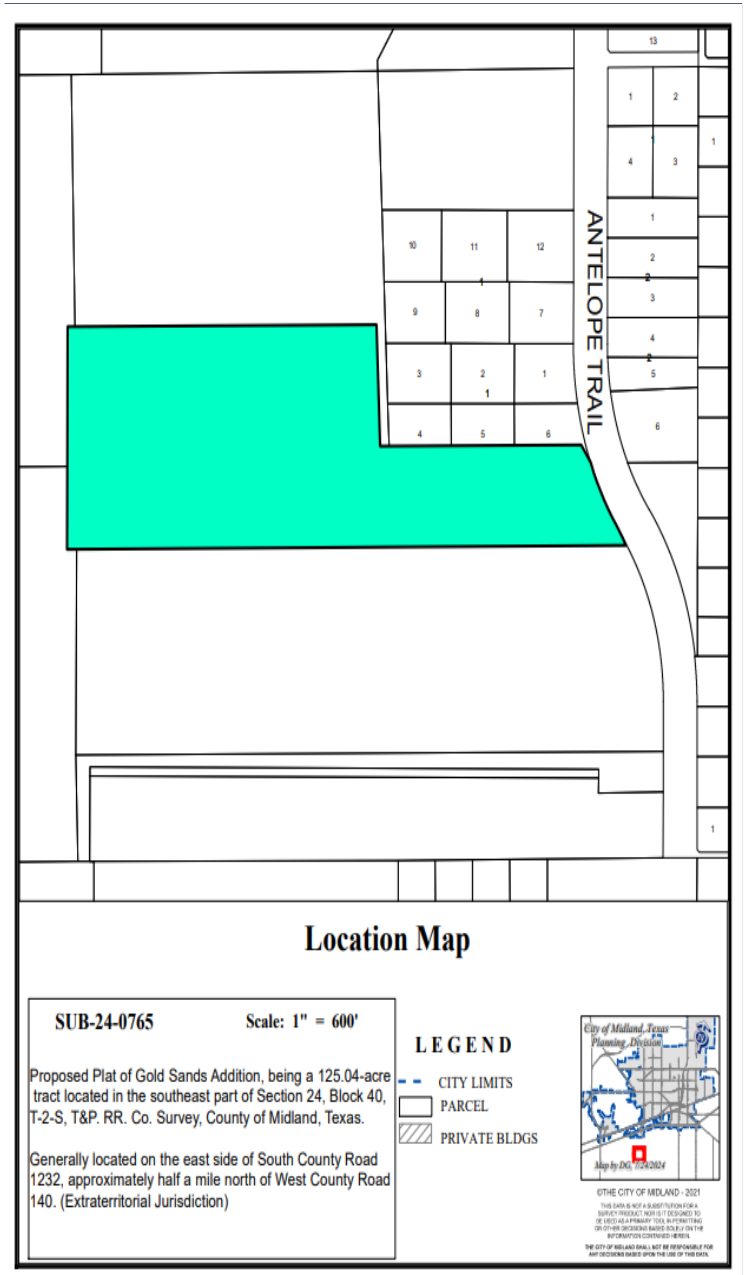
PRELIMINARY PLAT

October 22, 2024

Visit Our Website
MIDLANDTEXAS.GOV

APPLICATION SUMMARY

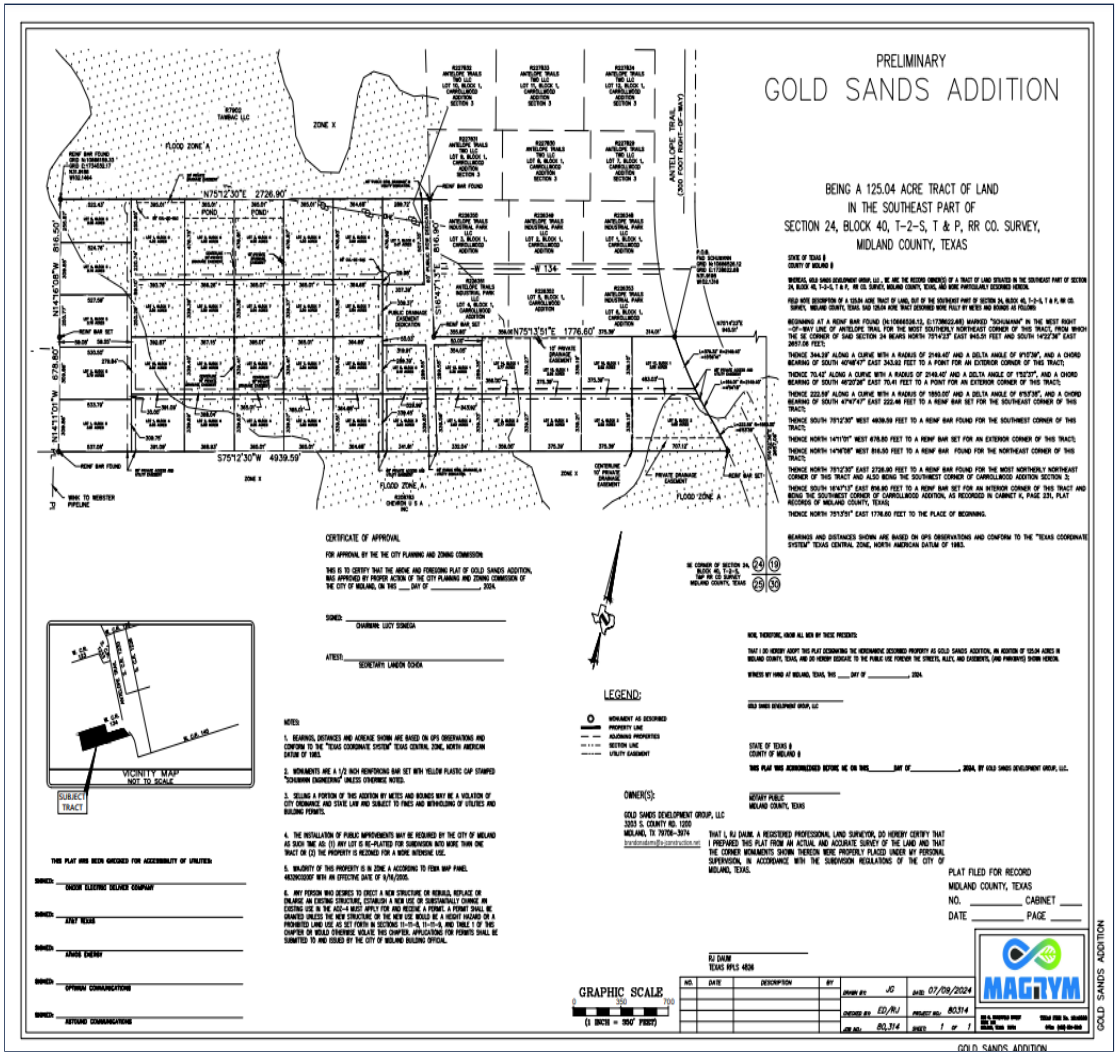
- **Property Owner & Developer:** Gold Sands Development Group, LLC
- **Representative:** Magrym Consulting
- **Application Type:** Plat
- **Address:** Generally located on the east side of South County Road 1232, approximately half a mile north of West County Road 140. (Extraterritorial Jurisdiction)



MIDLAND
Be the Energy!

PLAT DETAILS

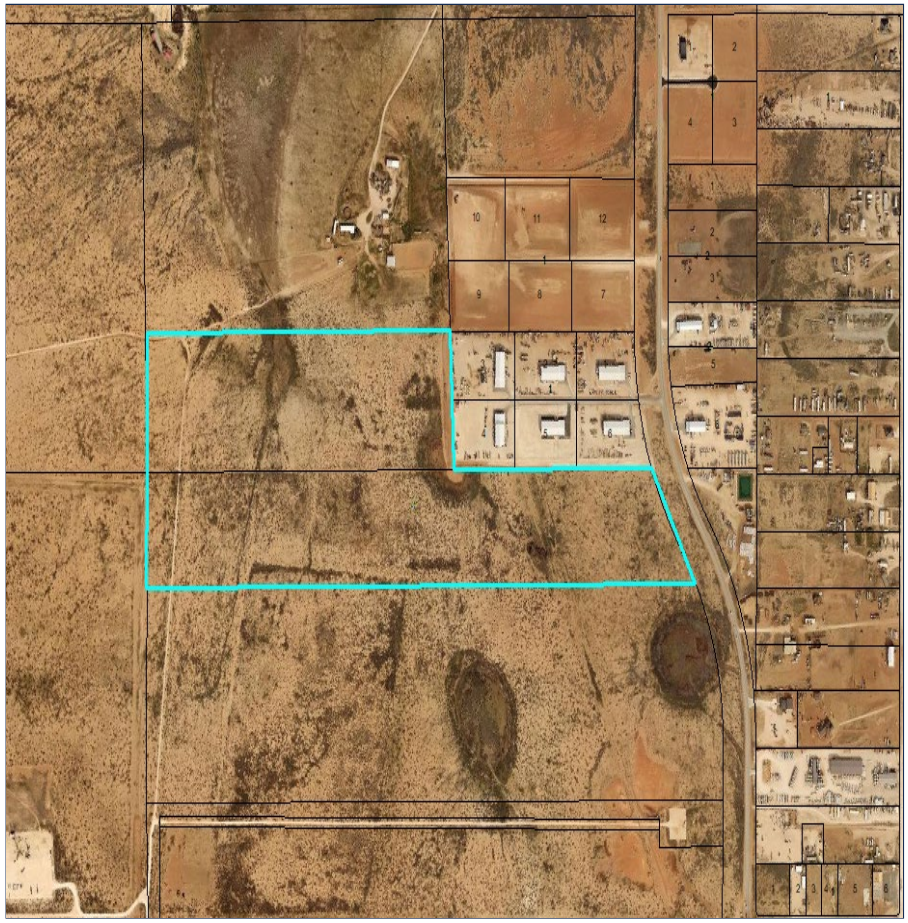
- **Acreage:** 125.04-acres
- **Number of lots: 38** lots
- **Reason for Request:** To obtain addresses and septic permits for commercial use.



LAND USE

- **Current Use:** Vacant

- **Proposed Use:** Commercial
- **Surrounding Uses:**
  - North: Commercial and Vacant
  - West & South: Vacant
  - East: Commercial



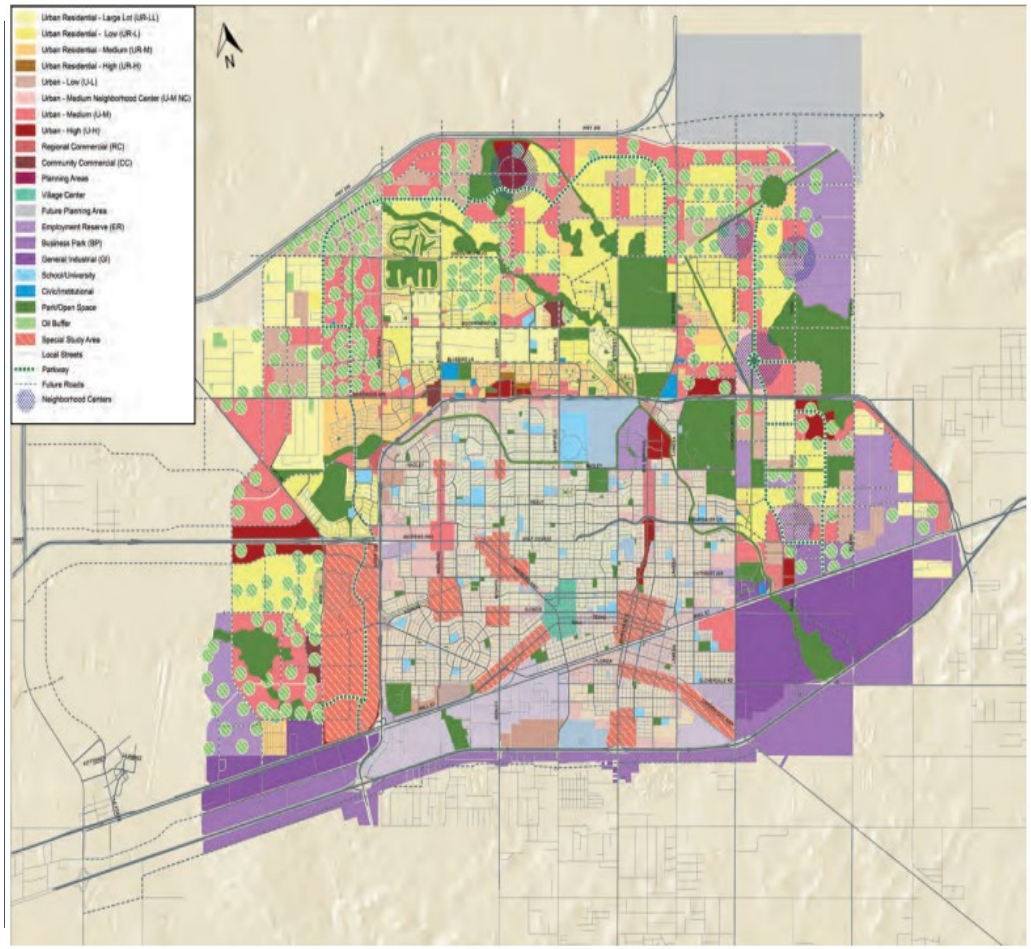
LAND USE

On South County Road 1232, Looking West

MIDLAND
Be the Energy!

COMPREHENSIVE PLAN ANALYSIS

- **TCT Land Use Designation:**
  - Not designated



STAFF RECOMMENDATION

- The Planning and Zoning Commission recommended approval of this plat on October 7, 2024.

Staff recommends APPROVAL of the preliminary plat of Gold Sands Addition subject to the following conditions:

A. **Approval by the City Council shall be required prior to consideration of a final plat by the Commission on which any preliminary plat is ten hectares (25 acres) or more in area and is located in any survey section (approximately one square mile) which does not contain a publicly owned site, or sites intended for both a public school and park, or public site reservation therefor; [11-2-3(D)11(a)(6)].**

B. **Proof of ownership must be provided at final plat submittal. [11-2-3(H)3(m)(1)]**

C. **Approval of this preliminary plat is subject to the Final plat including all plat comments, conditions, and requirements must be satisfied by all pertinent City departments before filing for recording with the County Clerk of Midland County, Texas. [11-2]**

MIDLAND Be the Energy!

MISSION

Deliver exceptional services and promote a high quality of life and place for ALL our citizens.

City Council Meeting

Item Number: 19

Meeting Date: October 22, 2024

To: City Council / City Manager

From: Landon Ochoa, Planning Division Manager

Subject: MOTION RATIFYING THE PLANNING AND ZONING COMMISSION'S APPROVAL OF AN INSTRUMENT VACATING THE PLAT OF LONGVIEW SUBDIVISION, SECTION 3, MIDLAND COUNTY, TEXAS (GENERALLY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF NORTH COUNTY ROAD 1275 AND WEST COUNTY ROAD 50) (DISTRICT: NONE) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

LCA, on behalf of GF Elite Real Estate Holdings, is requesting to vacate the plat of Longview Subdivision, Section 3 located at 9601 West County Road 50 for the purpose of reconfiguring the layout of the subdivision for future residential development.

Recommended City Council Action:

Approve

Fiscal Impact:

None.

Strategic Priority:

Quality of Life and Place

Discussion:

The subdivision is currently undeveloped with all lots in the subdivision being owned by GF Elite Real Estate Holdings. The developer previously had submitted the preliminary plat of Longview Subdivision, Section 4, a proposed replat of Longview Subdivision, Section 3 which was

withdrawn before reaching its scheduled reading by the P&Z Commission due to complications with the layout of the roads as shown in the two plats. Specifically, the approved layout of the roads in Longview Subdivision, Section 3 are not reflected in the Longview Subdivision, Section 4 Preliminary Plat. These roads are North County Road 1273 and 1274. Therefore, the existing subdivision will need to be vacated in order to proceed with Longview Subdivision, Section 4.

This request has been circulated to the respective City departments for internal review and their comments, conditions, and requirements are as follows:

Current Zoning:

ETJ, Extraterritorial Jurisdiction

This request has been routed to all respective departments for internal review. The comments are below.

BUILDING CODE: (Approved)

No objections.

ENGINEERING: (Approved with Conditions)

No objections to vacation. Applicant shall be responsible for relocating any utilities, if existing, or providing easements as needed.

TRANSPORTATION: (Approved)

No objections to vacation. Applicant shall be responsible for relocating any utilities, if existing, or providing easements as needed.

FIRE: (Approved)

No objections.

OIL AND GAS: (Approved)

Not in the City limits- no oil or gas jurisdiction.

GIS: (Approved)

Any exclusions being omitted from the vacation should be included in the deed. ("Save and Except:...") Another file depicting the vacation visual and the exclusions should be provided. Boundary does not close. Please check calls.

PLANNING: (Approved)

The Planning and Zoning Commission approved this request on October 7, 2024.

Staff recommends approval of this request.

Attachments:

Application
Longview Subdivision, Section 3
Longview Subdivision, Section 4 Preliminary Plat
Declaration Vacating a Plat
Maps
PowerPoint Presentation

City Manager's Office

LCA Job # 2017-044 /2022-072

MIDLAND Planning Division

Vacate Right-of-Way/Public Utility Easement/Land/Street Application

Project Number: _____

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: GF Elite Real Estate Holdings, LTD		Phone (432) 563-0663 Email Filyegf-elite.com	
Address 303 W. Wall Street, Suite 2400	City Midland	State TX	Zip 79701

Application is hereby made to the City Council to vacate the following:

- ☒ Right-of-Way
- ☐ Public Utility Easement
- ☒ Land
- ☒ Street

Description of Address: All of Longview Subdivision, Section 3 save and except Dedication Area No. 4 and the 20' waterline easements.

Reason for Request: Owner is requesting this vacation in order to re-plat the area with a new lot/street layout.

Reasons, in applicant's opinion, why the requested vacation will not adversely affect the public welfare or will contribute to it in a positive way: This vacation will not adversely affect the public welfare, but will enhance the area with a new planned development.

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Sealed metes and bounds description of the property to be vacated (included on the map) and total square feet of vacation. Include ownership, legal and deed information for adjacent property owners
- Digital Copies of Site Plan (PDF/JPEG)

Utility Company Approval

Clearance is needed from the following utility companies:

- City of Midland
- Atmos Energy
- Sharyland Utilities
- Oncor Electric
- AT&T
- Suddenlink Cable TV Co.
- Grande Communications

The City will route the request to these companies, but it is the applicant's responsibility to ensure clearance has been obtained to resolve any issues that may arise.

Policies

1. If the vacation request involves only a portion of a section right-of-way, such that approval would not affect the public's ability to travel along said right-of-way, then the request will be scheduled for consideration by the City Council. No public hearing will be needed.

2. If the vacation request involves an entire section of right-of-way, such that approval would cause the public to lose all rights to use it, then the following procedures apply:

   a. Nearby land owners who have a reasonable expectation to use said right-of-way, as determined by the Transportation Division, must first agree to the proposed vacation. It is the applicant's responsibility to obtain a letter of concurrence signed by the affected landowners.

   b. If all letters are received indicating that the affected landowners agree to the request, then a public hearing before the City Council will be scheduled. The Transportation Division will mail public notice of the hearing to landowners within 400 feet of the affected right-of-way.

   c. If a request is approved, the right-of-way shall be divided into two equal parts, with each half becoming the property of the respective abutting owner. If the applicant desires to own the entire width, he or she must negotiate with the opposite landowner.

Signatures

Applicant (signature): [signature] (LCA Authorized Agent)		Date: July 10, 2024
Affected Property Owners:		
Signature:	Print:	Date:
Signature:	Print:	Date
Signature:	Print:	Date
Signature:	Print:	Date

The Vacation of right-of-way/public utility easement/land/street 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.

FOR OFFICE USE ONLY

☐ 1 FOLDED Copy of Survey Plat ☐ Plans in Digital Format (PDF/JPEG)

☐ Application Fee

Check #_____

Received By:	Date:

****Application will not be considered for scheduling until reviewed by a planner.****

8 July 2024

City of Midland- Planning Department
300 N. Loraine
Midland, Texas 79702

To whom it may concern:

I/We G. F. Elite Real Estate Holdings, LTD, authorize LCA to act as our agent for the platting/zoning purposes regarding our project Longview Addition. As Client we consent to LCA signing all applications and/or needed documentation, receiving all comments and/or needed information and representing me/us at any all hearings for the duration of this project.

Sincerely,

By: Karla Muñoz

Date: 7/8/2024

STATE OF TEXAS §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared Karla Muñoz, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said G.F. Elite Real Estate Holdings LTD for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 8th day of July, A.D., 2024.

Notary Public in and for the State of Texas
My Commission Expires: 11-1-2027

KRISTIN JEANNE PEREZ
Notary Public, State of Texas
Comm. Expires 11-01-2027
Notary ID 125127094

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

DECLARATION VACATING A PLAT

THE STATE OF TEXAS §
§ KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF MIDLAND §

WHEREAS, the plat of Longview Subdivision, Section 3, Midland County, Texas (the "Plat"), was approved by the Planning and Zoning Commission of the City of Midland, Texas on October 4, 2018, and filed for record on October 5, 2018, as Instrument No. 2018-29009 in Cabinet L at page 98 of the Midland County Plat Records; and

WHEREAS, the sole owner and proprietor of the tract of land covered by the Plat is G. F. ELITE REAL ESTATE HOLDINGS, LTD., a Texas limited partnership ("Owner");

NOW, THEREFORE, Owner does hereby declare the Plat **VACATED** upon approval by the City of Midland, Texas.

EXECUTED on this 6 day of September, 2024.

GF ELITE REAL ESTATE HOLDINGS LTD

By: _____
Filberto Lozoya, President / Owner

ACKNOWLEDGMENT

STATE OF TEXAS)
) SS.
COUNTY OF MIDLAND)

This instrument was acknowledged before me on the 6 day of September, 2024, by FILBERTO LOZOYA, as President and Owner of G. F. ELITE REAL ESTATE HOLDINGS, LTD., a Texas limited partnership, on behalf of said limited partnership.

KARLA MICHELLE MUNOZ NOTARY PUBLIC STATE OF TEXAS ID 132268810 EXP. 12-02-2027

_____
Notary Public in and for the State of Texas

Karla Munoz
Name of Notary

My commission expires: 12/2/2027

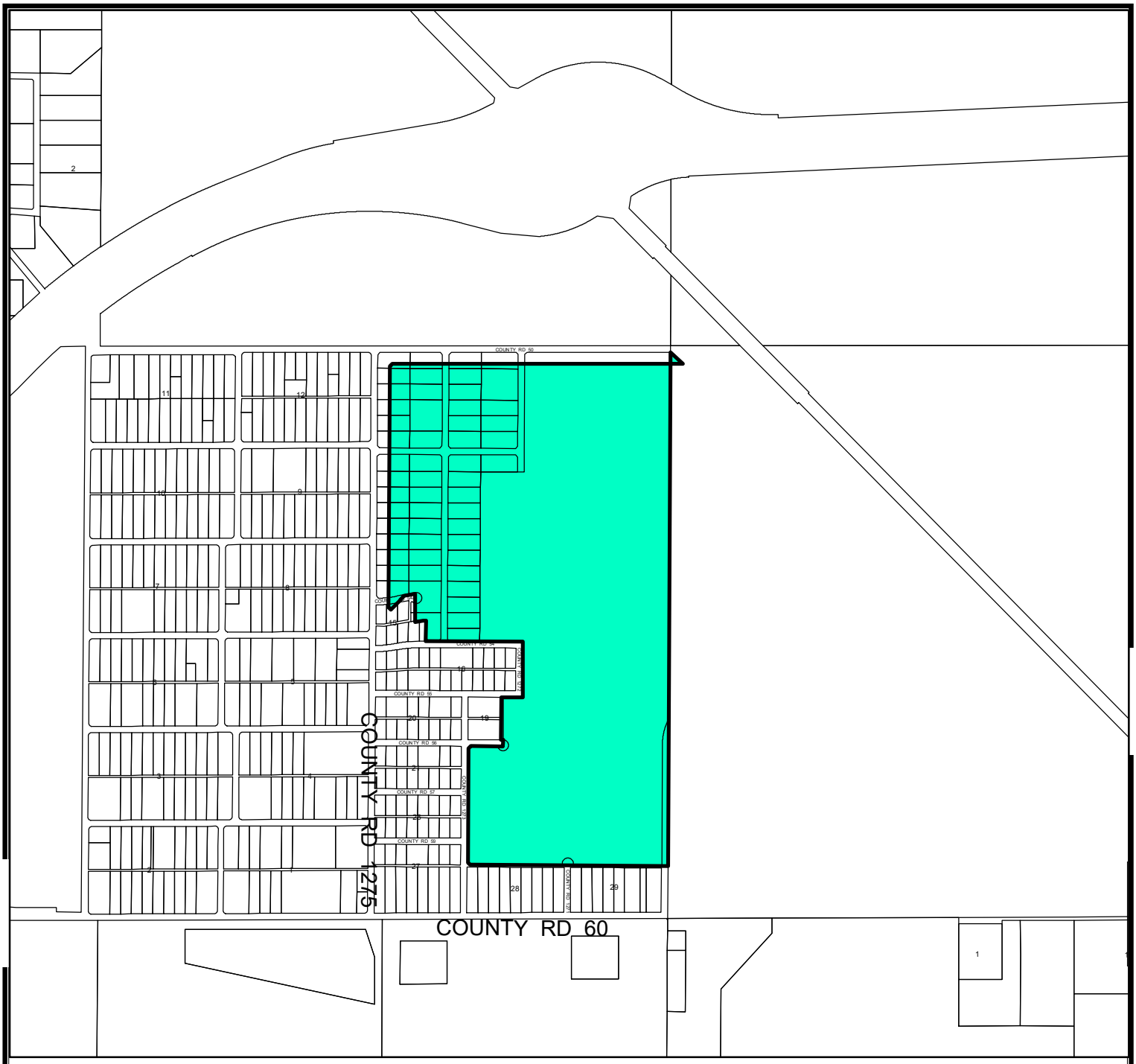
CERTIFICATE OF APPROVAL OF VACATION OF PLAT

This is to certify that the VACATION of the Plat of Longview Subdivision, Section 3, was APPROVED by proper action of the Planning and Zoning Commission of the City of Midland, Texas on this 7 day of October, 2024.

PLANNING AND ZONING COMMISSION
OF THE CITY OF MIDLAND, TEXAS

By: _____
Luey Sisniega, Chair

By: _____
Landon Ochoa, Secretary



Location Map

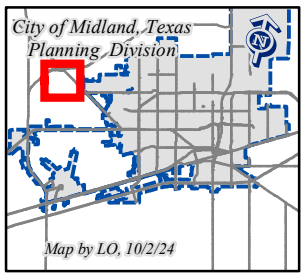
V-24-0065 **Scale: 1" = 600'**

Motion approving an instrument vacating the plat of Longview Subdivision, Section 3, Midland County, Texas.

Generally located at the southeast corner of the intersection of North County Road 1275 and West County Road 50. (ETJ)

L E G E N D

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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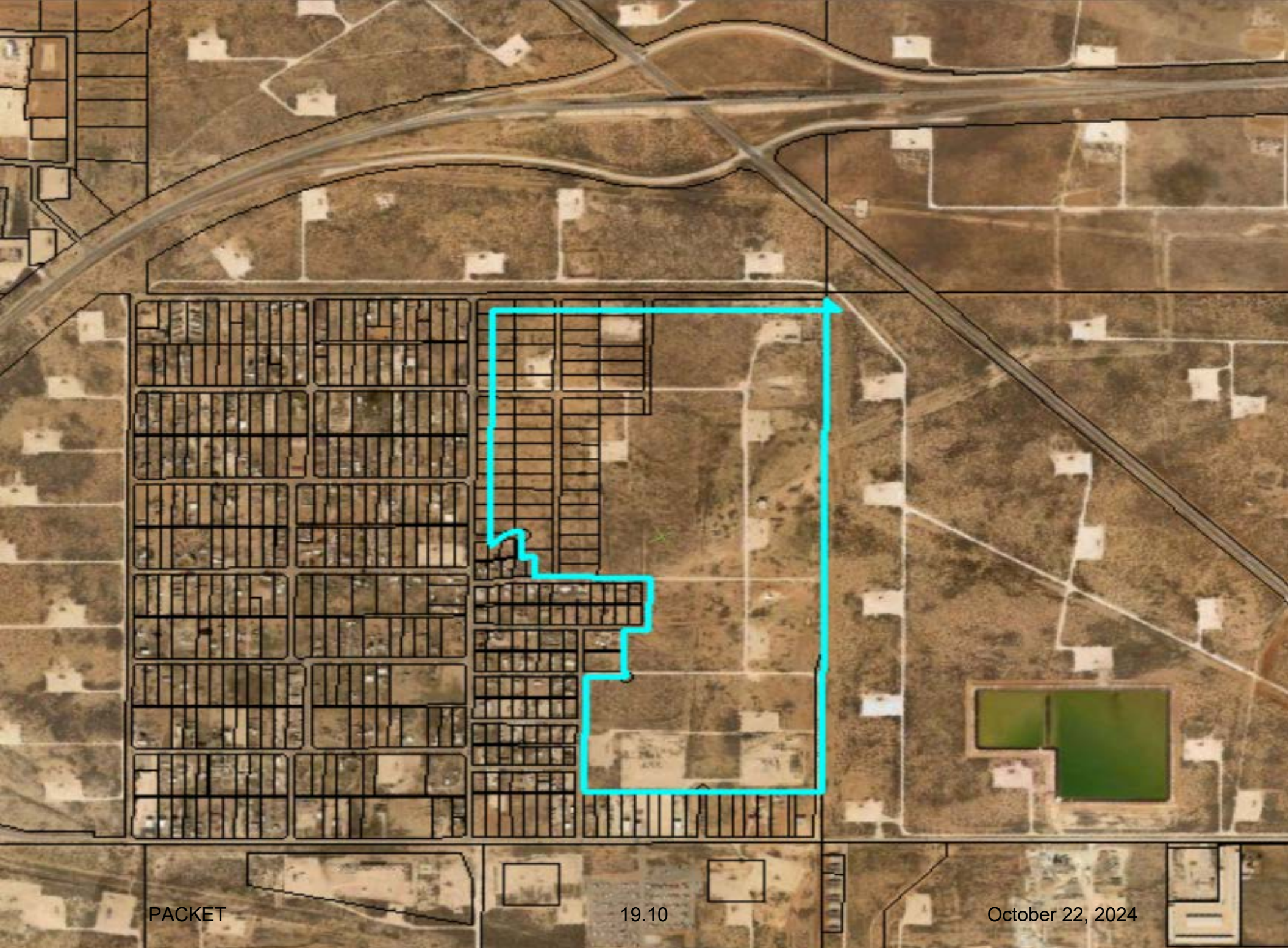


LONGVIEW SUBDIVISION, SECTION 3

REPLAT OF ALL OF LOT 1, BLOCK 30, LONGVIEW SUBDIVISION, SECTION 2 BEING 243.30 ACRES SITUATED IN THE EAST HALF OF SECTION 20, BLOCK 40, T-1-S, T&P RR SURVEY, MIDLAND COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF MIDLAND :

Whereas, Norbert Csaszar is/are the record owner(s) of Lot 1, Block 30, Longview Subdivision, Section 2, being 243.30 Acres situated in the east half of Section 20, Block 40, T-1-S, T&P RR Survey, Midland County, Texas, and more particularly described as follows:

Beginning at (N= 10,704,992.08 and E= 1,707,659.35) a 1/2" Iron rod with plastic cap marked "LCA ODESSA TX" set for the northeast corner of this tract and being in the east line of North County Road 1270 as shown on the plat of Longview Subdivision, recorded in Cabinet C, Page 71, Plat Records Midland County, from whence a 5/8" Iron Rod with Aluminum Cap marked "Piper" found at the northeast corner of Section 20, Block 40, T-1-S, T&P RR Survey, bears North 14°13'50" West, a distance of 60.00 feet;

THENCE, South 14°13'50" East, along the east line of said Longview Subdivision, the east right-of-way of North County Road 1270, and the east line of said Section 20, Block 40, a distance of 4,762.88 feet to a point;

Thence, South 75°50'10" West, passing the southeast corner of Lot 8 Block 29 of said Longview Subdivision in the north line of an alley at 60.00 feet, and along the south line of said Block 29 and Block 28, a distance of 1,839.14 feet;

THENCE, North 59°09'50" West, a distance of 28.28 feet;

THENCE, North 14°09'50" West, along the west line of said Block 28, the west line of Block 25 and Block 22 of the said Longview Subdivision, a distance of 1,059.59 feet;

THENCE, North 30°50'10" East, a distance of 28.28 feet to the south right-of-way of Spurkville County Road 58;

THENCE, North 75°50'10" East, along the south right-of-way of said Sparksville County Road 58 and the north line of said Block 22, a distance of 300.03 feet;

THENCE, North 14°09'50" West, crossing the right-of-way of said Sparkville County Road 58, a distance of 59.83 feet to the north right-of-way of said Sparkville County Road 58 and the south line of Block 19 of said Longview Subdivision;

THENCE, South 75°50'10" West, along the north right-of-way of said Sparkville County Road 58 and the south line of Block 19 of said Longview Subdivision, a distance of 20.00 feet to the southeast corner of Lot 16, Block 19 of the said Longview Subdivision;

THENCE, North 14°09'50" West, along the east line of said Lot 16 and the east line of Lot 3, Block 19 of said Longview Subdivision, a distance of 396.13 feet to the northeast corner of said Lot 3, Block 19, in the south right-of-way of Logsdon County Road 57;

THENCE, North 75°50'10" East, along the south right-of-way of said Logsdon County Road 57 and the north line of said Block 19, a distance of 199.79 feet;

THENCE, North 14°09'50" West, crossing Logsdon County Road 57 and along the west line of Lots 26 and 1, Block 17 of said Longview Subdivision and the east right-of-way of Lancer Street, a distance of 516.01 feet to the north right-of-way of Jamesville County Road 56;

THENCE, South 75°50'10" West, along the north right-of-way of said Jamesville County Road 56 and the south line of Block 15, a distance of 902.03 feet to the southeast corner of Lot 23, Block 15 of the said Longview Subdivision,

THENCE, along the lines of said Lot 23, Block 15 the following three calls:
1) North 14°09'50" West, a distance of 188.50 feet;
2) South 75°50'10" West, a distance of 23.28 feet;
3) South 66°10'37" West, a distance of 77.82 feet to the northwest corner of said Lot 23 and the northeast corner of Lot 24, Block 15:

THENCE, North 14°09'50" West, along the east line of Lot 3 Block 15 of the said Longview Subdivision, and crossing Bristow County Road 55, a distance of 262.63 feet to the north right-of-way of said Bristow County Road 55 and the south line of Block 12 of the said Longview Subdivision, said point being the PC of a curve to the left;

THENCE, along the north right-of-way of said Bristow County Road 55 and the south right-of-way of said Block 12, curve to the left having an arc distance of 10.68 feet, a delta angle of 00°37'11", a radius of 987.26 feet, and a chord bearing of S 64°21'32"W and a chord distance of 10.68 feet;

THENCE, South 64°02'22" West, along said right-of-way of Bristow County Road 55 and the south line of said Block 12, a distance of 100.00 feet to a PC of a curve to the right;

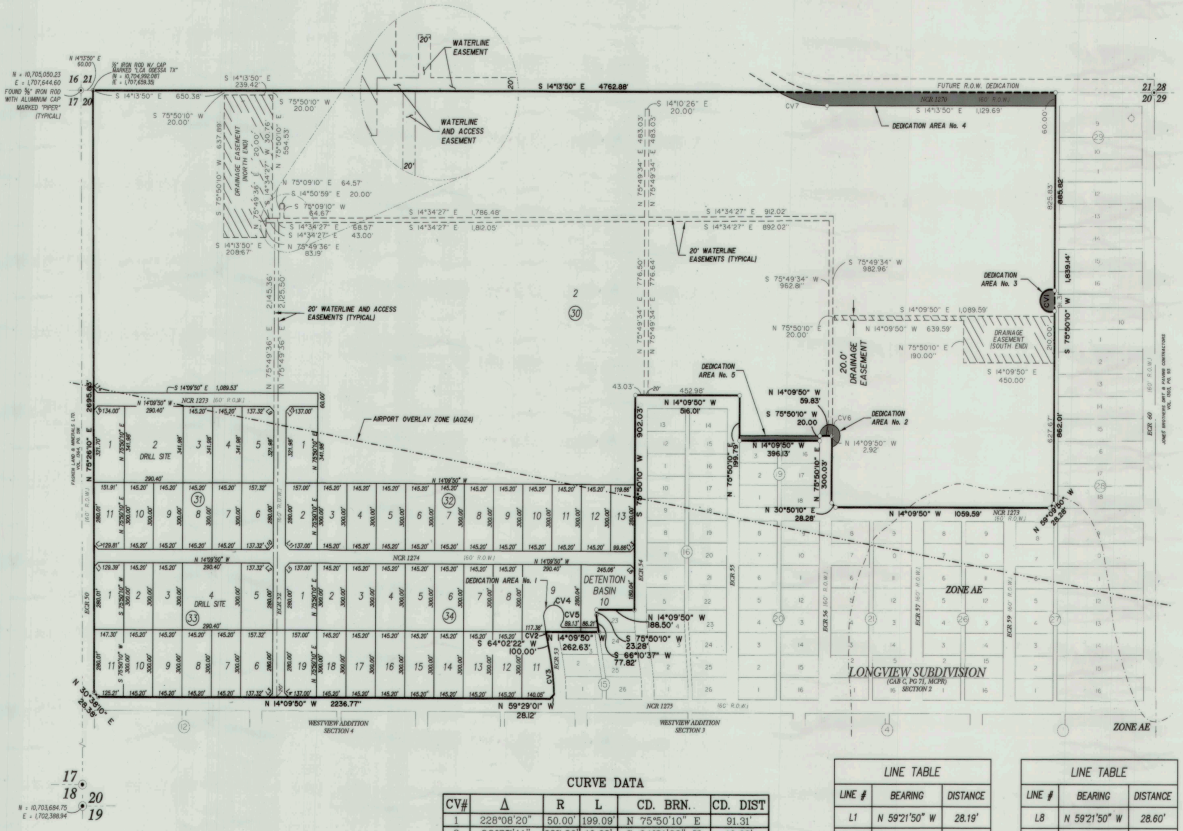
THENCE, along the north line of said right-of-way of Bristow County Road 55 and the south line of said Block 12, curve to the right having an arc distance of 172.99 feet, a delta angle of 10°02'22", a radius of 987.26 feet, and a chord bearing of S 29°13'55"W and a chord distance of 172.77 feet;

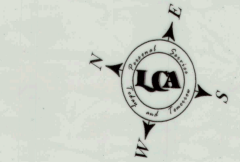
THENCE, North 59°29'01" West, a distance of 28.12 feet to the east right-of-way of Perryville County Road 1275 and the west line of said Block 12,

THENCE, North 14°09'50" West, along the east right-of-way of said Perryville County Road and the east lines of said Block 12 and the east lines of Blocks 11, 7, 6 and 1 of the said Longview Subdivision, a distance of 2,236.77 feet;

THENCE, North 30°50'10" East, a distance of 28.38 feet to the south right-of-way of said Allenville County Road 58;

THENCE, North 75°26'10" East, along the south right-of-way of said Allenville County Road, a distance of 2,695.83 feet to the POINT OF THE BEGINNING, containing 243.30 acres of land.

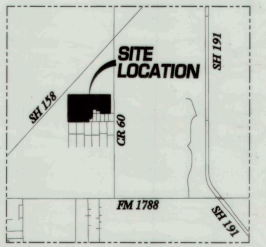




300' 0 300'
SCALE : 1" = 300'

LEGEND

- DRAINAGE EASEMENT
- WATERLINE EASEMENT
- WATERLINE AND ACCESS EASEMENT
- SECTION CORNER
- BOUNDARY CORNER



LOCATION MAP
N.T.S.

AREA TABULATION

GROSS AREA		243.30 AC
LESS:	DEDICATION AREA 1	0.31 AC
	DEDICATION AREA 2	0.12 AC
	DEDICATION AREA 3	0.14 AC
	DEDICATION AREA 4	1.78 AC
	DEDICATION AREA 5	0.18 AC
		2.53 AC
NET AREA		240.77 AC
AREA IN WATER LINE EASEMENTS		8.33 AC
AREA IN DRAINAGE EASEMENTS		5.91 AC

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That I, Norbert Csaszar, do hereby adopt this plat designating the herein described property as , an addition to Midland County, Texas, and do hereby dedicate to the public use forever the streets, alley and easements shown thereon for the purpose and consideration therein expressed, and an easement of egress and ingress for trash collection, and location and maintenance of trash containers, and as a condition of said easement that no construction shall commence on the said lot or lots until the exact location of said containers there with have been selected and approved by the Director of Utilities.

WITNESS our hands at Midland, Texas this the 13th day of June 2018.

Norbert Csaszar, President
Midenergy Real Estate Holdings, LLC
10000 Memorial Drive, Suite 550
Houston, TX 77027

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 Norbert Csaszar, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me 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 13th day of June 2018.

My commission expires: 3/3/19

JULIE WALKER
Notary Public
STATE OF TEXAS
My Comm. Exp. March 3, 2019

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

CERTIFICATE OF APPROVAL

For approval by the Commission:

This is to certify that the above and foregoing Plat of Longview Subdivision, Section 3, was approved by proper action of the City Planning and Zoning Commission of the City of Midland, Texas on this 11th day of October, 2018

SIGNED: _____
CHAIRMAN OF PLANNING & ZONING
JOSH SPARKS

SIGNED: _____
SECRETARY OF PLANNING & ZONING
CRISTINA ODENBORG

THE UTILITY COMPANIES CERTIFICATE

This plat has been checked for accessibility of utilities

Mark Lieb MARK LIEB
AEMOS ENERGY

Jeff Underwood
AT&T TELEPHONE COMPANY

Christi Gilliam
ONCOR ELECTRIC

Luis Montez
SUDDENLINK COMMUNICATIONS

GRANDE COMMUNICATIONS

ENG. _____ E.T. _____
SVY. _____ DFT. _____
LCA JOB No. 2017-044

CURVE DATA

CV#	Δ	R	L	CD. BRN.	CD. DIST
1	228°08'20"	50.00'	199.09'	N 75°50'10" E	91.31'
2	00°37'11"	987.26'	10.68'	S 64°21'32" W	10.68'
3	10°02'22"	987.26'	172.99'	S 69°13'55" W	172.77'
4	229°15'05"	50.00'	200.04'	S 03°01'15" W	90.90'
5	131°50'21"	10.00'	23.01'	S 51°43'38" W	18.26'
6	256°32'07"	50.00'	225.81'	S 25°02'17" W	77.42'
7	28°21'29"	499.95'	247.45'	N 00°03'07" W	224.93'

LINE TABLE

LINE #	BEARING	DISTANCE
L1	N 59°21'50" W	28.19'
L2	N 30°50'10" E	28.28'
L3	S 59°09'50" E	28.28'
L4	S 30°50'10" W	28.28'
L5	N 59°09'50" W	28.28'
L6	N 30°50'10" E	28.28'
L7	S 30°38'10" W	28.38'

LINE TABLE

LINE #	BEARING	DISTANCE
L8	N 59°21'50" W	28.60'
L9	N 30°50'10" E	28.28'
L10	S 59°09'50" E	28.28'
L11	S 30°50'10" W	28.28'
L12	N 59°09'50" W	28.28'
L13	S 59°09'50" E	28.28'
L14	N 30°38'10" E	28.80'

SPECIAL STATE PLANE COORDINATE NOTE

The Coordinates, Bearings and Distances recited above are relative to the Texas Coordinate System, 1983 NAD (Central Zone) with a combined grid factor of 0.999904315 and a Theta Angle of -00°54'00", and are based upon the City of Midland Control Monuments as published in US Survey Feet as provided by the City of Midland, Texas.

GENERAL NOTES

1. Approval of a site plan by the City of Midland may be required before this lot may by developed and before a building permit may be obtained.
2. Selling a portion of this addition by metes and bounds may be a violation of city ordinance and state law subject to fines and withholding of utilities and building permits.
3. The property lies within the City of Midland's "Airport Height and Compatibility Land Use Zoning" (AOZ-4) Ordinance No. 9302. Any person who desires to erect a new structure or rebuild, replace, or enlarge an existing structure or establish a new use or substantially change an existing use in the AOZ-4 must apply for and receive a permit. A permit shall be granted unless the new structure or the new use would be a height hazard or a prohibited land use as set forth in Sections 11-11-8, 11-11-9, and Table 1 of this chapter or would otherwise violate this chapter. Applications for permits shall be submitted to and issued by the City of Midland Building Official.
4. The Coordinates for the ends of the AOZ-4 line as shown, were provided by The City of Midland GIS Department.
5. Lots [illegible] as shown as per the current flood insurance rate map (Firm) No. [illegible] F dated September 16, 2005.

SURVEYOR'S CERTIFICATE
KNOW ALL MEN BY THESE PRESENTS:

I, John F. Landgraf, a Registered Professional Land Surveyor, No. 2410, do hereby certify that the above plat represents a survey actually made on the ground by me or under my direct supervision and there are no apparent encroachments or visible easements except as shown.

STATE OF TEXAS
JOHN F. LANDGRAF
2410
REGISTERED PROFESSIONAL LAND SURVEYOR

John F. Landgraf, R.P.L.S. #2410
March 1, 2018

PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS
No. 2018-29099 CABINET C
DATE 10/17/18 PAGE 98

OWNER: NORBERT CSASCAR
MIDENERGY REAL ESTATE HOLDINGS, LLC
10000 MEMORIAL DRIVE, SUITE 550
HOUSTON, TX 77027

ENGINEER: LANDGRAF, CRUTCHER & ASSOC. INC.
521 NORTH TEXAS
ODESSA, TEXAS 79761-5131
PHONE: (432) 332-5058

LONGVIEW SUBDIVISON, SECTION 3

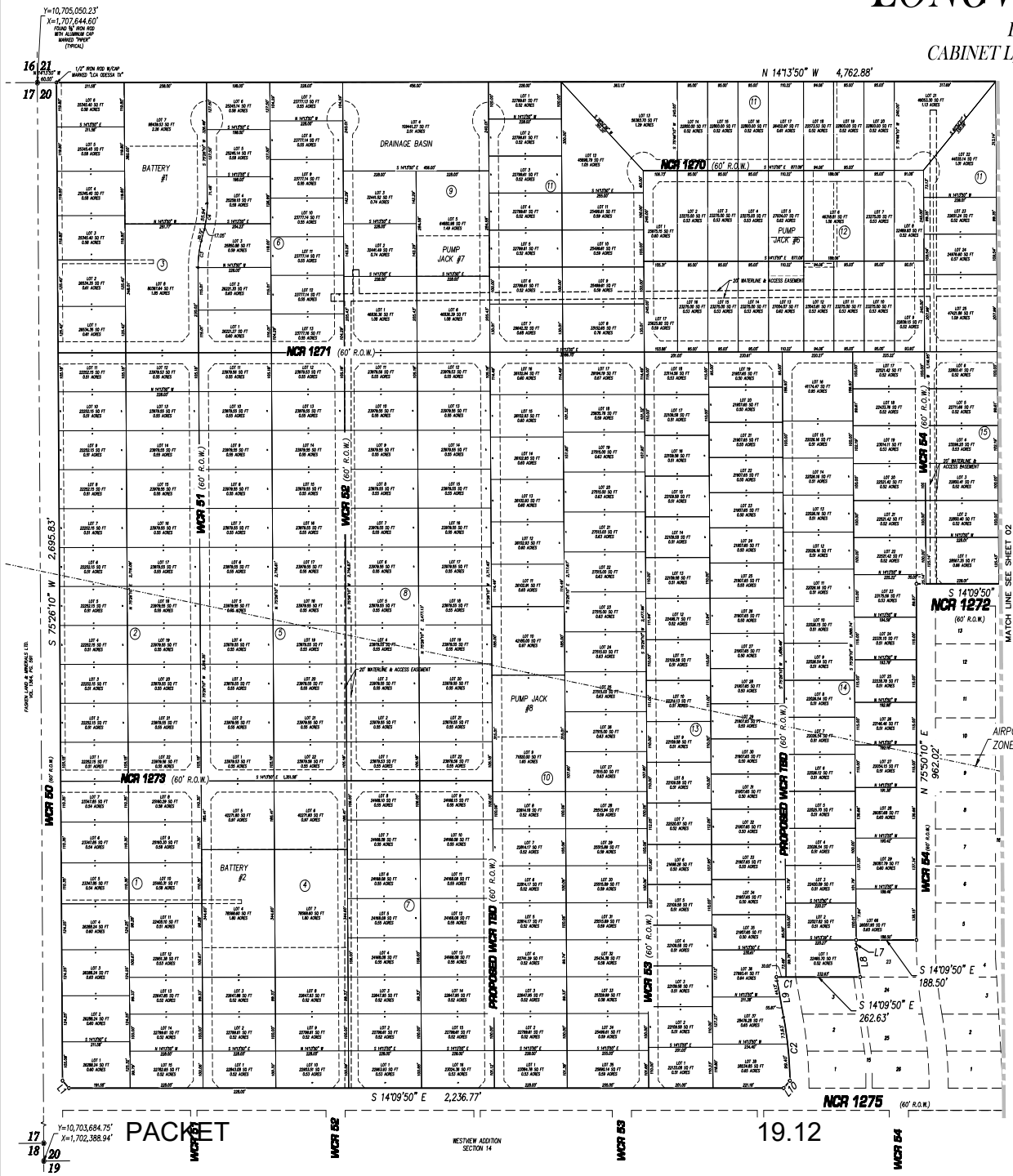
LCA — LANDGRAF, CRUTCHER & ASSOCIATES, INC. — ENVIRONMENTAL · CIVIL ENGINEERING · LAND SURVEYING
521 North Texas, Odessa Tx. 79761 F-001363 F-10034300
Phone # (432) 332-5058 E-Mail : lca@lcaodessa.com
Personal Service, Today and Tomorrow

PACKET 19.11 October 22, 2024

PRELIMINARY PLAT

LONGVIEW SUBDIVISION, SECTION 4

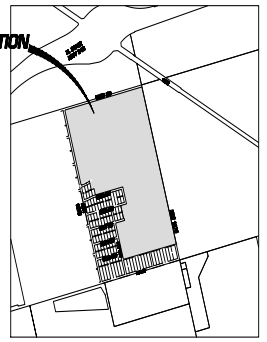
BEING A REPLAT OF LONGVIEW SUBDIVISION, SECTION 3
CABINET L, PAGE 98 LOCATED IN SECTION 20, BLOCK 40, T-1-S, T&P RR SURVEY
CITY AND COUNTY OF MIDLAND, TEXAS



LEGEND

- ● FOUND 1/2" I.R. W/CAP "LCA ODESSA TX" UNLESS OTHERWISE NOTED
- ○ SET 1/2" I.R. W/CAP UNLESS OTHERWISE NOTED

NOTE:
1. ALL DRILL SITE RADII ARE 135'
2. SEE EASEMENT DETAIL SHEET 03



VICINITY MAP
SCALE: N.T.S.

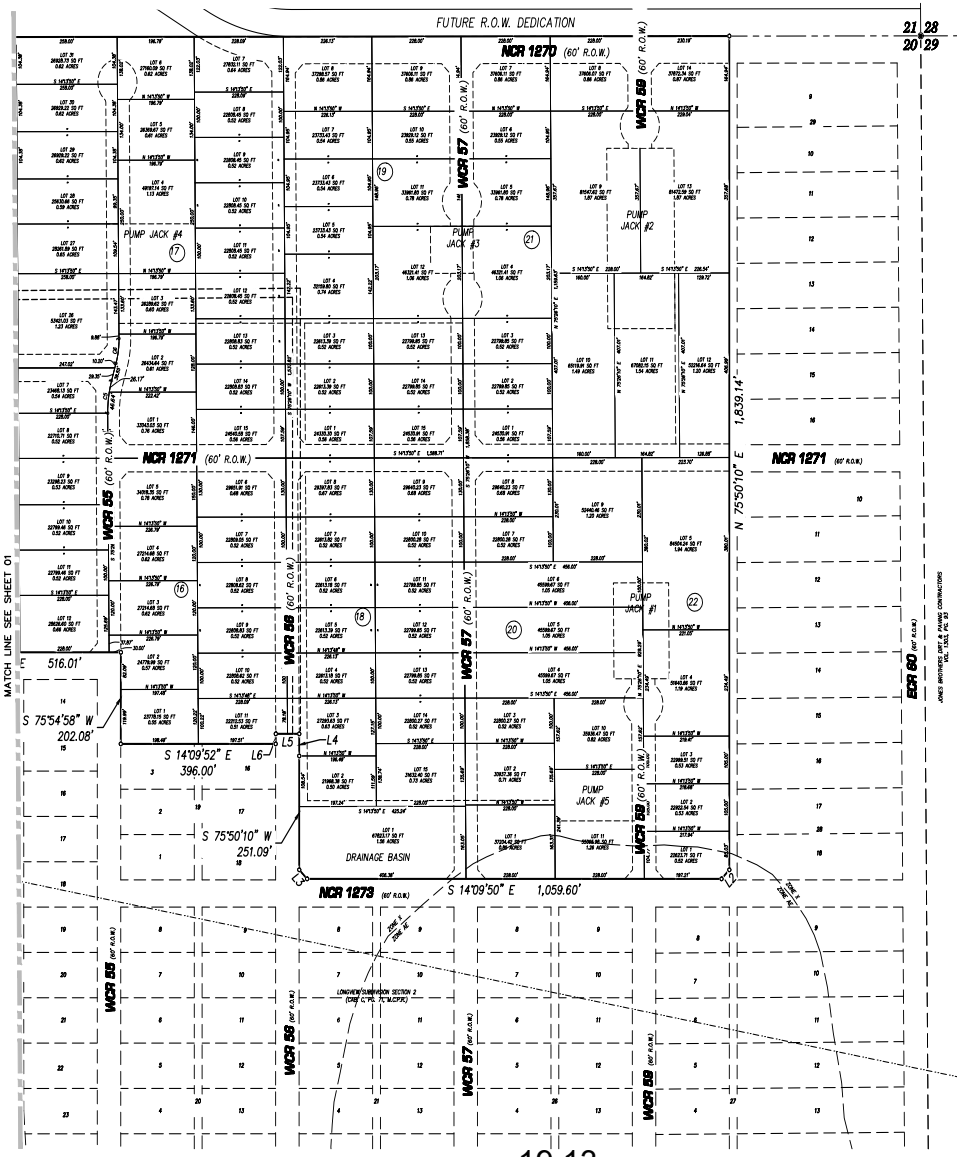
ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING
521 North Texas, Odessa Tx. 79761 F-001363 F-10034300
Phone # (432) 332-5038 E-Mail : lca@lcaodessa.com

PACKET 19.12 October 22, 2024

PRELIMINARY PLAT

LONGVIEW SUBDIVISION, SECTION 4

BEING A REPLAT OF LONGVIEW SUBDIVISION, SECTION 3
CABINET L, PAGE 98 LOCATED IN SECTION 20, BLOCK 40, T-1-S, T&P RR SURVEY
CITY AND COUNTY OF MIDLAND, TEXAS



150' 0 150'
SCALE : 1" = 150'

LEGEND

- ● FOUND 1/2" I.R. W/CAP "LCA ODESSA TX" UNLESS OTHERWISE NOTED
- ○ SET 1/2" I.R. W/CAP UNLESS OTHERWISE NOTED

NOTE:
1. ALL DRILL SITE RADII ARE 135'
2. SEE EASEMENT DETAIL SHEET 03

LCA ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING
521 North Texas, Odessa Tx. 79761 F-001363 F-10034300
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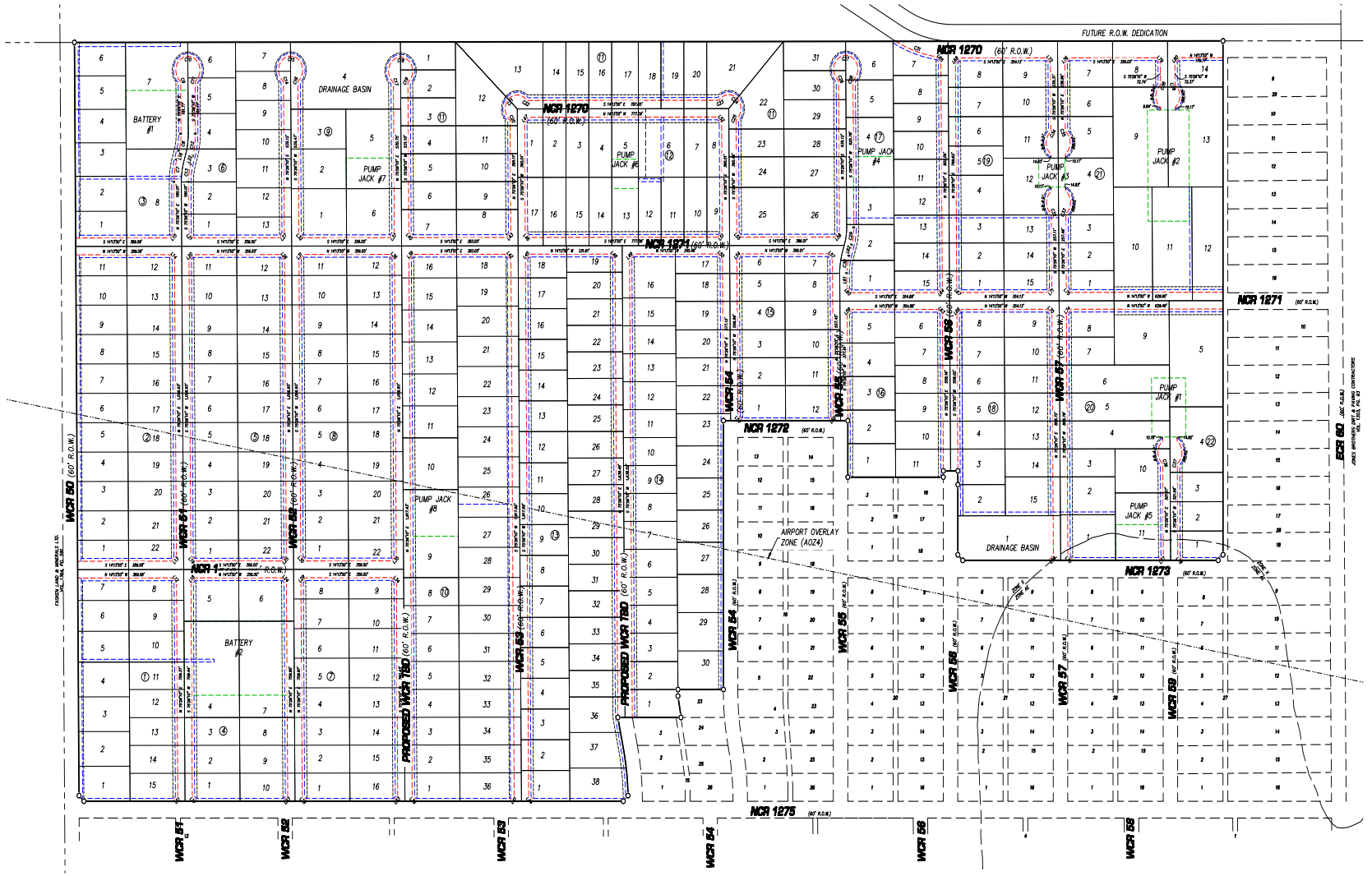
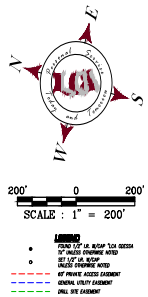
Personal Service, Today and Tomorrow

PRELIMINARY PLAT

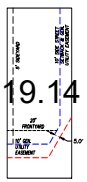
LONGVIEW SUBDIVISION, SECTION 4

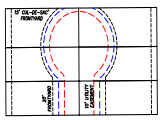
BEING A REPLAT OF LONGVIEW SUBDIVISION, SECTION 3
CABINET L, PAGE 98 LOCATED IN SECTION 20, BLOCK 40, T-1-S, T&P RR SURVEY
CITY AND COUNTY OF MIDLAND, TEXAS





SET BACK DETAIL





ALL FRONTYARD CUL-DE-SAC SETBACK LINES ARE 15 FEET
ALL FRONTYARD SETBACK LINES ARE 20 FEET
ALL SIDEYARD SETBACK LINES ARE 5 FEET
ALL SIDE STREET SETBACK LINES ARE 10 FEET
ALL FRONTYARD UTILITY EASEMENT ARE 10 FEET

PACKET 19.14

ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING
521 North Texas, Odessa Tx. 79761 F-001363 F-10034300
Phone # (432) 332-5038 E-Mail : lca@lcaodessa.com

PRELIMINARY PLAT

LONGVIEW SUBDIVISION, SECTION 4

BEING A REPLAT OF LONGVIEW SUBDIVISION, SECTION 3
CABINET L, PAGE 98 LOCATED IN SECTION 20, BLOCK 40, T-1-S, T&P RR SURVEY
CITY AND COUNTY OF MIDLAND, TEXAS

THE STATE OF TEXAS
COUNTY OF MIDLAND

Beginning at (N= 10,704,992.08 and E= 1,707,659.35) a 1/2" Iron rod with plastic cap marked "LCA ODESSA TX" set for the northeast corner of this tract and being in the east line of North County Road 1270 as shown on the plat of Longview Subdivision, recorded in Cabinet C, Page 71, Plat Records Midland County, from whence a 5/8" Iron Rod with Aluminum Cap marked "Piper" found at the northeast corner of Section 20, Block 40, T-1-S, T&P RR Survey, bears North 14°13'50" West, a distance of 60.00 feet;

THENCE, South 14°13'50" East, along the east line of said Longview Subdivision, the east right-of-way of North County Road 1270, and the east line of said Section 20, Block 40, a distance of 4,762.88 feet to a point;

Thence, South 75°50'10" West, passing the southeast corner of Lot 8 Block 29 of said Longview Subdivision in the north line of an alley at 60.00 feet, and along the south line of said Block 29 and Block 28, a distance of 1,839.14 feet;

THENCE, North 59°09'50" West, a distance of 28.28 feet;

THENCE, North 14°09'50" West, along the west line of said Block 28, the west line of Block 25 and Block 22 of the said Longview Subdivision, a distance of 1,059.59 feet;

THENCE, North 30°50'10" East, a distance of 28.28 feet to the south right-of-way of Sparksville County Road 58;

THENCE, North 75°50'10" East, along the south right-of-way of said Sparksville County Road 58 and the north line of said Block 22, a distance of 300.03 feet;

THENCE, North 14°09'50" West, crossing the right-of-way of said Sparksville County Road 58, a distance of 59.83 feet to the north right-of-way of said Sparksville County Road 58 and the south line of Block 19 of said Longview Subdivision;

THENCE, South 75°50'10" West, along the north right-of-way of said Sparksville County Road 58 and the south line of Block 19 of said Longview Subdivision, a distance of 20.00 feet to the southeast corner of Lot 16, Block 19 of the said Longview Subdivision;

THENCE, North 14°09'50" West, along the east line of said Lot 16 and the east line of Lot 3, Block 19 of said Longview Subdivision, a distance of 396.13 feet to the northeast corner of said Lot 3, Block 19, in the south right-of-way of Logsdon County Road 57;

THENCE, North 75°50'10" East, along the south right-of-way of said Logsdon County Road 57 and the north line of said Block 19, a distance of 199.79 feet;

THENCE, North 14°09'50" West, crossing Logsdon County Road 57 and along the west line of Lots 26 and 1, Block 17 of said Longview Subdivision and the east right-of-way of Lancer Street, a distance of 516.01 feet to the north right-of-way of Jamesville County Road 56;

THENCE, South 75°50'10" West, along the north right-of-way of said Jamesville County Road 56 and the south line of Block 15, a distance of 902.03 feet to the southeast corner of Lot 23, Block 15 of the said Longview Subdivision,

THENCE, along the lines of said Lot 23, Block 15 the following three calls:
1) North 14°09'50" West, a distance of 188.50 feet;
2) South 75°50'10" West, a distance of 23.28 feet;
3) South 66°10'37" West, a distance of 77.82 feet to the northwest corner of said Lot 23 and the northeast corner of Lot 24, Block 15:

THENCE, North 14°09'50" West, along the east line of Lot 3 Block 15 of the said Longview Subdivision, and crossing Bristow County Road 55, a distance of 262.63 feet to the north right-of-way of said Bristow County Road 55 and the south line of Block 12 of the said Longview Subdivision, said point being the PC of a curve to the left;

THENCE, along the north right-of-way of said Bristow County Road 55 and the south right-of-way of said Block 12, curve to the left having an arc distance of 10.68 feet, a delta angle of 00°37'11", a radius of 987.26 feet, and a chord bearing of S 64°21'32" W and a chord distance of 10.68 feet;

THENCE, South 64°02'22" West, along said right-of-way of Bristow County Road 55 and the south line of said Block 12, a distance of 100.00 feet to a PC of a curve to the right;

THENCE, along the north line of said right-of-way of Bristow County Road 55 and the south line of said Block 12, curve to the right having an arc distance of 172.99 feet, a delta angle of 10°02'22", a radius of 987.26 feet, and a chord bearing of S 29°13'55"W and a chord distance of 172.77 feet;

THENCE, North 59°29'01" West, a distance of 28.12 feet to the east right-of-way of Perryville County Road 1275 and the west line of said Block 12,

THENCE, North 14°09'50" West, along the east right-of-way of said Perryville County Road and the east lines of said Block 12 and the east lines of Blocks 11, 7, 6 and 1 of the said Longview Subdivision, a distance of 2,236.77 feet;

THENCE, North 30°50'10" East, a distance of 28.38 feet to the south right-of-way of said Allenville County Road 58;

THENCE, North 75°26'10" East, along the south right-of-way of said Allenville County Road, a distance of 2,695.83 feet to the POINT OF THE BEGINNING, containing 243.30 acres of land.

LINE TABLE		
LINE #	BEARING	DISTANCE
L1	S 30°38'10" W	28.38'
L2	S 59°09'50" E	28.28'
L3	S 30°50'10" W	28.28'
L4	S 75°50'34" W	48.93'
L5	S 14°09'50" E	60.00'
L6	N 76°54'34" E	22.30'
L7	N 75°50'10" E	23.28'
L8	N 66°10'37" E	77.82'
L9	N 64°02'22" E	99.99'
L10	S 59°29'01" E	28.12'
L11	S 59°21'50" E	28.19'
L12	N 30°36'10" E	28.37'
L13	S 59°23'50" E	28.20'
L14	N 30°36'10" E	28.37'
L15	S 59°23'50" E	28.20'
L16	S 87°50'12" E	30.72'
L17	S 30°38'10" W	28.38'
L18	N 59°23'50" W	28.20'
L19	S 30°36'10" W	28.37'
L20	N 59°23'50" W	28.20'
L21	S 30°36'10" W	28.37'
L22	N 87°50'12" W	30.72'

LINE TABLE		
LINE #	BEARING	DISTANCE
L23	S 59°21'50" E	28.19'
L24	N 30°36'10" E	28.37'
L25	S 59°23'50" E	28.20'
L26	N 30°36'10" E	28.37'
L27	S 59°23'50" E	28.20'
L28	N 30°38'10" E	28.38'
L29	S 59°23'50" E	28.20'
L30	S 30°36'10" W	28.37'
L31	N 59°23'50" W	28.20'
L32	S 30°36'10" W	28.37'
L33	N 59°21'50" W	28.19'
L34	S 30°36'10" W	28.37'
L35	S 59°23'50" E	28.20'
L36	N 30°36'10" E	28.37'
L37	S 59°23'50" E	28.20'
L38	N 30°38'10" E	28.38'
L39	S 59°23'50" E	28.20'
L40	S 30°36'10" W	28.37'
L41	N 59°21'50" W	28.19'
L42	S 30°36'10" W	28.37'
L43	S 59°23'50" E	28.20'
L44	S 30°38'10" W	28.38'

LINE TABLE		
LINE #	BEARING	DISTANCE
L45	N 59°23'50" W	28.20'
L46	S 30°36'10" W	28.37'
L47	N 59°23'50" W	28.20'
L48	N 30°36'10" E	28.37'
L49	N 59°23'50" W	28.20'
L50	N 30°36'10" E	28.37'
L51	S 59°23'50" E	28.20'
L52	N 30°36'10" E	28.37'
L53	S 30°38'10" W	28.38'
L54	N 59°23'50" W	28.20'
L55	S 30°36'10" W	28.37'
L56	S 59°21'50" E	28.19'
L57	N 30°36'10" E	28.37'
L58	S 59°23'50" E	28.20'
L59	N 59°23'50" W	28.20'
L60	S 30°36'10" W	28.37'
L61	S 75°26'10" W	49.76'
L62	N 87°50'15" W	39.55'
L63	N 30°36'10" E	28.37'
L64	S 59°23'50" E	28.20'
L65	N 34°05'11" E	30.03'
L66	N 59°23'50" W	28.20'

LINE TABLE		
LINE #	BEARING	DISTANCE
L67	N 30°36'10" E	28.37'
L68	S 59°23'50" E	28.20'
L69	S 59°21'50" E	28.19'
L70	N 30°36'10" E	28.37'
L71	N 59°23'50" W	28.20'
L72	S 30°36'10" W	28.37'
L73	S 30°38'10" W	28.38'
L74	N 59°23'50" W	28.20'
L75	N 30°36'10" E	28.37'
L76	S 59°23'50" E	28.20'
L77	S 59°21'50" E	28.19'
L78	S 30°38'10" W	28.38'
L79	S 30°36'10" W	28.37'
L80	N 59°23'50" W	28.20'

CURVE TABLE					
Curve #	DELTA	RADIUS	LENGTH	CD. BEARING	CD. DIST.
C1	0°37'11"	987.16'	10.68'	N 64°20'57" E	10.68'
C2	11°00'49"	900.15'	173.03'	N 69°14'00" E	172.76'
C3	16°43'38"	250.00'	72.99'	S 83°47'59" W	72.73'
C4	16°43'38"	250.00'	72.99'	S 83°47'59" W	72.73'
C5	16°41'12"	250.00'	72.81'	S 83°49'10" W	72.55'
C6	16°43'36"	190.00'	55.47'	S 83°47'58" W	55.27'
C7	16°41'30"	280.00'	81.57'	N 83°49'03" E	81.28'
C8	16°43'38"	220.00'	64.23'	N 83°47'59" E	64.00'
C9	48°11'23"	10.00'	8.41'	N 51°20'28" E	8.16'
C10	276°22'46"	50.00'	241.19'	S 14°33'50" E	66.67'
C11	48°11'23"	10.00'	8.41'	N 80°28'09" W	8.16'
C12	16°43'38"	280.00'	81.74'	S 83°47'59" W	81.45'
C13	16°46'21"	220.00'	64.40'	S 83°46'37" W	64.17'
C14	48°11'23"	10.00'	8.41'	N 51°20'28" E	8.16'
C15	276°22'46"	50.00'	241.19'	S 14°33'50" E	66.67'
C16	48°11'23"	10.00'	8.41'	N 80°28'09" W	8.16'
C17	48°11'23"	10.00'	8.41'	N 51°20'28" E	8.16'
C18	276°22'46"	50.00'	241.19'	S 14°33'50" E	66.67'
C19	48°11'23"	10.00'	8.41'	N 80°28'09" W	8.16'
C20	48°11'23"	10.00'	8.41'	N 51°20'28" E	8.16'

CURVE TABLE					
Curve #	DELTA	RADIUS	LENGTH	CD. BEARING	CD. DIST.
C21	186°42'46"	50.00'	162.94'	S 59°23'50" E	99.83'
C22	48°11'23"	10.00'	8.41'	S 09°51'51" W	8.16'
C23	48°11'23"	10.00'	8.41'	S 38°19'32" E	8.16'
C24	186°02'46"	50.00'	162.36'	S 30°36'10" W	99.86'
C25	48°11'23"	10.00'	8.41'	N 80°28'09" W	8.16'
C26	48°11'23"	10.00'	8.41'	N 51°20'28" E	8.16'
C27	276°22'46"	50.00'	241.19'	S 14°33'50" E	66.67'
C28	48°11'23"	10.00'	8.41'	N 80°28'09" W	8.16'
C29	16°43'36"	220.00'	64.23'	S 83°47'58" W	64.00'
C30	16°41'12"	220.00'	64.07'	S 83°49'10" W	63.85'
C31	20°16'04"	500.60'	177.08'	N 04°00'39" E	176.16'
C32	48°11'23"	10.00'	8.41'	S 51°20'28" W	8.16'
C33	48°11'23"	10.00'	8.41'	S 80°28'09" E	8.16'
C34	48°11'23"	10.00'	8.41'	N 80°28'09" W	8.16'
C35	48°11'23"	10.00'	8.41'	N 51°20'28" E	8.16'
C36	48°11'23"	10.00'	8.41'	N 51°20'28" E	8.16'
C37	48°11'23"	10.00'	8.41'	N 80°28'09" W	8.16'
C38	48°10'23"	10.00'	8.41'	N 80°28'39" W	8.16'
C39	48°12'22"	10.00'	8.41'	S 51°19'59" W	8.17'

CERTIFICATE OF APPROVAL

For approval by the Commission:

This is to certify that the above and foregoing Plat of Longview Subdivision, Section 4, was approved by proper action of the City Planning and Zoning Commission of the City of Midland, Texas

on this _____ day of _____ , _____.

SIGNED: _____
CHAIRMAN OF PLANNING & ZONING COMMISSION
LUCY SISNIEGA

SIGNED: _____
SECRETARY OF PLANNING & ZONING COMMISSION
CRISTINA BURNS

THE UTILITY COMPANIES CERTIFICATE

This plat has been checked for accessibility of utilities

_____
ATMOS ENERGY

_____
AT&T TELEPHONE COMPANY

_____
ONCOR ELECTRIC

_____
OPTIMUM

_____
ASTOUND BROADBAND

GENERAL NOTES

1. Approval of a site plan by the City of Midland may be required before this lot may by developed and before a building permit may be obtained.
2. Selling a portion of this addition by metes and bounds may be a violation of city ordinance and state law subject to fines and withholding of utilities and building permits.
3. Bearings & distances shown on this plat are relative to the Texas Coordinate System, 1983NAD (Central Zone) Combined Grid Factor of 0.999904315 Theta Angle of -00°54'00" Coordinates are based on the City of Midland Control Monuments as published in U.S. Survey Feet as provided by the City of Midland.
4. According to the FEMA Flood Insurance Rate Map Number 48329C0063F Dated September 16, 2005, a portion of the property lies in a flood hazard area zone "AE", "X shaded", and the majority in zone "X unshaded."
5. All lot corners shall be monumented with a 1/2 inch iron rod with a plastic cap stamped "LCA ODESSA TX" unless otherwise noted.
6. Initial impact fees will be assessed during the final platting process. Implementation and collection of impact fees will take place during the building permit process. Additional impact fees or increase in fees may not be addressed against the tract unless the number of service units to be developed on the tract increases.
7. Comply with the existing drainage analysis titled XXXXXXXXXXXXX, sealed by Levi Bryand P.E., and approved by the City of Midland on XXXXXXXX, or any revisions, corrections, amendments, or replacements of this drainage analysis that are approved by the City of Midland.
8. The Coordinates for the ends of the AOZ-4 line as shown, were provided by The City of Midland GIS Department.
9. The property lies within the City of Midland's "Airport Height and Compatibility Land Use Zoning" (AOZ-4) Ordinance No. 9302. Any person who desires to erect a new structure or rebuild, replace, or enlarge an existing structure or establish a new use or substantially change an existing use in the AOZ-4 must apply for and receive a permit. A permit shall be granted unless the new structure or the new use would be a height hazard or a prohibited land use as set forth in Sections 11-11-8, 11-11-9, and Table 1 of this chapter or would otherwise violate this chapter. Applications for permits shall be submitted to and issued by the City of Midland Building Official.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That I, XXXXXX, do hereby adopt this plat designating the herein described property as , an addition to Midland County, Texas, and do hereby dedicate to the public use forever the streets, alley and easements shown thereon for the purpose and consideration therein expressed, and an easement of egress and ingress for trash collection, and location and maintenance of trash containers, and as a condition of said easement that no construction shall commence on the said lot or lots until the exact location of said containers there with have been selected and approved by the Director of Utilities.

WITNESS our hands at Midland, Texas this the ____ day of _____ 2023.

_____
GF ELITE ESTATE HOLINDINGS LTD

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 XXXXXX, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me 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 _____ day of _____ 2023.

My commission expires: _____

_____
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

SURVEYOR'S CERTIFICATE
KNOW ALL MEN BY THESE PRESENTS:

That I, John F. Landgraf, 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 thereon were properly placed under my personal supervision, in accordance with the subdivision regulations of the City of Midland, Texas.

PRELIMINARY
THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE AND SHALL NOT BE USED FOR VIEWED OR RELIED UPON AS A FINAL SURVEY DOCUMENT.

JOHN F. LANDGRAF, R.P.L.S. # 2410

OWNER: GF ELITE ESTATE HOLINDINGS LTD.
303 W. WALL ST. STE 2400
MIDLAND, TEXAS 79701
PHONE: (432)

ENGINEER: LANDGRAF, CRUTCHER & ASSOC. INC.
521 NORTH TEXAS
ODESSA, TEXAS 79761-5131
PHONE: (432) 332-5058

PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS

No. _____ CABINET _____

DATE _____ PAGE _____

ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING
521 North Texas, Odessa Tx. 79761 F-001363 F-10034300
Phone # (432) 332-5058 E-Mail : lca@lcaodessa.com

LONGVIEW SUBDIVISION, SECTION 3

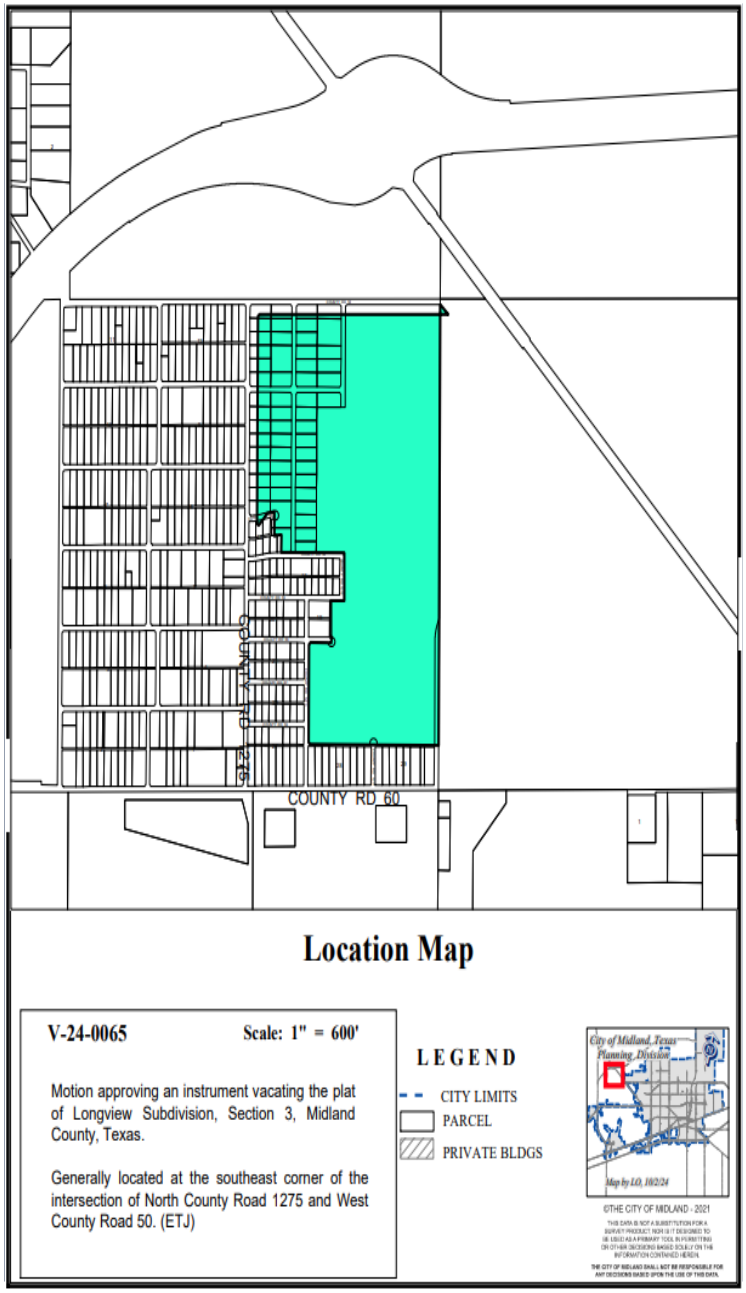
ITEM _
Plat Vacation

October 22, 2024

Visit Our Website
MIDLANDTEXAS.GOV

APPLICATION SUMMARY

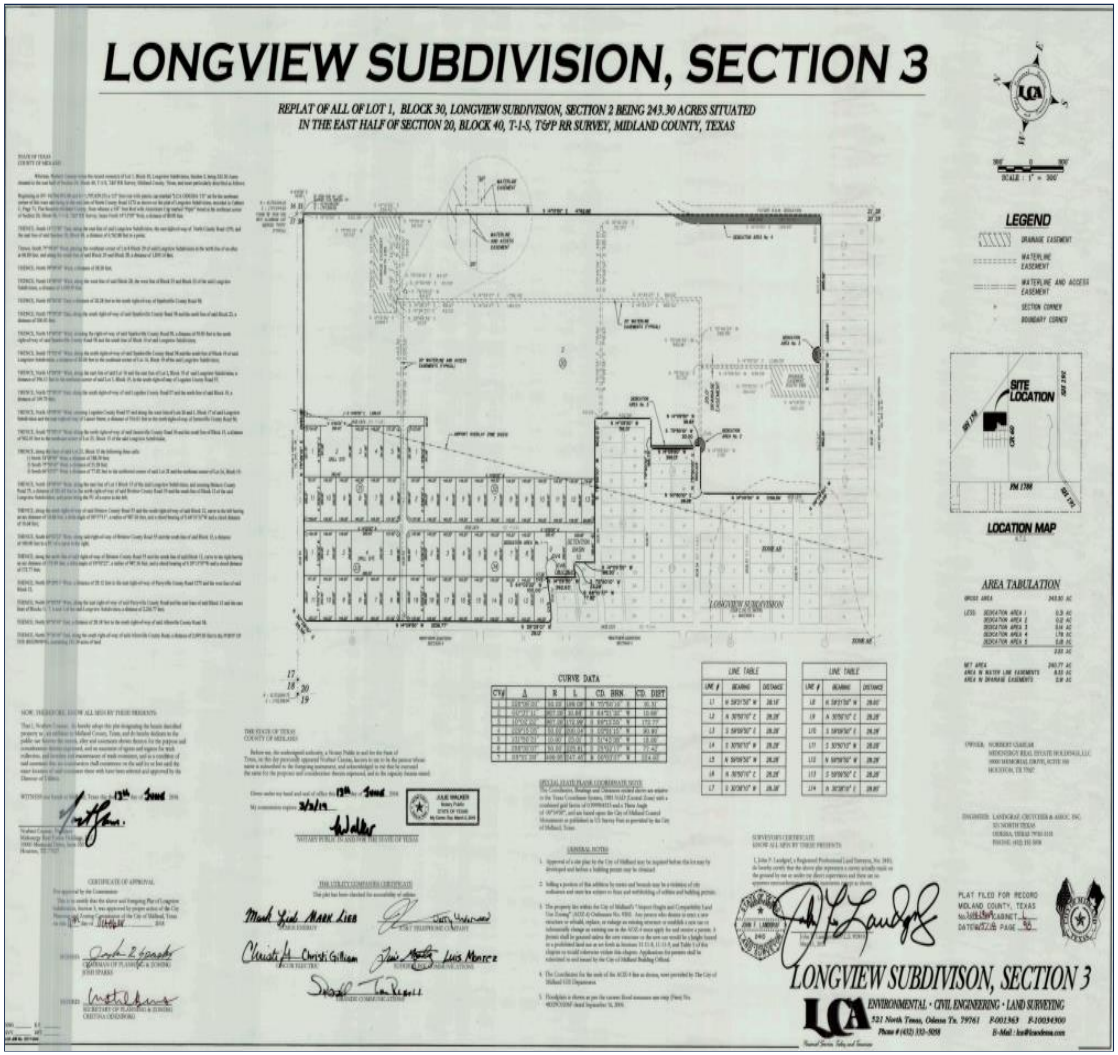
- **Property Owner & Developer:** GF Elite Real Estate Holdings
- **Representative:** LCA
- **Application Type:** Plat Vacation
- **Address:** Generally located at the southeast corner of the intersection of North County Road 1275 and West County Road 50 (ETJ)



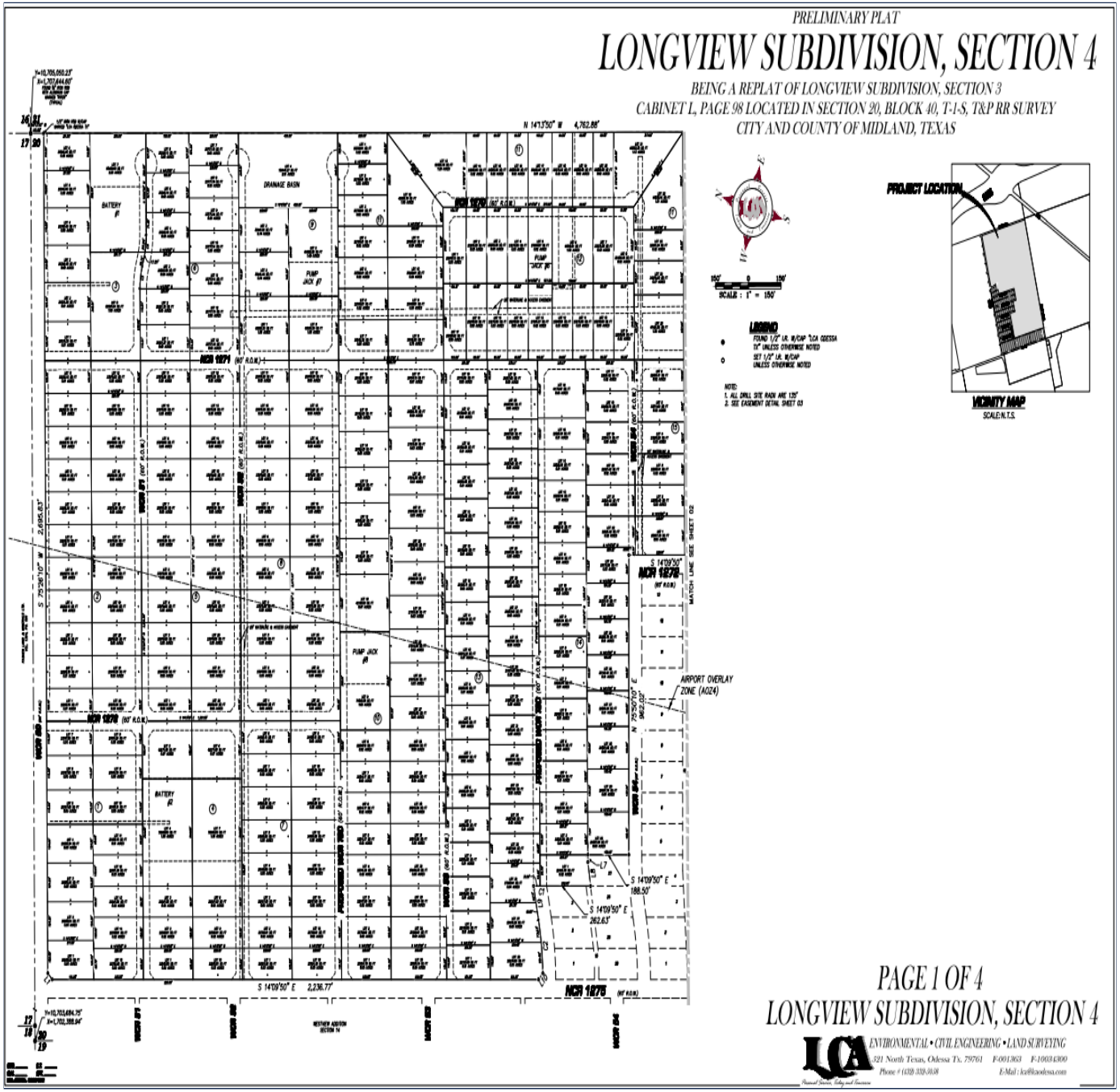
MIDLAND
Be the Energy!

PLAT DETAILS

- **Acreage:** 243.30-acres
- **Reason for Request:** To reconfigure the layout of the Longview Subdivision, Section 3 subdivision for future residential development



MIDLAND
Be the Energy!



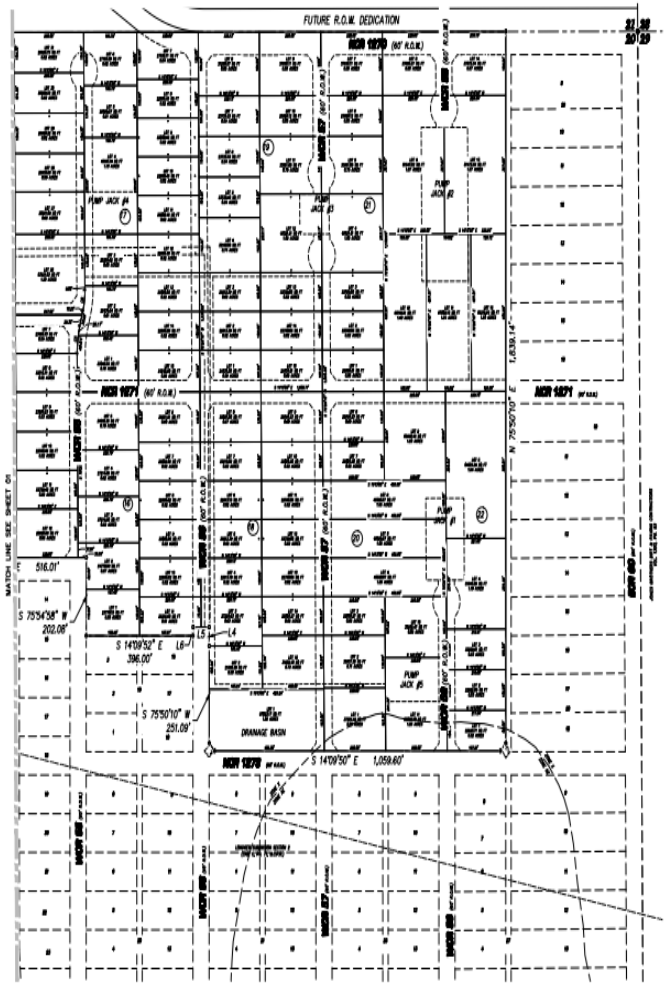
PLAT DETAILS

PLAT DETAILS

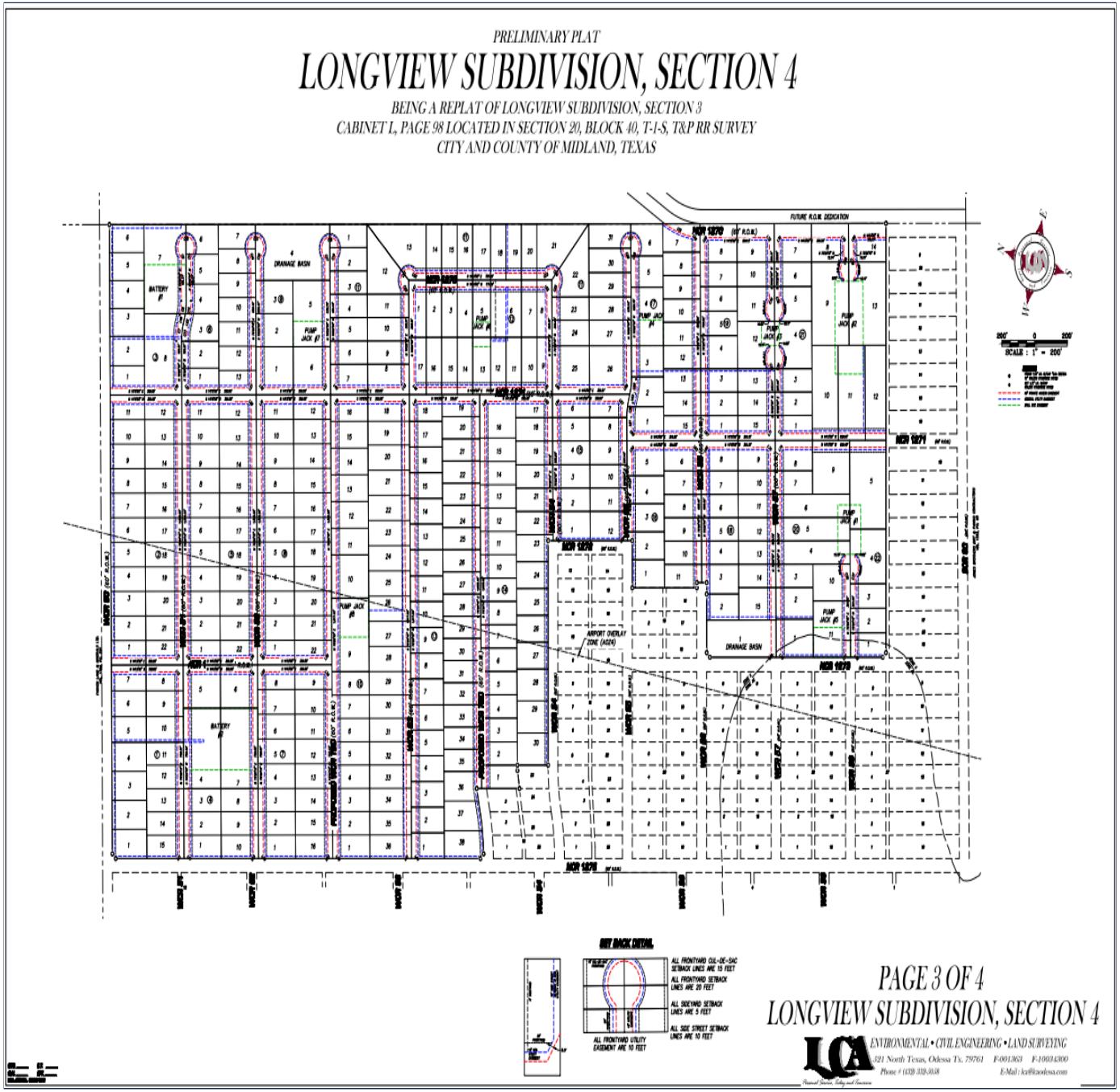
PRELIMINARY PLAT

LONGVIEW SUBDIVISION, SECTION 4

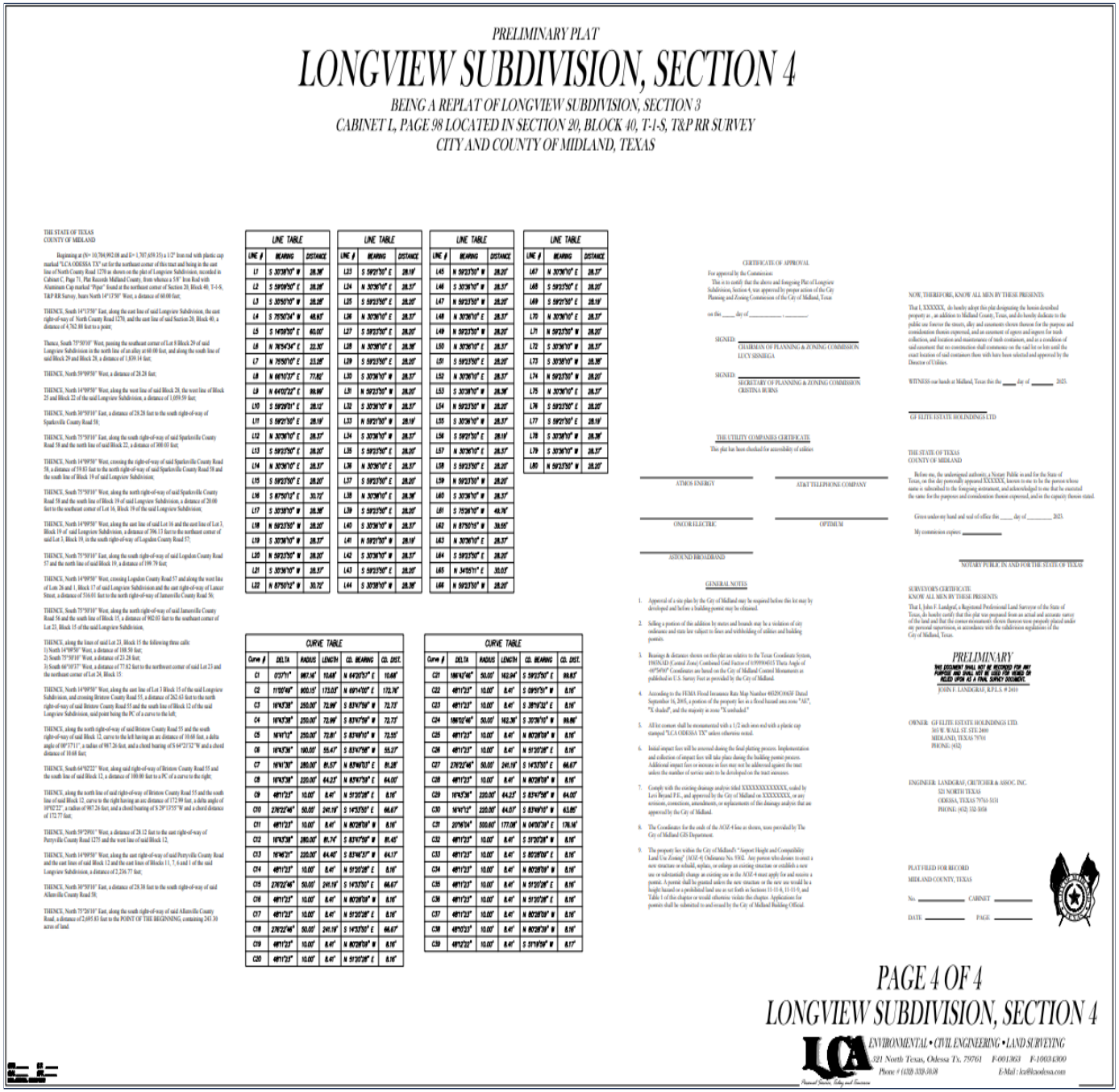
BEING A REPLAT OF LONGVIEW SUBDIVISION, SECTION 3
CABINET L, PAGE 98 LOCATED IN SECTION 20, BLOCK 40, T-1-S, T&P RR SURVEY
CITY AND COUNTY OF MIDLAND, TEXAS


FUTURE R.O.W. DEDICATION
MIDKIFF RD (80' R.O.W.)
MIDKIFF RD (80' R.O.W.)
MIDKIFF RD (80' R.O.W.)

PLAT DETAILS



PLAT DETAILS



PRELIMINARY PLAT

LONGVIEW SUBDIVISION, SECTION 4

BEING A REPLAT OF LONGVIEW SUBDIVISION, SECTION 3
CABINET L, PAGE 98 LOCATED IN SECTION 20, BLOCK 40, T-1-S, T&P RR SURVEY
CITY AND COUNTY OF MIDLAND, TEXAS

THE STATE OF TEXAS
COUNTY OF MIDLAND

Beginning at (N= 10,784,992.08 and E= 1,707,659.35) a 1/2" iron rod with plastic cap marked "LCA ODESSA TX" set for the northeast corner of this tract and being in the east line of North County Road 1270 as shown on the plat of Longview Subdivision, recorded in Cabinet C, Page 71, Plat Records Midland County, from whence a 5/8" iron Rod with Aluminum Cap marked "Pipat" found at the northeast corner of Section 20, Block 40, T-1-S, T&P RR Survey, bears North 14°17'50" West, a distance of 60.00 feet;

THENCE, South 14°17'50" East, along the east line of said Longview Subdivision, the east right-of-way of North County Road 1270, and the east line of said Section 20, Block 40, a distance of 4,762.88 feet to a point;

Thence, South 75°50'10" West, passing the southeast corner of Lot 8 Block 29 of said Longview Subdivision in the north line of an alley at 60.00 feet, and along the south line of said Block 29 and Block 28, a distance of 1,839.14 feet;

THENCE, North 59°09'50" West, a distance of 28.28 feet;

THENCE, North 14°09'50" West, along the west line of said Block 28, the west line of Block 25 and Block 22 of the said Longview Subdivision, a distance of 1,059.59 feet;

THENCE, North 30°50'10" East, a distance of 28.28 feet to the south right-of-way of Sparkeville County Road 58;

THENCE, North 75°50'10" East, along the south right-of-way of said Sparkeville County Road 58 and the north line of said Block 22, a distance of 300.03 feet;

THENCE, North 14°09'50" West, crossing the right-of-way of said Sparkeville County Road 58, a distance of 59.83 feet to the north right-of-way of said Sparkeville County Road 58 and the south line of Block 19 of said Longview Subdivision;

THENCE, South 75°50'10" West, along the north right-of-way of said Sparkeville County Road 58 and the south line of Block 19 of said Longview Subdivision, a distance of 20.00 feet to the southeast corner of Lot 16, Block 19 of the said Longview Subdivision;

THENCE, North 14°09'50" West, along the east line of said Lot 16 and the east line of Lot 3, Block 19 of said Longview Subdivision, a distance of 396.13 feet to the northeast corner of said Lot 3, Block 19, in the south right-of-way of Logsdon County Road 57;

THENCE, North 75°50'10" East, along the south right-of-way of said Logsdon County Road 57 and the north line of said Block 19, a distance of 199.79 feet;

THENCE, North 14°09'50" West, crossing Logsdon County Road 57 and along the west line of Lots 26 and 1, Block 17 of said Longview Subdivision and the east right-of-way of Lancer Street, a distance of 516.01 feet to the north right-of-way of Jamesville County Road 56;

THENCE, South 75°50'10" West, along the north right-of-way of said Jamesville County Road 56 and the south line of Block 15, a distance of 982.03 feet to the southeast corner of Lot 23, Block 15 of the said Longview Subdivision;

THENCE, along the lines of said Lot 23, Block 15 the following three calls:
1) North 14°09'50" West, a distance of 108.50 feet;
2) South 75°50'10" West, a distance of 23.28 feet;
3) South 60°10'37" West, a distance of 77.82 feet to the northwest corner of said Lot 23 and the northeast corner of Lot 24, Block 15;

THENCE, North 14°09'50" West, along the east line of Lot 1 Block 15 of the said Longview Subdivision, and crossing Bristow County Road 55, a distance of 262.63 feet to the north right-of-way of said Bristow County Road 55 and the south line of Block 12 of the said Longview Subdivision, said point being the PC of a curve to the left;

THENCE, along the north right-of-way of said Bristow County Road 55 and the south right-of-way of said Block 12, curve to the left having an arc distance of 10.68 feet, a delta angle of 00°37'11", a radius of 987.26 feet, and a chord bearing of S 64°21'32" W and a chord distance of 10.68 feet;

THENCE, South 64°02'22" West, along said right-of-way of Bristow County Road 55 and the south line of said Block 12, a distance of 100.00 feet to a PC of a curve to the right;

THENCE, along the north line of said right-of-way of Bristow County Road 55 and the south line of said Block 12, curve to the right having an arc distance of 172.99 feet, a delta angle of 10°02'22", a radius of 987.26 feet, and a chord bearing of S 29°15'55" W and a chord distance of 172.77 feet;

THENCE, North 59°29'01" West, a distance of 28.12 feet to the east right-of-way of Perryville County Road 1275 and the west line of said Block 12,

THENCE, North 14°09'50" West, along the east right-of-way of said Perryville County Road and the east lines of said Block 12 and the east lines of Blocks 11, 7, 6 and 1 of the said Longview Subdivision, a distance of 2,236.77 feet;

THENCE, North 30°50'10" East, a distance of 28.28 feet to the south right-of-way of said Allenville County Road 58;

THENCE, North 75°26'10" East, along the south right-of-way of said Allenville County Road, a distance of 2,695.83 feet to the POINT OF THE BEGINNING, containing 243.30 acres of land.

LINE TABLE		
LINE #	BEARING	DISTANCE
L1	S 30°38'10" W	28.28'
L2	S 59°09'50" E	28.28'
L3	S 30°50'10" W	28.28'
L4	S 75°50'34" W	48.00'
L5	S 14°09'50" E	60.00'
L6	N 76°54'34" E	22.30'
L7	N 75°50'10" E	23.28'
L8	N 60°10'37" E	77.82'
L9	N 64°02'22" E	99.99'
L10	S 59°29'01" E	28.12'
L11	S 59°21'50" E	28.19'
L12	N 30°38'10" E	28.37'
L13	S 59°23'50" E	28.20'
L14	N 30°36'10" E	28.37'
L15	S 59°23'50" E	28.20'
L16	S 87°50'12" E	30.72'
L17	S 30°38'10" W	28.36'
L18	N 59°23'50" W	28.20'
L19	S 30°36'10" W	28.37'
L20	N 59°23'50" W	28.20'
L21	S 30°36'10" W	28.37'
L22	N 87°50'12" W	30.72'

LINE TABLE		
LINE #	BEARING	DISTANCE
L23	S 59°21'50" E	28.19'
L24	N 30°36'10" E	28.37'
L25	S 59°23'50" E	28.20'
L26	N 30°36'10" E	28.37'
L27	S 59°23'50" E	28.20'
L28	N 30°36'10" E	28.36'
L29	S 59°23'50" E	28.20'
L30	S 30°36'10" W	28.37'
L31	N 59°23'50" W	28.20'
L32	S 30°36'10" W	28.37'
L33	N 59°21'50" W	28.19'
L34	S 30°36'10" W	28.37'
L35	S 59°23'50" E	28.20'
L36	N 30°36'10" E	28.37'
L37	S 59°23'50" E	28.20'
L38	N 30°36'10" E	28.36'
L39	S 59°23'50" E	28.20'
L40	S 30°36'10" W	28.37'
L41	N 59°21'50" W	28.19'
L42	S 30°36'10" W	28.37'
L43	S 59°23'50" E	28.20'
L44	S 30°38'10" W	28.36'

LINE TABLE		
LINE #	BEARING	DISTANCE
L45	N 59°23'50" W	28.20'
L46	S 30°36'10" W	28.37'
L47	N 59°23'50" W	28.20'
L48	N 30°36'10" E	28.37'
L49	N 59°23'50" W	28.20'
L50	N 30°36'10" E	28.37'
L51	S 59°23'50" E	28.20'
L52	N 30°36'10" E	28.37'
L53	S 30°38'10" W	28.36'
L54	N 59°23'50" W	28.20'
L55	S 30°36'10" W	28.37'
L56	S 59°21'50" E	28.19'
L57	N 30°36'10" E	28.37'
L58	S 59°23'50" E	28.20'
L59	N 59°23'50" W	28.20'
L60	S 30°36'10" W	28.37'
L61	S 75°26'10" W	48.76'
L62	N 87°50'15" W	30.55'
L63	N 30°36'10" E	28.37'
L64	S 59°23'50" E	28.20'
L65	N 34°05'11" E	35.03'
L66	N 59°23'50" W	28.20'

LINE TABLE		
LINE #	BEARING	DISTANCE
L67	N 30°36'10" E	28.37'
L68	S 59°23'50" E	28.20'
L69	S 59°21'50" E	28.19'
L70	N 30°36'10" E	28.37'
L71	N 59°23'50" W	28.20'
L72	S 30°36'10" W	28.37'
L73	S 30°38'10" W	28.36'
L74	N 59°23'50" W	28.20'
L75	N 30°36'10" E	28.37'
L76	S 59°23'50" E	28.20'
L77	S 59°21'50" E	28.19'
L78	S 30°38'10" W	28.36'
L79	S 30°36'10" W	28.37'
L80	N 59°23'50" W	28.20'

CURVE TABLE					
Curve #	DELTA	RADIUS	LENGTH	CD. BEARING	CD. DIST.
C1	0°37'11"	987.26'	10.68'	N 64°20'57" E	10.68'
C2	11°00'49"	900.15'	173.03'	N 69°14'00" E	172.76'
C3	16°43'38"	250.00'	72.99'	S 83°47'59" W	72.73'
C4	16°43'38"	250.00'	72.99'	S 83°47'59" W	72.73'
C5	16°41'12"	250.00'	72.81'	S 83°49'07" W	72.55'
C6	16°43'38"	190.00'	55.47'	S 83°47'59" W	55.27'
C7	16°41'30"	280.00'	81.57'	N 83°48'03" E	81.28'
C8	16°43'38"	220.00'	64.23'	N 83°47'59" E	64.00'
C9	48°11'23"	10.00'	8.41'	N 31°20'28" E	8.16'
C10	270°22'46"	50.00'	241.19'	S 14°37'50" E	66.67'
C11	48°11'23"	10.00'	8.41'	N 80°28'09" W	8.16'
C12	16°43'38"	280.00'	81.74'	S 83°47'59" W	81.45'
C13	16°46'21"	220.00'	64.40'	S 83°46'37" W	64.17'
C14	48°11'23"	10.00'	8.41'	N 31°20'28" E	8.16'
C15	270°22'46"	50.00'	241.19'	S 14°37'50" E	66.67'
C16	48°11'23"	10.00'	8.41'	N 80°28'09" W	8.16'
C17	48°11'23"	10.00'	8.41'	N 31°20'28" E	8.16'
C18	270°22'46"	50.00'	241.19'	S 14°37'50" E	66.67'
C19	48°11'23"	10.00'	8.41'	N 80°28'09" W	8.16'
C20	48°11'23"	10.00'	8.41'	N 31°20'28" E	8.16'

CURVE TABLE					
Curve #	DELTA	RADIUS	LENGTH	CD. BEARING	CD. DIST.
C21	186°42'46"	50.00'	162.94'	S 59°23'50" E	99.85'
C22	48°11'23"	10.00'	8.41'	S 09°51'51" W	8.16'
C23	48°11'23"	10.00'	8.41'	S 38°19'32" E	8.16'
C24	186°02'46"	50.00'	162.36'	S 30°36'10" W	99.86'
C25	48°11'23"	10.00'	8.41'	N 80°28'09" W	8.16'
C26	48°11'23"	10.00'	8.41'	N 51°20'28" E	8.16'
C27	270°22'46"	50.00'	241.19'	S 14°37'50" E	66.67'
C28	48°11'23"	10.00'	8.41'	N 80°28'09" W	8.16'
C29	16°43'38"	220.00'	64.23'	S 83°47'59" W	64.00'
C30	16°41'12"	220.00'	64.07'	S 83°49'07" W	63.85'
C31	20°06'04"	500.00'	177.08'	N 04°00'29" E	176.14'
C32	48°11'23"	10.00'	8.41'	S 51°20'28" W	8.16'
C33	48°11'23"	10.00'	8.41'	S 80°28'09" E	8.16'
C34	48°11'23"	10.00'	8.41'	N 80°28'09" W	8.16'
C35	48°11'23"	10.00'	8.41'	N 51°20'28" E	8.16'
C36	48°11'23"	10.00'	8.41'	N 51°20'28" E	8.16'
C37	48°11'23"	10.00'	8.41'	N 80°28'09" W	8.16'
C38	48°01'23"	10.00'	8.41'	N 80°28'39" W	8.16'
C39	48°12'12"	10.00'	8.41'	S 51°19'56" W	8.17'

CERTIFICATE OF APPROVAL

For approval by the Commission:
This is to certify that the above and foregoing Plat of Longview Subdivision, Section 4, was approved by proper action of the City Planning and Zoning Commission of the City of Midland, Texas

on this ____ day of _____, _____.

SIGNED: _____
CHAIRMAN OF PLANNING & ZONING COMMISSION
LUCY SISNIEGA

SIGNED: _____
SECRETARY OF PLANNING & ZONING COMMISSION
CRISTINA BURNS

THE UTILITY COMPANIES CERTIFICATE
The plat has been checked for accessibility of utilities

ATMOS ENERGY

AT&T TELEPHONE COMPANY

ONCOR ELECTRIC

OPTIMUM

ASTOUND BROADBAND

GENERAL NOTES

1. Approval of a site plan by the City of Midland may be required before this lot may be developed and before a building permit may be obtained.
2. Selling a portion of this addition by metes and bounds may be a violation of city ordinance and state law subject to fines and withholding of utilities and building permits.
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5. All lot corners shall be monumented with a 1/2 inch iron rod with a plastic cap stamped "LCA ODESSA TX" unless otherwise noted.
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8. The Coordinates for the ends of the AOZ-4 line as shown, were provided by The City of Midland GIS Department.
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NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That I, XXXXXX, do hereby adopt this plat designating the herein described property as , an addition to Midland County, Texas, and do hereby dedicate to the public use forever the streets, alley and easements shown thereon for the purpose and consideration therein expressed, and an easement of egress and ingress for trash collection, and location and maintenance of trash containers, and as a condition of said easement that no construction shall commence on the said lot or lots until the exact location of said containers there with have been selected and approved by the Director of Utilities.

WITNESS our hands at Midland, Texas this the ___ day of _____ 2023.

_____
GF ELITE ESTATE HOLDINGS LTD

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 XXXXXX, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me 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 ____ day of _____ 2023.

My commission expires _____

_____
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

SURVEYOR'S CERTIFICATE
KNOW ALL MEN BY THESE PRESENTS:

That I, John F. Landgraf, 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 thereon were properly placed under my personal supervision, in accordance with the subdivision regulations of the City of Midland, Texas.

PRELIMINARY
THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE AND SHALL NOT BE USED FOR MAKING ANY RELIED UPON AS A FINAL SURVEY DOCUMENT.
JOHN F. LANDGRAF, R.P.L.S. # 2410

OWNER: GF ELITE ESTATE HOLDINGS LTD.
303 W. WALL ST. STE 2000
MIDLAND, TEXAS 79701
PHONE: (432)

ENGINEER: LANDGRAF, CRUTCHER & ASSOC. INC.
521 NORTH TEXAS
ODESSA, TEXAS 79761-5151
PHONE: (432) 332-3018

PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS

No. _____ CABINET _____

DATE _____ PAGE _____

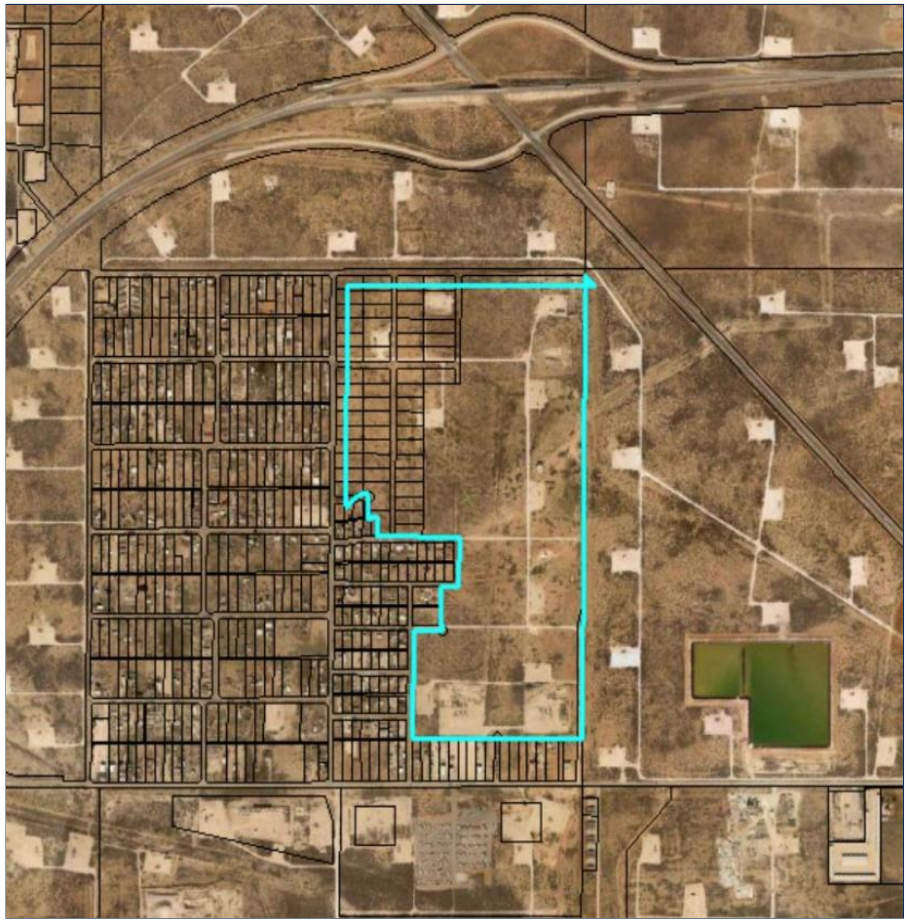
PAGE 4 OF 4
LONGVIEW SUBDIVISION, SECTION 4

LCA ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING
521 North Texas, Odessa Tx, 79761 F-001363 F-10034300
Phone # (432) 332-3018 E-Mail : lca@caodessa.com

MIDLAND Be the Energy!

LAND USE

- **Current Use:** Vacant Lots
- **Proposed Use:** Residential Development
- **Surrounding Uses:**
  - North, East, South & West: Vacant Lots



RELATED ITEMS

- The Longview Subdivision, Section 3 final plat (being vacated) was approved on May 7, 2018, by the Planning & Zoning Commission.

- The Planning and Zoning Commission approved the request to vacate Longview Subdivision, Section 3 on October 7, 2024.

STAFF RECOMMENDATION

- Staff recommends approval of this plat vacation.

MISSION

Deliver exceptional services and promote a high quality of life and place for ALL our citizens.

City Council Meeting

Item Number: 20

Meeting Date: October 22, 2024

To: City Council / City Manager

From: Dr. Whitney Craig, Manager, Health Services

Subject: **MOTION AUTHORIZING THE ACCEPTANCE OF GRANT FUNDS IN THE AMOUNT OF $150,358.00 FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES TO ASSIST THE CITY OF MIDLAND HEALTH SERVICES DIVISION WITH THE FUNDING AND DELIVERY OF 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) (FIRE) (PROVIDE SOUND GOVERNANCE & FISCAL MANAGEMENT)**

Purpose:

Motion authorizing the acceptance of grant funds in the amount of $150,358.00 from the Texas Department of State Health Services to assist the City of Midland Health Services Division with the funding and delivery of 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.

Recommended City Council Action:

Approve

Fiscal Impact:

$150,358 will be appropriated from General Fund unappropriated fund balance and transferred to a project for this purpose.

Strategic Priority:

(Provide Sound Governance & Fiscal Management)

Discussion:

City of Midland Health Services Division is seeking approval for the acceptance of this grant. These funds are instrumental in allowing the City to provide immunization services to the community. The Immunizations Locals grant is accepted annually.

Morris Williams Jr.

City Manager's Office

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DEPARTMENT OF STATE HEALTH SERVICES
CONTRACT NO. HHS001331300032
AMENDMENT NO. 1

The **DEPARTMENT OF STATE HEALTH SERVICES** ("DSHS" or "System Agency") **CITY OF MIDLAND** Health Department ("Grantee"), Parties to that certain Immunization/Locals Grant Program Contract, effective September 1, 2023, and denominated DSHS Contract No. HHS001331300032 (the Contract), now want to amend the Contract.

WHEREAS, DSHS wants to exercise its option to extend the Contract term for an additional year, representing the first of four extension options ("First Extension Option");

WHEREAS, DSHS wants to add funds to the Contract to pay for services provided during the extended term; and

WHEREAS, DSHS wants to revise the Statement of Work and replace Attachments C and D.

NOW, THEREFORE, the Parties agree as follows:

1. The Contract is extended in accordance with SECTION III, DURATION, of the Contract for an additional year. The First Extension Option shall begin on September 1, 2024 and ends on August 31, 2025, unless terminated sooner.

2. SECTION V, BUDGET AND INDIRECT COST RATE, of the Contract is amended to increase funding in the amount of $150,358.00 for State Fiscal Year 2025 ("FY 2025"). The total not-to-exceed amount of this Contract is increased to **$300,716.00**. All expenditures of the additional funds must conform with **ATTACHMENT B-1, FY 2025 BUDGET**.

3. ATTACHMENT A, STATEMENT OF WORK, of the Contract is deleted in its entirety and replaced with ATTACHMENT A-1, FY 2025 STATEMENT OF WORK.

4. ATTACHMENT B, BUDGET, of the Contract is supplemented with the addition of ATTACHMENT B-1, FY 2025 BUDGET.

5. ATTACHMENT C, HHS CONTRACT AFFIRMATIONS V. 2.2 (MAY 2022), is deleted in its entirety and replaced with ATTACHMENT C-1, HHS CONTRACT AFFIRMATIONS V. 2.3 (AUGUST 2023) which is attached to this Amendment and incorporated and made part of the Contract for all purposes.

6. ATTACHMENT D, HHS UNIFORM TERMS AND CONDITIONS – GRANT V. 3.2 (July 2022) is deleted in its entirety and replaced with ATTACHMENT D-1, HHS UNIFORM TERMS AND CONDITIONS-GRANT V. 3.3 (NOVEMBER 2023), which is attached to this Amendment and incorporated and made part of the Contract for all purposes.

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7. ATTACHMENT J-1, FISCAL FEDERAL FUNDING AND ACCOUNTABILITY ACT (FFATA) CERTIFICATION FORM, is attached to this Amendment and incorporated into the Contract for all purposes.

8. This Amendment shall be effective September 1, 2024.

9. Except as modified by this Amendment, all terms and conditions of the Contract, as amended, shall remain in full force and effect.

10. Any further revisions to the Contract shall be by written agreement of the Parties.

SIGNATURE PAGE FOLLOWS

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SIGNATURE PAGE FOR AMENDMENT NO. 1
DSHS CONTRACT NO. HHS001331300032

DEPARTMENT OF STATE HEALTH SERVICES

DocuSigned by:
By: Josh Hutchison
2C308B50E881450...

Name: Josh Hutchison

Title: Associate Commissioner, Infectious Disease Prevention Division

Date of Signature: March 22, 2024

CITY OF MIDLAND HEALTH DEPARTMENT

DocuSigned by:
By: Whitney S. Craig, DrPH, MPH
83EBFB35036D49F...

Name: Whitney S. Craig, DrPH, MPH

Title: Health Services Manager

Date of Signature March 8, 2024

THE FOLLOWING DOCUMENTS ARE ATTACHED TO THIS AMENDMENT AND THEIR TERMS ARE INCORPORATED INTO THE CONTRACT BY REFERENCE:

ATTACHMENT A-1 - FY 2025 STATEMENT OF WORK
ATTACHMENT B-1 - FY 2025 BUDGET
ATTACHMENT C-1 - HHS CONTRACT AFFIRMATIONS V. 2.3 (AUGUST 2023)
ATTACHMENT D-1- HHS UNIFORM TERMS AND CONDITIONS-GRANT V. 3.3 (NOVEMBER 2023)
ATTACHMENT J-1 - FISCAL FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) CERTIFICATION FORM

ATTACHMENTS FOLLOW

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ATTACHMENT A-1
FY 2025 STATEMENT OF WORK

I. GRANTEE RESPONSIBILITIES

Grantee shall:

A. Implement and operate an immunization program for children, adolescents, and adults, with special emphasis on accelerating interventions to improve the immunization coverage of children three (3) years of age or younger (birth to 35 months of age). Grantee shall incorporate traditional and non-traditional systematic approaches designed to eliminate barriers, expand immunization capacity, and establish uniform operating policies, as described herein.

B. Be enrolled as a provider in the Texas Vaccines for Children (TVFC) and the Adult Safety Net (ASN) Programs by the effective date of this Contract. This includes a signed *Deputization Addendum Form (EF11-13999)*.

C. Maintain staffing levels to meet required activities of the Contract and ensure staff funded by this Contract attend required training.

D. Report all notifiable conditions as specified in Texas Administrative Code (TAC) Title 25, Part I §§ 97.1-97.6, as amended, and as otherwise required by law.

E. Report all vaccine adverse event occurrences in accordance with the 1986 National Childhood Vaccine Injury Act (NCVIA) 42 U.S.C. § 300aa-25 (located at http://vaers.hhs.gov/ or 1-800-822-7967, as amended.

F. Sustain a network of TVFC/ASN providers to administer vaccines to program-eligible populations by conducting the following activities:
   1. Ensuring New Provider Checklist is completed;
   2. Conducting quality assurance reviews;
   3. Ensuring annual influenza pre-book survey is completed;
   4. Conducting compliance site visits;
   5. Conducting unannounced storage and handling visits; and
   6. Ensuring providers adhere to the vaccine borrowing procedure.

G. Participate in audits and assessments through the following activities:
   1. Completing and submitting through Child Health Reporting System (CHRS) all audits and assessments conducted on childcare facilities and Head Start Centers;
   2. Completing audits, assessments and retrospective surveys of public and private schools;

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3. Reviewing monthly reports to ensure data quality;
4. Reviewing the monthly Provider Activity Reports;
5. Reviewing the quarterly Consent Accepted Rate Evaluations; and
6. Conducting quality improvement assessments of Texas Immunization Registry organizations.

H. Provide education and outreach activities regarding vaccines and vaccine-preventable diseases, Texas Immunization Registry, and TVFC and ASN Programs to the following:
1. American Indian Tribes;
2. Schools and childcare facilities;
3. Healthcare workers; and
4. Community and general public.

I. Not deny vaccinations to recipients because they do not reside within Grantee's jurisdiction or because of an inability to pay an administration fee.

J. Be responsible for identification and case management of all hepatitis B surface antigen (HBsAg)-positive pregnant women. Grantee shall ensure timely newborn post-exposure prophylaxis (PEP) with hepatitis B vaccine and hepatitis B immune globulin (HBIG), timely completion of doses two and three of hepatitis B vaccine, and timely completion of post-vaccination serologic testing (PVST).

K. Be responsible for assessing and/or auditing coverage rates and/or compliance with vaccine requirements at assigned schools and childcare facilities in accordance with the Population Assessment Manual, which is distributed annually from DSHS.

L. Transfer (which may include shipping) overstocked vaccines and vaccines approaching expiration to alternate providers for immediate use when instructed to do so by the DSHS Public Health Region (PHR) Immunization Program Manager to avoid vaccine waste. Grantee is responsible for covering the cost to ship overstocked vaccines and vaccines approaching expiration.

M. Receive written approval from DSHS before varying from applicable policies, procedures, protocols, and/or work plans, and must update and disseminate its implementation documentation to its staff involved in activities under this Contract within forty-eight (48) hours of making approved changes.

N. Review monthly Contract funding expenditures and salary savings from any Contract-paid staff vacancies and revise spending plan to ensure that all funds will be properly expended under this Contract before the end of the Contract term.

O. Submit out-of-state travel requests to the Immunization Section for approval when utilizing Contract funds or program income.

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II. REPORTING REQUIREMENTS

Grantee shall:

A. Report the number of doses administered to underinsured children monthly, as directed by DSHS.

B. Report the number of unduplicated underinsured clients served, as directed by DSHS.

C. Complete and submit Immunization Inter-Local Agreement (ILA) Quarterly Report form, utilizing the format provided by the DSHS Immunization Section and available at https://dshs.texas.gov/immunize/lhd.shtm by the report due date. If the due date falls on a weekend or state approved holiday, the report is due the next business day.

Report Type	Reporting Period	Report Due Date
Programmatic	09/01/2024 to 11/30/2024	12/31/2024
Programmatic	12/01/2024 to 02/28/2025	03/31/2025
Programmatic	03/01/2025 to 05/31/2025	06/30/2025
Programmatic	06/01/2025 to 08/31/2025	09/30/2025

Submit quarterly reports electronically through an online tool according to the timeframes stated above. DSHS Immunization Section will provide instructions at the beginning of each state fiscal year through CMS. Supplemental report documents (PEAR and AFIX reports, vacancy letters, etc.) should be sent to dshsimmunizationcontracts@dshs.texas.gov.

D. Submit the Financial Status Report (FSR-269A) biannually as outlined below. Grantee shall email the Financial Status Report (FSR-269A) to the following email address: FSRgrants@dshs.texas.gov.

Period Covered	Due Date
September 1, 2024 – February 28, 2025	March 31, 2025
March 1, 2025 - August 31, 2025	September 30, 2025

E. Maintain an inventory of equipment, supplies defined as Controlled Assets, and real property. Submit an annual cumulative report of the equipment and other property on HHS System Agency Grantee's Property Inventory Report to the designated DSHS Contract Manager and fsoequip@dshs.texas.gov by email not later than October 15 of each year. Controlled Assets include firearms, regardless of the acquisition cost, and the following assets with an acquisition cost of $500.00 or more, but less than $5,000.00: desktop and laptop computers (including notebooks, tablets and similar devices), non-portable printers and copiers, emergency management equipment, communication devices and systems,

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medical and laboratory equipment, and media equipment. Controlled Assets are considered Supplies.

F. Provide written notification of budget transfers by submission of a revised Categorical Budget Form to the designated DSHS Contract Manager, highlighting the areas affected by the budget transfer. Grantee is advised as follows:

1. Transferring funds between budget categories, other than the equipment and indirect cost categories, is allowable, but cannot exceed 25% of the total Contract value during a Contract budget period. If the budget transfer(s) exceeds 25% of the total Contract value, alone or cumulatively, a formal Contract amendment is required; and

2. After review, the designated DSHS Contract Manager shall provide notification of acceptance to Grantee via email, upon receipt of which, the revised budget shall be incorporated into the Contract.

3. Grantee's budget revision is not authorized, and funds cannot be utilized until the contract amendment is executed.

III. RULES

Grantee shall:

A. Provide services in accordance with all applicable federal and state laws, rules, regulations, standards and guidelines, as amended, including, but not limited to, the following:

1. Written policies and procedures provided by DSHS in managing vaccines supplied through the ASN and TVFC Programs, including guidelines for proper storage, handling, and safeguarding of vaccines in the event of natural disaster;
2. DSHS Immunization updated guidance according to the *FY2024 Contractors Guide,* located at: https://www.dshs.texas.gov/immunize/Responsible-Entities/Contract-Management/;
3. Texas Health and Safety Code § 1001.089 and maintain the confidentiality of any public health data obtained through provision of essential public health services as those services are defined in Texas Health and Safety Code §121.002; and
4. Those terms and conditions set forth in **ATTACHMENT E, DATA USE AGREEMENT**.

IV. PERFORMANCE MEASURES

System Agency will monitor the Grantee's performance of the requirements in this **ATTACHMENT A-1** and compliance with the Contract's terms and conditions.

V. INVOICE AND PAYMENT

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Grantee shall request monthly payments by the 30th day following the service month using the State of Texas Purchase Voucher (Form B-13) located at http://www.dshs.texas.gov/grants/forms.shtm. System Agency will issue reimbursement payments to Grantees on a monthly basis for reported actual cash disbursements which are supported by adequate documentation. Invoices must be submitted monthly to prevent delays in subsequent months. Grantees that do not incur expenses within a month are required to submit a "zero dollar" invoice on a monthly basis. Grantee must submit a final close-out invoice and final financial status report no later than 30 days following the end of the Contract term. Invoices received more than 30 days after the end of the Contract term are subject to denial of payment. Grantee shall electronically submit all invoices with supporting documentation to: invoices@dshs.texas.gov and CMSinvoices@dshs.texas.gov with a copy to the assigned DSHS Contract Representative identified in the Signature Document.

A. At a minimum, voucher should include:

1. Grantee name, address, email address, vendor identification number, and telephone number;
2. DSHS Contract or Purchase Order number;
3. Dates services were completed and/or products were delivered;
4. The total invoice amount; and
5. Any additional supporting documentation which is required by the Statement of Work or as requested by DSHS.

Failure to submit required information may result in delay of payment or return of invoice. Billing invoices must be legible. Illegible or incomplete invoices which cannot be verified will be disallowed for payment.

B. DSHS will pay Grantee monthly on a cost reimbursement basis and in accordance with **ATTACHMENT B-1, FY 2025 BUDGET**, of this Contract. DSHS will reimburse Grantee only for allowable and reported expenses incurred within the grant term.

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ATTACHMENT B-1

FY 2025 BUDGET

Budget Categories	Budget for FY 2025 September 1, 2024 - August 31, 2025
Personnel	**$105,000.00**
Fringe	**$45,150.00**
Travel	**$0.00**
Equipment	**$0.00**
Supplies	**$208.00**
Contractual	**$0.00**
Other	**$0.00**
Total Direct	**$150,358.00**
Indirect	**$0.00**
Total	**$150,358.00**

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HEALTH AND HUMAN SERVICES
Contract Number HHS001331300032
Attachment C1 CONTRACT AFFIRMATIONS

For purposes of these Contract Affirmations, HHS includes both the Health and Human Services Commission (HHSC) and the Department of State Health Services (DSHS). System Agency refers to HHSC, DSHS, or both, that will be a party to this Contract. These Contract Affirmations apply to all Contractors and Grantees (referred to as "Contractor") regardless of their business form (e.g., individual, partnership, corporation).

By entering into this Contract, Contractor affirms, without exception, understands, and agrees to comply with the following items through the life of the Contract:

1. Contractor represents and warrants that these Contract Affirmations apply to Contractor and all of Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Contract and any related Solicitation.

2. Complete and Accurate Information

Contractor represents and warrants that all statements and information provided to HHS are current, complete, and accurate. This includes all statements and information in this Contract and any related Solicitation Response.

3. Public Information Act

Contractor understands that HHS will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material prepared and submitted in connection with this Contract or any related Solicitation may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

4. Contracting Information Requirements

Contractor represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J (Additional Provisions Related to Contracting Information), Chapter 552 of the Government Code, may apply to the Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

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5. Assignment

A. Contractor shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from System Agency. Any attempted assignment in violation of this provision is void and without effect.

B. Contractor understands and agrees the System Agency may in one or more transactions assign, pledge, or transfer the Contract. Upon receipt of System Agency's notice of assignment, pledge, or transfer, Contractor shall cooperate with System Agency in giving effect to such assignment, pledge, or transfer, at no cost to System Agency or to the recipient entity.

6. Terms and Conditions

Contractor accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation, if any, under which this Contract was awarded. Contractor agrees that all exceptions to the Solicitation, as well as terms and conditions advanced by Contractor that differ in any manner from HHS' terms and conditions, if any, are rejected unless expressly accepted by System Agency in writing.

7. HHS Right to Use

Contractor agrees that HHS has the right to use, produce, and distribute copies of and to disclose to HHS employees, agents, and contractors and other governmental entities all or part of this Contract or any related Solicitation Response as HHS deems necessary to complete the procurement process or comply with state or federal laws.

8. Release from Liability

Contractor generally releases from liability and waives all claims against any party providing information about the Contractor at the request of System Agency.

9. Dealings with Public Servants

Contractor has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract or any related Solicitation, or related Solicitation Response.

10. Financial Participation Prohibited

Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

11. Prior Disaster Relief Contract Violation

Under Sections 2155.006 and 2261.053 of the Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract

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and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

12. Child Support Obligation

Under Section 231.006(d) of the Texas Family Code regarding child support, Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive the specified payment and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate. If the certification is shown to be false, Contractor may be liable for additional costs and damages set out in 231.006(f).

13. Suspension and Debarment

Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM*) maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.

14. Excluded Parties

Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order 13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism,"* published by the United States Department of the Treasury, Office of Foreign Assets Control.'

15. Foreign Terrorist Organizations

Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

16. Executive Head of a State Agency

In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor certifies that it is not (1) the executive head of an HHS agency, (2) a person who at any time during the four years before the date of this Contract was the executive head of an HHS agency, or (3) a person who employs a current or former executive head of an HHS agency.

17. Human Trafficking Prohibition

Under Section 2155.0061 of the Texas Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

DocuSign Envelope ID: 78C0FD9C-4546-4FFF-A716-2A72498E1DBC

18. Franchise Tax Status

Contractor represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.

19. Debts and Delinquencies

Contractor agrees that any payments due under this Contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

20. Lobbying Prohibition

Contractor represents and warrants that payments to Contractor and Contractor's receipt of appropriated or other funds under this Contract or any related Solicitation are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).

21. Buy Texas

Contractor agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.

22. Disaster Recovery Plan

Contractor agrees that upon request of System Agency, Contractor shall provide copies of its most recent business continuity and disaster recovery plans.

23. Computer Equipment Recycling Program

If this Contract is for the purchase or lease of computer equipment, then Contractor certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.

24. Television Equipment Recycling Program

If this Contract is for the purchase or lease of covered television equipment, then Contractor certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.

25. Cybersecurity Training

A. Contractor represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.

B. Contractor represents and warrants that if Contractor or Subcontractors, officers, or employees of Contractor have access to any state computer system or database, the Contractor, Subcontractors, officers, and employees of Contractor shall complete cybersecurity training pursuant to and in accordance with Government Code, Section 2054.5192.

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26. Restricted Employment for Certain State Personnel

Contractor acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving Contractor may not accept employment from Contractor before the second anniversary of the date the Contract is signed or the procurement is terminated or withdrawn.

27. No Conflicts of Interest

A. Contractor represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to System Agency under this Contract or any related Solicitation and that Contractor's provision of the requested goods and/or services under this Contract and any related Solicitation will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

B. Contractor agrees that, if after execution of the Contract, Contractor discovers or is made aware of a Conflict of Interest, Contractor will immediately and fully disclose such interest in writing to System Agency. In addition, Contractor will promptly and fully disclose any relationship that might be perceived or represented as a conflict after its discovery by Contractor or by System Agency as a potential conflict. System Agency reserves the right to make a final determination regarding the existence of Conflicts of Interest, and Contractor agrees to abide by System Agency's decision.

28. Fraud, Waste, and Abuse

Contractor understands that HHS does not tolerate any type of fraud, waste, or abuse. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. Pursuant to Texas Government Code, Section 321.022, if the administrative head of a department or entity that is subject to audit by the state auditor has reasonable cause to believe that money received from the state by the department or entity or by a client or contractor of the department or entity may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the department or entity, the administrative head shall report the reason and basis for the belief to the Texas State Auditor's Office (SAO). All employees or contractors who have reasonable cause to believe that fraud, waste, or abuse has occurred (including misconduct by any HHS employee, Grantee officer, agent, employee, or subcontractor that would constitute fraud, waste, or abuse) are required to immediately report the questioned activity to the Health and Human Services Commission's Office of Inspector General. Contractor agrees to comply with all applicable laws, rules, regulations, and System Agency policies regarding fraud, waste, and abuse including, but not limited to, HHS Circular C-027.

A report to the SAO must be made through one of the following avenues:

- SAO Toll Free Hotline: 1-800-TX-AUDIT
- SAO website: http://sao.fraud.state.tx.us/

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All reports made to the OIG must be made through one of the following avenues:

- OIG Toll Free Hotline 1-800-436-6184
- OIG Website: ReportTexasFraud.com
- Internal Affairs Email: InternalAffairsReferral@hhsc.state.tx.us
- OIG Hotline Email: OIGFraudHotline@hhsc.state.tx.us.
- OIG Mailing Address: Office of Inspector General
  Attn: Fraud Hotline
  MC 1300
  P.O. Box 85200
  Austin, Texas 78708-5200

29. Antitrust

The undersigned affirms under penalty of perjury of the laws of the State of Texas that:

A. in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;

B. in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any federal antitrust law; and

C. neither I nor any representative of the Contractor has directly or indirectly communicated any of the contents of this Contract and any related Solicitation Response to a competitor of the Contractor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contractor.

30. Legal and Regulatory Actions

Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Contractor or any of the individuals or entities included in numbered paragraph 1 of these Contract Affirmations within the five (5) calendar years immediately preceding execution of this Contract or the submission of any related Solicitation Response that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into this Contract. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has provided to System Agency a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into this Contract. In addition, Contractor acknowledges this is a continuing disclosure requirement. Contractor represents and warrants that Contractor shall notify System Agency in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update System Agency shall constitute breach of contract and may result in immediate contract termination.

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31. No Felony Criminal Convictions

Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred Contractor has fully advised System Agency in writing of the facts and circumstances surrounding the convictions.

32. Unfair Business Practices

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings**.**

33. Entities that Boycott Israel

Contractor represents and warrants that (1) it does not, and shall not for the duration of the Contract, boycott Israel or (2) the verification required by Section 2271.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify System Agency.

34. E-Verify

Contractor certifies that for contracts for services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of this Contract to determine the eligibility of:

1. all persons employed by Contractor to perform duties within Texas; and
2. all persons, including subcontractors, assigned by Contractor to perform work pursuant to this Contract within the United States of America.

35. Former Agency Employees – Certain Contracts

If this Contract is an employment contract, a professional services contract under Chapter 2254 of the Texas Government Code, or a consulting services contract under Chapter 2254 of the Texas Government Code, in accordance with Section 2252.901 of the Texas Government Code, Contractor represents and warrants that neither Contractor nor any of Contractor's employees including, but not limited to, those authorized to provide services under the Contract, were former employees of an HHS Agency during the twelve (12) month period immediately prior to the date of the execution of the Contract.

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36. Disclosure of Prior State Employment – Consulting Services

If this Contract is for consulting services,

A. In accordance with Section 2254.033 of the Texas Government Code, a Contractor providing consulting services who has been employed by, or employs an individual who has been employed by, System Agency or another State of Texas agency at any time during the two years preceding the submission of Contractor's offer to provide services must disclose the following information in its offer to provide services. Contractor hereby certifies that this information was provided and remains true, correct, and complete:

1. Name of individual(s) (Contractor or employee(s));
2. Status;
3. The nature of the previous employment with HHSC or the other State of Texas agency;
4. The date the employment was terminated and the reason for the termination; and
5. The annual rate of compensation for the employment at the time of its termination.

B. If no information was provided in response to Section A above, Contractor certifies that neither Contractor nor any individual employed by Contractor was employed by System Agency or any other State of Texas agency at any time during the two years preceding the submission of Contractor's offer to provide services.

37. Abortion Funding Limitation

Contractor understands, acknowledges, and agrees that, pursuant to Article IX of the General Appropriations Act (the Act), to the extent allowed by federal and state law, money appropriated by the Texas Legislature may not be distributed to any individual or entity that, during the period for which funds are appropriated under the Act:

1. performs an abortion procedure that is not reimbursable under the state's Medicaid program;
2. is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program; or
3. is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program.

The provision does not apply to a hospital licensed under Chapter 241, Health and Safety Code, or an office exempt under Section 245.004(2), Health and Safety Code. Contractor represents and warrants that it is not ineligible, nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article IX.

38. Funding Eligibility

Contractor understands, acknowledges, and agrees that, pursuant to Chapter 2272 (eff. Sept. 1, 2021, Ch. 2273) of the Texas Government Code, except as exempted under that Chapter, HHSC cannot contract with an abortion provider or an affiliate of an abortion provider. Contractor certifies that it is not ineligible to contract with HHSC under the terms of Chapter 2272 (eff. Sept. 1, 2021, Ch. 2273) of the Texas Government Code.

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39. Gender Transitioning and Gender Reassignment Procedures and Treatments for Certain Children – Prohibited Use of Public Money; Prohibited State Health Plan Reimbursement.

Contractor understands, acknowledges, and agrees that, pursuant to Section 161.704 of the Texas Health and Safety Code (eff. Sept. 1, 2023), public money may not directly or indirectly be used, granted, paid, or distributed to any health care provider, medical school, hospital, physician, or any other entity, organization, or individual that provides or facilitates the provision of a procedure or treatment to a child that is prohibited under Section 161.702 of the Texas Health and Safety Code. Contractor also understands, acknowledges, and agrees that, pursuant to Section 161.705 of the Texas Health and Safety Code (eff. Sept. 1, 2023), HHSC may not provide Medicaid reimbursement and the child health plan program established under Chapter 62 may not provide reimbursement to a physician or health care provider for provision of a procedure or treatment to a child that is prohibited under Section 161.702 of the Texas Health and Safety Code. Contractor certifies that it is not ineligible to contract with System Agency under the terms of Chapter 161, Subchapter X, of the Texas Health and Safety Code.

40. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 CFR 200.216)

Contractor certifies that the individual or business entity named in this Response or Contract is not ineligible to receive the specified Contract or funding pursuant to 2 CFR 200.216.

41. COVID-19 Vaccine Passports

Pursuant to Texas Health and Safety Code, Section 161.0085(c), Contractor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Contractor's business. Contractor acknowledges that such a vaccine or recovery requirement would make Contractor ineligible for a state-funded contract.

42. COVID-19 Vaccinations

Contractor understands, acknowledges, and agrees that, pursuant to Article II of the General Appropriations Act, none of the General Revenue Funds appropriated to the Department of State Health Services (DSHS) may be used for the purpose of promoting or advertising COVID-19 vaccinations in the 2024-25 biennium. It is also the intent of the legislature that to the extent allowed by federal law, any federal funds allocated to DSHS shall be expended for activities other than promoting or advertising COVID-19 vaccinations. Contractor represents and warrants that it is not ineligible, nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article II.

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43. Entities that Boycott Energy Companies

In accordance with Senate Bill 13, Acts 2021, 87th Leg., R.S., pursuant to Section 2274.002 (eff. Sept. 1, 2023, Section 2276.002, pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.) of the Texas Government Code (relating to prohibition on contracts with companies boycotting certain energy companies), Contractor represents and warrants that: (1) it does not, and will not for the duration of the Contract, boycott energy companies or (2) the verification required by Section 2274.002 (eff. Sept. 1, 2023, Section 2276.002, pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.) of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify System Agency.

44. Entities that Discriminate Against Firearm and Ammunition Industries

In accordance with Senate Bill 19, Acts 2021, 87th Leg., R.S., pursuant to Section 2274.002 of the Texas Government Code (relating to prohibition on contracts with companies that discriminate against firearm and ammunition industries), Contractor verifies that: (1) it does not, and will not for the duration of the Contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify System Agency.

45. Security Controls for State Agency Data

In accordance with Senate Bill 475, Acts 2021, 87th Leg., R.S., pursuant to Texas Government Code, Section 2054.138, Contractor understands, acknowledges, and agrees that if, pursuant to this Contract, Contractor is or will be authorized to access, transmit, use, or store data for System Agency, Contractor is required to meet the security controls the System Agency determines are proportionate with System Agency's risk under the Contract based on the sensitivity of System Agency's data and that Contractor must periodically provide to System Agency evidence that Contractor meets the security controls required under the Contract.

46. Cloud Computing State Risk and Authorization Management Program (TX-RAMP)

In accordance with Senate Bill 475, Acts 2021, 87th Leg., R.S., pursuant to Texas Government Code, Section 2054.0593, Contractor acknowledges and agrees that, if providing cloud computing services for System Agency, Contractor must comply with the requirements of the state risk and authorization management program and that System Agency may not enter or renew a contract with Contractor to purchase cloud computing services for the agency that are subject to the state risk and authorization management program unless Contractor demonstrates compliance with program requirements. If providing cloud computing services for System Agency that are subject to the state risk and authorization management program, Contractor certifies it will maintain program compliance and certification throughout the term of the Contract.

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47. Office of Inspector General Investigative Findings Expert Review

In accordance with Senate Bill 799, Acts 2021, 87th Leg., R.S., if Texas Government Code, Section 531.102(m-1)(2) (eff. Apr. 1, 2025, Section 544.0106, pursuant to House Bill 4611, Acts 2023, 88th Leg., R.S.) is applicable to this Contract, Contractor affirms that it possesses the necessary occupational licenses and experience.

48. Contract for Professional Services of Physicians, Optometrists, and Registered Nurses

In accordance with Senate Bill 799, Acts 2021, 87th Leg., R.S., if Texas Government Code, Section 2254.008(a)(2) is applicable to this Contract, Contractor affirms that it possesses the necessary occupational licenses and experience.

49. Foreign-Owned Companies in Connection with Critical Infrastructure

If Texas Government Code, Section 2274.0102(a)(1) (eff. Sept. 1, 2023, Section 2275.0102(a)(1), pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.) (relating to prohibition on contracts with certain foreign-owned companies in connection with critical infrastructure) is applicable to this Contract, pursuant to Government Code Section 2274.0102 (eff. Sept. 1, 2023, Section 2275.0102, pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.), Contractor certifies that neither it nor its parent company, nor any affiliate of Contractor or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2274.0103 (eff. Sept. 1, 2023, Section 2275.0103, pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.), or (2) headquartered in any of those countries.

50. Critical Infrastructure Subcontracts

For purposes of this Paragraph, the designated countries are China, Iran, North Korea, Russia, and any countries lawfully designated by the Governor as a threat to critical infrastructure. Pursuant to Section 113.002 of the Business and Commerce Code, Contractor shall not enter into a subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business and Commerce Code, in this state, other than access specifically allowed for product warranty and support purposes to any subcontractor unless (i) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is majority owned or controlled by citizens or governmental entities of a designated country; and (ii) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is headquartered in a designated country. Contractor will notify the System Agency before entering into any subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business & Commerce Code, in this state.

51. Enforcement of Certain Federal Firearms Laws Prohibited

In accordance with House Bill 957, Acts 2021, 87th Leg., R.S., if Texas Government Code, Section 2.101 is applicable to Contractor, Contractor certifies that it is not ineligible to receive state grant funds pursuant to Texas Government Code, Section 2.103.

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52. Prohibition on Abortions

Contractor understands, acknowledges, and agrees that, pursuant to Article II of the General Appropriations Act, (1) no funds shall be used to pay the direct or indirect costs (including marketing, overhead, rent, phones, and utilities) of abortion procedures provided by contractors of HHSC; and (2) no funds appropriated for Medicaid Family Planning, Healthy Texas Women Program, or the Family Planning Program shall be distributed to individuals or entities that perform elective abortion procedures or that contract with or provide funds to individuals or entities for the performance of elective abortion procedures. Contractor represents and warrants that it is not ineligible, nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article II.

53. False Representation

Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

54. False Statements

Contractor represents and warrants that all statements and information prepared and submitted by Contractor in this Contract and any related Solicitation Response are current, complete, true, and accurate. Contractor acknowledges any false statement or material misrepresentation made by Contractor during the performance of this Contract or any related Solicitation is a material breach of contract and may void this Contract. Further, Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

55. Permits and License

Contractor represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to this Contract.

56. Equal Employment Opportunity

Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

57. Federal Occupational Safety and Health Law

Contractor represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).

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58. Signature Authority

Contractor represents and warrants that the individual signing this Contract Affirmations document is authorized to sign on behalf of Contractor and to bind the Contractor.

Signature Page Follows

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Authorized representative on behalf of Contractor must complete and sign the following:

City of Midland Health Department

Legal Name of Contractor

City of Midland Health Department

Assumed Business Name of Contractor, if applicable (d/b/a or 'doing business as')

City of Midland Health Department

Texas County(s) for Assumed Business Name (d/b/a or 'doing business as')
Attach Assumed Name Certificate(s) filed with the Texas Secretary of State and Assumed Name Certificate(s), if any, for each Texas County Where Assumed Name Certificate(s) has been filed.

DocuSigned by:
Whitney S. Craig, DrPH, MPH
83EBFB35036D49F...

March 8, 2024

Signature of Authorized Representative

Date Signed

Whitney S. Craig, DrPH, MPH

Health Services Manager

Printed Name of Authorized Representative First, Middle Name or Initial, and Last Name

Title of Authorized Representative

3303 W. Illinois Ave Sp. 22

Midland, TX 79703

Physical Street Address

City, State, Zip Code

300 N. Loraine St

Midland, TX 79701

Mailing Address, if different

City, State, Zip Code

432-699-6290

Phone Number

Fax Number

wcraig@midlandtexas.gov

Email Address

DUNS Number

wcraig@midlandtexas.gov

17560006086

Federal Employer Identification Number

Texas Identification Number (TIN)

17560006086

000

Texas Franchise Tax Number

Texas Secretary of State Filing Number

CPZ1T3B85A64

SAM.gov Unique Entity Identifier (UEI)

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Health and Human Services (HHS)

Uniform Terms and Conditions - Grant

Version 3.3

Published and Effective – November 2023

Responsible Office: Chief Counsel

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ABOUT THIS DOCUMENT

In this document, Grantees (also referred to in this document as subrecipients or contractors) will find requirements and conditions applicable to grant funds administered and passed through by both the Texas Health and Human Services Commission (HHSC) and the Department of State Health Services (DSHS). These requirements and conditions are incorporated into the Grant Agreement through acceptance by Grantee of any funding award by HHSC or DSHS.

The terms and conditions in this document are in addition to all requirements listed in the RFA, if any, under which applications for this grant award are accepted, as well as all applicable federal and state laws and regulations. Applicable federal and state laws and regulations may include, but are not limited to: 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; requirements of the entity that awarded the funds to HHS; Chapter 783 of the Texas Government Code; Texas Comptroller of Public Accounts' agency rules (including Uniform Grant and Contract Standards set forth in Title 34, Part 1, Chapter 20, Subchapter E, Division 4 of the Texas Administrative Code); the Texas Grant Management Standards (TxGMS) developed by the Texas Comptroller of Public Accounts; and the Funding Announcement, Solicitation, or other instrument/documentation under which HHS was awarded funds. HHS, in its sole discretion, reserves the right to add requirements, terms, or conditions.

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TABLE OF CONTENTS

ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS 6
1.1 DEFINITIONS 6
1.2 INTERPRETIVE PROVISIONS 7
ARTICLE II. PAYMENT PROVISIONS 8
2.1 PROMPT PAYMENT 8
2.2 TAXES 8
2.3 ANCILLARY AND TRAVEL EXPENSES 8
2.4 BILLING 9
2.5 USE OF FUNDS 9
2.6 USE FOR MATCH PROHIBITED 9
2.7 PROGRAM INCOME 9
2.8 NONSUPPLANTING 9
2.9 INDIRECT COST RATES 9
ARTICLE III. STATE AND FEDERAL FUNDING 10
3.1 EXCESS OBLIGATIONS PROHIBITED 10
3.2 NO DEBT AGAINST THE STATE 10
3.3 DEBTS AND DELINQUENCIES 10
3.4 REFUNDS AND OVERPAYMENTS 10
ARTICLE IV. ALLOWABLE COSTS AND AUDIT REQUIREMENTS 10
4.1 ALLOWABLE COSTS 10
4.2 AUDITS AND FINANCIAL STATEMENTS 11
4.3 SUBMISSION OF AUDITS AND FINANCIAL STATEMENTS 11
ARTICLE V. WARRANTY, AFFIRMATIONS, ASSURANCES AND CERTIFICATIONS 12
5.1 WARRANTY 12
5.2 GENERAL AFFIRMATIONS 12
5.3 FEDERAL ASSURANCES 12
5.4 FEDERAL CERTIFICATIONS 12
5.5 STATE ASSURANCES 12
ARTICLE VI. INTELLECTUAL PROPERTY 13
6.1 OWNERSHIP OF WORK PRODUCT 13
6.2 GRANTEE'S PRE-EXISTING WORKS 13
6.3 THIRD PARTY IP 14

DocuSign Envelope ID: 78C0FD9C-4546-4FFF-A716-2A72498E1DBC

6.4 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS 14
6.5 DELIVERY UPON TERMINATION OR EXPIRATION 14
6.6 SURVIVAL 14
6.7 SYSTEM AGENCY DATA 14
ARTICLE VII. PROPERTY **15**
7.1 USE OF STATE PROPERTY 15
7.2 DAMAGE TO STATE PROPERTY 15
7.3 PROPERTY RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT 15
7.4 EQUIPMENT AND PROPERTY 16
ARTICLE VIII. RECORD RETENTION, AUDIT, AND CONFIDENTIALITY **16**
8.1 RECORD MAINTENANCE AND RETENTION 16
8.2 AGENCY'S RIGHT TO AUDIT 17
8.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS 17
8.4 STATE AUDITOR'S RIGHT TO AUDIT 18
8.5 CONFIDENTIALITY 18
ARTICLE IX. GRANT REMEDIES, TERMINATION AND PROHIBITED ACTIVITIES **18**
9.1 REMEDIES 18
9.2 TERMINATION FOR CONVENIENCE 19
9.3 TERMINATION FOR CAUSE 19
9.4 GRANTEE RESPONSIBILITY FOR SYSTEM AGENCY'S TERMINATION COSTS 19
9.5 INHERENTLY RELIGIOUS ACTIVITIES 20
9.6 POLITICAL ACTIVITIES 20
ARTICLE X. INDEMNITY **20**
10.1 GENERAL INDEMNITY 20
10.2 INTELLECTUAL PROPERTY 21
10.3 ADDITIONAL INDEMNITY PROVISIONS 21
ARTICLE XI. GENERAL PROVISIONS **21**
11.1 AMENDMENTS 21
11.2 NO QUANTITY GUARANTEES 21
11.3 CHILD ABUSE REPORTING REQUIREMENTS 22
11.4 CERTIFICATION OF MEETING OR EXCEEDING TOBACCO-FREE WORKPLACE POLICY MINIMUM STANDARDS 22
11.5 INSURANCE AND BONDS 22

DocuSign Envelope ID: 78C0FD9C-4546-4FFF-A716-2A72498E1DBC

11.6 LIMITATION ON AUTHORITY 23
11.7 CHANGE IN LAWS AND COMPLIANCE WITH LAWS 23
11.8 SUBCONTRACTORS 23
11.9 PERMITTING AND LICENSURE 23
11.10 INDEPENDENT CONTRACTOR 24
11.11 GOVERNING LAW AND VENUE 24
11.12 SEVERABILITY 24
11.13 SURVIVABILITY 24
11.14 FORCE MAJEURE 24
11.15 NO IMPLIED WAIVER OF PROVISIONS 25
11.16 FUNDING DISCLAIMERS AND LABELING 25
11.17 MEDIA RELEASES 25
11.18 PROHIBITION ON NON-COMPETE RESTRICTIONS 25
11.19 SOVEREIGN IMMUNITY 25
11.20 ENTIRE CONTRACT AND MODIFICATION 26
11.21 COUNTERPARTS 26
11.22 PROPER AUTHORITY 26
11.23 E-VERIFY PROGRAM 26
11.24 CIVIL RIGHTS 26
11.25 ENTERPRISE INFORMATION MANAGEMENT STANDARDS 27
11.26 DISCLOSURE OF LITIGATION 27
11.27 NO THIRD PARTY BENEFICIARIES 28
11.28 BINDING EFFECT 28

DocuSign Envelope ID: 78C0FD9C-4546-4FFF-A716-2A72498E1DBC

ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

1.1 DEFINITIONS

As used in this Grant Agreement, unless a different definition is specified, or the context clearly indicates otherwise, the following terms and conditions have the meanings assigned below:

"Amendment" means a written agreement, signed by the Parties, which documents changes to the Grant Agreement.

"Contract" or "Grant Agreement" means the agreement entered into by the Parties, including the Signature Document, these Uniform Terms and Conditions, along with any attachments and amendments that may be issued by the System Agency.

"Deliverables" means the goods, services, and work product, including all reports and project documentation, required to be provided by Grantee to the System Agency.

"DSHS" means the Department of State Health Services.

"Effective Date" means the date on which the Grant Agreement takes effect.

"Federal Fiscal Year" means the period beginning October 1 and ending September 30 each year, which is the annual accounting period for the United States government.

"GAAP" means Generally Accepted Accounting Principles.

"GASB" means the Governmental Accounting Standards Board.

"Grantee" means the Party receiving funds under this Grant Agreement. May also be referred to as "subrecipient" or "contractor" in this document.

"HHSC" means the Texas Health and Human Services Commission.

"Health and Human Services" or "HHS" includes HHSC and DSHS.

"Intellectual Property Rights" means the worldwide proprietary rights or interests, including patent, copyright, trade secret, and trademark rights, as such right may be evidenced by or embodied in:

i. any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement;
ii. any work of authorship, including any compilation, computer code, website or web page design, literary work, pictorial work, or graphic work;
iii. any trademark, service mark, trade dress, trade name, branding, or other indicia of source or origin;
iv. domain name registrations; and
v. any other proprietary or similar rights. The Intellectual Property Rights of a Party include all worldwide proprietary rights or interests that the Party may have acquired by assignment, by exclusive license, or by license with the right to grant sublicenses.

"Parties" means the System Agency and Grantee, collectively.

"Party" means either the System Agency or Grantee, individually.

"Project" means specific activities of the Grantee that are supported by funds provided under this Grant Agreement.

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"Signature Document" means the document executed by all Parties for this Grant Agreement.

"Solicitation," "Funding Announcement" or "Request for Applications (RFA)" means the document (including all exhibits, attachments, and published addenda), issued by the System Agency under which applications for grant funds were requested, which is incorporated by reference in the Grant Agreement for all purposes in its entirety.

"Solicitation Response" or "Application" means Grantee's full and complete Solicitation response (including any attachments and addenda), which is incorporated by reference in the Grant Agreement for all purposes in its entirety.

"State Fiscal Year" means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

"State of Texas *Textravel*" means the Texas Comptroller of Public Accounts' website relative to travel reimbursements under this Contract, if any.

"Statement of Work" means the description of activities Grantee must perform to complete the Project, as specified in the Grant Agreement, and as may be amended.

"System Agency" means HHSC or DSHS, as applicable.

"Work Product" means any and all works, including work papers, notes, materials, approaches, designs, specifications, systems, innovations, improvements, inventions, software, programs, source code, documentation, training materials, audio or audiovisual recordings, methodologies, concepts, studies, reports, whether finished or unfinished, and whether or not included in the deliverables, that are developed, produced, generated or provided by Grantee in connection with Grantee's performance of its duties under the Grant Agreement or through use of any funding provided under this Grant Agreement.

"Texas Grant Management Standards" or "TxGMS" means uniform grant and contract administration procedures, developed under the authority of Chapter 783 of the Texas Government Code, to promote the efficient use of public funds in local government and in programs requiring cooperation among local, state, and federal agencies. Under this Grant Agreement, TxGMS applies to Grantee except as otherwise provided by applicable law or directed by System Agency. Additionally, except as otherwise provided by applicable law, in the event of a conflict between TxGMS and applicable federal or state law, federal law prevails over state law and state law prevails over TxGMS.

1.2 Interpretive Provisions

A. The meanings of defined terms include the singular and plural forms.
B. The words "hereof," "herein," "hereunder," and similar words refer to this Grant Agreement as a whole and not to any particular provision, section, attachment, or schedule of this Grant Agreement unless otherwise specified.
C. The term "including" is not limiting and means "including without limitation" and, unless otherwise expressly provided in this Grant Agreement, (i) references to contracts (including this Grant Agreement) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Grant Agreement, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation.

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D. Any references to agreements, contracts, statutes, or administrative rules or regulations in the Grant Agreement are references to these documents as amended, modified, or supplemented during the term of the Grant Agreement.
E. The captions and headings of this Grant Agreement are for convenience of reference only and do not affect the interpretation of this Grant Agreement.
F. All attachments, including those incorporated by reference, and any Amendments are considered part of the terms of this Grant Agreement.
G. This Grant Agreement may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative.
H. Unless otherwise expressly provided, reference to any action of the System Agency or by the System Agency by way of consent, approval, or waiver will be deemed modified by the phrase "in its sole discretion."
I. Time is of the essence in this Grant Agreement.
J. Prior to execution of the Grant Agreement, Grantee must notify System Agency's designated contact in writing of any ambiguity, conflict, discrepancy, omission, or other error. If Grantee fails to notify the System Agency designated contact of any ambiguity, conflict, discrepancy, omission, or other error in the Grant Agreement prior to Grantee's execution of the Grant Agreement, Grantee:
    i. Shall have waived any claim of error or ambiguity in the Grant Agreement; and
    ii. Shall not contest the interpretation by the System Agency of such provision(s).

No grantee will be entitled to additional reimbursement, relief, or time by reason of any ambiguity, conflict, discrepancy, exclusionary specification, omission, or other error or its later correction.

ARTICLE II. PAYMENT PROVISIONS

2.1 PROMPT PAYMENT

Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.

2.2 TAXES

Grantee represents and warrants that it shall pay all taxes or similar amounts resulting from the Grant Agreement, including, but not limited to, any federal, State, or local income, sales or excise taxes of Grantee or its employees. System Agency shall not be liable for any taxes resulting from the Grant Agreement.

2.3 ANCILLARY AND TRAVEL EXPENSES

A. Except as otherwise provided in the Grant Agreement, no ancillary expenses incurred by the Grantee in connection with its provision of the services or deliverables will be reimbursed by the System Agency. Ancillary expenses include, but are not limited to, costs associated with transportation, delivery, and insurance for each deliverable.
B. Except as otherwise provided in the Grant Agreement, when the reimbursement of travel expenses is authorized by the Grant Agreement, all such expenses will be reimbursed in accordance with the rates set by the Texas Comptroller's *Textravel* guidelines, which can currently be accessed at: https://fmx.cpa.texas.gov/fmx/travel/textravel/

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2.4 BILLING

Unless otherwise provided in the Grant Agreement, Grantee shall bill the System Agency in accordance with the Grant Agreement. Unless otherwise specified in the Grant Agreement, Grantee shall submit requests for reimbursement or payment monthly by the last business day of the month following the month in which expenses were incurred or services provided. Grantee shall maintain all documentation that substantiates invoices and make the documentation available to the System Agency upon request.

2.5 USE OF FUNDS

Grantee shall expend funds under this Grant Agreement only for approved services and for reasonable and allowable expenses directly related to those services.

2.6 USE FOR MATCH PROHIBITED

Grantee shall not use funds provided under this Grant Agreement for matching purposes in securing other funding without the written approval of the System Agency.

2.7 PROGRAM INCOME

Program income refers to gross income directly generated by a supporting activity during the period of performance. Unless otherwise required under the Grant Agreement, Grantee shall use Program Income, as provided in TxGMS, to further the Project, and Grantee shall spend the Program Income on the Project. Grantee shall identify and report Program Income in accordance with the Grant Agreement, applicable law, and any programmatic guidance. Grantee shall expend Program Income during the Grant Agreement term, when earned, and may not carry Program Income forward to any succeeding term. Grantee shall refund Program Income to the System Agency if the Program Income is not expended in the term in which it is earned. The System Agency may base future funding levels, in part, upon Grantee's proficiency in identifying, billing, collecting, and reporting Program Income, and in using Program Income for the purposes and under the conditions specified in this Grant Agreement.

2.8 NONSUPPLANTING

Grant funds must be used to supplement existing, new or corresponding programming and related activities. Grant funds may not be used to supplant (replace) existing funds that have been appropriated, allocated, or disbursed for the same purpose. System Agency may conduct Grant monitoring or audits may be conducted to review, among other things, Grantee's compliance with this provision.

2.9 INDIRECT COST RATES

The System Agency may acknowledge an indirect cost rate for Grantees that is utilized for all applicable Grant Agreements. For subrecipients receiving federal funds, indirect cost rates will be determined in accordance with applicable law including, but not limited to, 2 CFR 200.414(f). For recipients receiving state funds, indirect costs will be determined in accordance with applicable law including, but not limited to, TxGMS. Grantees funded with blended federal and state funding will be subject to both state and federal requirements when determining indirect costs. In the event of a conflict between TxGMS and applicable federal law or regulation, the provisions of federal law or regulation will apply. Grantee will provide any necessary financial documents to determine the indirect cost rate in accordance with the Uniform Grant Guidance (UGG) and TxGMS.

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ARTICLE III. STATE AND FEDERAL FUNDING

3.1 EXCESS OBLIGATIONS PROHIBITED

This Grant Agreement is subject to termination or cancellation, without penalty to System Agency, either in whole or in part, subject to the availability and actual receipt by System Agency of state or federal funds. System Agency is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If System Agency becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either System Agency's or Grantee's delivery or performance under the Grant Agreement impossible or unnecessary, the Grant Agreement will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, System Agency will not be liable to Grantee for any damages that are caused or associated with such termination or cancellation, and System Agency will not be required to give prior notice. Additionally, System Agency will not be liable to Grantee for any remaining unpaid funds under this Grant Agreement at time of termination.

3.2 NO DEBT AGAINST THE STATE

This Grant Agreement will not be construed as creating any debt by or on behalf of the State of Texas.

3.3 DEBTS AND DELINQUENCIES

Grantee agrees that any payments due under the Grant Agreement shall be directly applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support during the entirety of the Grant Agreement term.

3.4 REFUNDS AND OVERPAYMENTS

A. At its sole discretion, the System Agency may (i) withhold all or part of any payments to Grantee to offset overpayments, unallowable or ineligible costs made to the Grantee, or if any required financial status report(s) is not submitted by the due date(s); or (ii) require Grantee to promptly refund or credit - within thirty (30) calendar days of written notice – to System Agency any funds erroneously paid by System Agency which are not expressly authorized under the Grant Agreement.

B. "Overpayments" as used in this Section include payments (i) made by the System Agency that exceed the maximum allowable rates; (ii) that are not allowed under applicable laws, rules, or regulations; or (iii) that are otherwise inconsistent with this Grant Agreement, including any unapproved expenditures. Grantee understands and agrees that it shall be liable to the System Agency for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Grant Agreement. Grantee further understands and agrees that reimbursement of such disallowed costs shall be paid by Grantee from funds which were not provided or otherwise made available to Grantee under this Grant Agreement.

ARTICLE IV. ALLOWABLE COSTS AND AUDIT REQUIREMENTS

4.1 ALLOWABLE COSTS

A. Allowable Costs are restricted to costs that are authorized under Texas Uniform Grant Management Standards (TxGMS) and applicable state and federal rules and laws. This Grant Agreement is subject to all applicable requirements of TxGMS, including the

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criteria for Allowable Costs. Additional federal requirements apply if this Grant Agreement is funded, in whole or in part, with federal funds.

B. System Agency will reimburse Grantee for actual, allowable, and allocable costs incurred by Grantee in performing the Project, provided the costs are sufficiently documented. Grantee must have incurred a cost prior to claiming reimbursement and within the applicable term to be eligible for reimbursement under this Grant Agreement. At its sole discretion, the System Agency will determine whether costs submitted by Grantee are allowable and eligible for reimbursement. The System Agency may take repayment (recoup) from remaining funds available under this Grant Agreement in amounts necessary to fulfill Grantee's repayment obligations. Grantee and all payments received by Grantee under this Grant Agreement are subject to applicable cost principles, audit requirements, and administrative requirements including applicable provisions under 2 CFR 200, 48 CFR Part 31, and TxGMS.

C. OMB Circulars will be applied with the modifications prescribed by TxGMS with effect given to whichever provision imposes the more stringent requirement in the event of a conflict.

4.2 AUDITS AND FINANCIAL STATEMENTS

A. Audits

i. Grantee understands and agrees that Grantee is subject to any and all applicable audit requirements found in state or federal law or regulation or added by this Grant Agreement

ii. HHS Single Audit Unit will notify Grantee to complete the Single Audit Determination Form. If Grantee fails to complete the form within thirty (30) calendar days after receipt of notice, Grantee maybe subject to sanctions and remedies for non-compliance.

iii. If Grantee, within Grantee's fiscal year, expends at least SEVEN HUNDRED FIFTY THOUSAND DOLLARS ($750,000) in federal funds awarded, Grantee shall have a single audit or program-specific audit in accordance with 2 CFR 200. The federal threshold amount includes federal funds passed through by way of state agency awards.

iv. If Grantee, within Grantee's fiscal year, expends at least SEVEN HUNDRED FIFTY THOUSAND DOLLARS ($750,000) in state funds awarded, Grantee shall have a single audit or program-specific audit in accordance with TxGMS. The audit must be conducted by an independent certified public accountant and in accordance with 2 CFR 200, Government Auditing Standards, and TxGMS.

v. For-profit Grantees whose expenditures meet or exceed the federal or state expenditure thresholds stated above shall follow the guidelines in 2 CFR 200 or TxGMS, as applicable, for their program-specific audits.

vi. Each Grantee required to obtain a single audit must competitively re-procure single audit services once every six years. Grantee shall procure audit services in compliance with this section, state procurement procedures, as well as with applicable provisions of 2 CFR 200 and TxGMS.

B. Financial Statements.

Each Grantee that does not meet the expenditure threshold for a single audit or program-specific audit, must provide financial statements for the audit period.

4.3 SUBMISSION OF AUDITS AND FINANCIAL STATEMENTS

A. Audits.

Due the earlier of 30 days after receipt of the independent certified public accountant's

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report or nine months after the end of the fiscal year, Grantee shall submit one electronic copy of the single audit or program-specific audit to the System Agency via:

i. HHS portal at https://hhsportal.hhs.state.tx.us/heartwebextr/hhscSau or,
ii. Email to: single_audit_report@hhsc.state.tx.us.

B. Financial Statements.

Due no later than nine months after the Grantee's fiscal year-end, Grantees not required to submit an audit, shall submit one electronic copy of their financial statements via:

i. HHS portal at https://hhsportal.hhs.state.tx.us/heartwebextr/hhscSau; or,
ii. Email to: single_audit_report@hhsc.state.tx.us.

ARTICLE V. WARRANTY, AFFIRMATIONS, ASSURANCES AND CERTIFICATIONS

5.1 WARRANTY

Grantee warrants that all work under this Grant Agreement shall be completed in a manner consistent with standards under the terms of this Grant Agreement, in the applicable trade, profession, or industry; shall conform to or exceed the specifications set forth in the Grant Agreement; and all deliverables shall be fit for ordinary use, of good quality, and with no material defects. If System Agency, in its sole discretion, determines Grantee has failed to complete work timely or to perform satisfactorily under conditions required by this Grant Agreement, the System Agency may require Grantee, at its sole expense, to:

i. Repair or replace all defective or damaged work;
ii. Refund any payment Grantee received from System Agency for all defective or damaged work and, in conjunction therewith, require Grantee to accept the return of such work; and,
iii. Take necessary action to ensure that Grantee's future performance and work conform to the Grant Agreement requirements.

5.2 GENERAL AFFIRMATIONS

Grantee certifies that, to the extent affirmations are incorporated into the Grant Agreement, the Grantee has reviewed the affirmations and that Grantee is in compliance with all requirements.

5.3 FEDERAL ASSURANCES

Grantee further certifies that, to the extent federal assurances are incorporated into the Grant Agreement, the Grantee has reviewed the federal assurances and that Grantee is in compliance with all requirements.

5.4 FEDERAL CERTIFICATIONS

Grantee further certifies that, to the extent federal certifications are incorporated into the Grant Agreement, the Grantee has reviewed the federal certifications and that Grantee is in compliance with all requirements. In addition, Grantee certifies that it is in compliance with all applicable federal laws, rules, and regulations, as they may pertain to this Grant Agreement.

5.5 STATE ASSURANCES

Except to the extent of any conflict under applicable law or requirements or guidelines of any federal awarding agency from which funding for this Grant Agreement originated, the Grantee must comply with the applicable state assurances included within the TxGMS which are incorporated here by reference.

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ARTICLE VI. INTELLECTUAL PROPERTY

6.1 OWNERSHIP OF WORK PRODUCT

A. All right, title, and interest in the Work Product, including all Intellectual Property Rights therein, is exclusively owned by System Agency. Grantee and Grantee's employees will have no rights in or ownership of the Work Product or any other property of System Agency.

B. Any and all Work Product that is copyrightable under United States copyright law is deemed to be "work made for hire" owned by System Agency, as provided by Title 17 of the United States Code. To the extent that Work Product does not qualify as a "work made for hire" under applicable federal law, Grantee hereby irrevocably assigns and transfers to System Agency, its successors and assigns, the entire right, title, and interest in and to the Work Product, including any and all Intellectual Property Rights embodied therein or associated therewith, and in and to all works based upon, derived from, or incorporating the Work Product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing.

C. Grantee agrees to execute all papers and to perform such other acts as System Agency may deem necessary to secure for System Agency or its designee the rights herein assigned.

D. In the event that Grantee has any rights in and to the Work Product that cannot be assigned to System Agency, Grantee hereby grants to System Agency an exclusive, worldwide, royalty-free, transferable, irrevocable, and perpetual license, with the right to sublicense, to reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, make, have made, use, sell and offer for sale the Work Product and any products developed by practicing such rights.

E. The foregoing does not apply to Incorporated Pre-existing Works or Third Party IP that are incorporated in the Work Product by Grantee. Grantee shall provide System Agency access during normal business hours to all Grantee materials, premises, and computer files containing the Work Product.

6.2 GRANTEE'S PRE-EXISTING WORKS

A. To the extent that Grantee incorporates into the Work Product any works of Grantee that were created by Grantee or that Grantee acquired rights in prior to the Effective Date of this Grant Agreement ("**Incorporated Pre-existing Works**"), Grantee retains ownership of such Incorporated Pre-existing Works.

B. Grantee hereby grants to System Agency an irrevocable, perpetual, non-exclusive, royalty-free, transferable, worldwide right and license, with the right to sublicense, to use, reproduce, modify, copy, create derivative works of, publish, publicly perform and display, sell, offer to sell, make and have made, the Incorporated Pre-existing Works, in any medium, with or without the associated Work Product.

C. Grantee represents, warrants, and covenants to System Agency that Grantee has all necessary right and authority to grant the foregoing license in the Incorporated Pre-existing Works to System Agency.

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6.3 THIRD PARTY IP

A. To the extent that any Third Party IP is included or incorporated in the Work Product by Grantee, Grantee hereby grants to System Agency, or shall obtain from the applicable third party for System Agency's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for System Agency's internal business or governmental purposes only, to use, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Third Party IP and any derivative works thereof embodied in or delivered to System Agency in conjunction with the Work Product, and to authorize others to do any or all of the foregoing.
B. Grantee shall obtain System Agency's advance written approval prior to incorporating any Third Party IP into the Work Product, and Grantee shall notify System Agency on delivery of the Work Product if such materials include any Third Party IP.
C. Grantee shall provide System Agency all supporting documentation demonstrating Grantee's compliance with this Section 6.3, including without limitation documentation indicating a third party's written approval for Grantee to use any Third Party IP that may be incorporated in the Work Product.

6.4 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS

Grantee shall have written, binding agreements with its employees and subcontractors that include provisions sufficient to give effect to and enable Grantee's compliance with Grantee's obligations under this Article VI, Intellectual Property.

6.5 DELIVERY UPON TERMINATION OR EXPIRATION

No later than the first calendar day after the termination or expiration of the Grant Agreement or upon System Agency's request, Grantee shall deliver to System Agency all completed, or partially completed, Work Product, including any Incorporated Pre-existing Works, and any and all versions thereof. Grantee's failure to timely deliver such Work Product is a material breach of the Grant Agreement. Grantee will not retain any copies of the Work Product or any documentation or other products or results of Grantee's activities under the Grant Agreement without the prior written consent of System Agency.

6.6 SURVIVAL

The provisions and obligations of this Article survive any termination or expiration of the Grant Agreement.

6.7 SYSTEM AGENCY DATA

A. As between the Parties, all data and information acquired, accessed, or made available to Grantee by, through, or on behalf of System Agency or System Agency contractors, including all electronic data generated, processed, transmitted, or stored by Grantee in the course of providing data processing services in connection with Grantee's performance hereunder (the "System Agency Data"), is owned solely by System Agency.
B. Grantee has no right or license to use, analyze, aggregate, transmit, create derivatives of, copy, disclose, or process the System Agency Data except as required for Grantee to fulfill its obligations under the Grant Agreement or as authorized in advance in writing by System Agency.
C. For the avoidance of doubt, Grantee is expressly prohibited from using, and from permitting any third party to use, System Agency Data for marketing, research, or other non-governmental or commercial purposes, without the prior written consent of System Agency.
D. Grantee shall make System Agency Data available to System Agency, including to

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System Agency's designated vendors, as directed in writing by System Agency. The foregoing shall be at no cost to System Agency.

E. Furthermore, the proprietary nature of Grantee's systems that process, store, collect, and/or transmit the System Agency Data shall not excuse Grantee's performance of its obligations hereunder.

ARTICLE VII. PROPERTY

7.1 USE OF STATE PROPERTY

A. Grantee is prohibited from using State Property for any purpose other than performing Services authorized under the Grant Agreement.

B. State Property includes, but is not limited to, System Agency's office space, identification badges, System Agency information technology equipment and networks (*e.g.,* laptops, portable printers, cell phones, iPads or tablets, external hard drives, data storage devices, any System Agency-issued software, and the System Agency Virtual Private Network (VPN client)), and any other resources of System Agency.

C. Grantee shall not remove State Property from the continental United States. In addition, Grantee may not use any computing device to access System Agency's network or e-mail while outside of the continental United States.

D. Grantee shall not perform any maintenance services on State Property unless the Grant Agreement expressly authorizes such Services.

E. During the time that State Property is in the possession of Grantee, Grantee shall be responsible for:

i. all repair and replacement charges incurred by State Agency that are associated with loss of State Property or damage beyond normal wear and tear, and

ii. all charges attributable to Grantee's use of State Property that exceeds the Grant Agreement scope. Grantee shall fully reimburse such charges to System Agency within ten (10) calendar days of Grantee's receipt of System Agency's notice of amount due. Use of State Property for a purpose not authorized by the Grant Agreement shall constitute breach of contract and may result in termination of the Grant Agreement and the pursuit of other remedies available to System Agency under contract, at law, or in equity.

7.2 DAMAGE TO STATE PROPERTY

A. In the event of loss, destruction, or damage to any System Agency or State of Texas owned, leased, or occupied property or equipment by Grantee or Grantee's employees, agents, Subcontractors, or suppliers, Grantee shall be liable to System Agency and the State of Texas for the full cost of repair, reconstruction, or replacement of the lost, destroyed, or damaged property.

B. Grantee shall notify System Agency of the loss, destruction, or damage of equipment or property within one (1) business day. Grantee shall reimburse System Agency and the State of Texas for such property damage within ten (10) calendar days after Grantee's receipt of System Agency's notice of amount due.

7.3 PROPERTY RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT

In the event the Grant Agreement is terminated for any reason or expires, State Property remains the property of the System Agency and must be returned to the System Agency by the earlier of the end date of the Grant Agreement or upon System Agency's request.

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7.4 EQUIPMENT AND PROPERTY

A. The Grantee must ensure equipment with a per-unit cost of $5,000 or greater purchased with grant funds under this award is used solely for the purpose of this Grant or is properly pro-rated for use under this Grant. Grantee must have control systems to prevent loss, damage, or theft of property funded under this Grant. Grantee shall maintain equipment management and inventory procedures for equipment, whether acquired in part or whole with grant funds, until disposition occurs.

B. When equipment acquired by Grantee under this Grant Agreement is no longer needed for the original project or for other activities currently supported by System Agency, the Grantee must properly dispose of the equipment pursuant to 2 CFR and/or TxGMS, as applicable. Upon termination of this Grant Agreement, use and disposal of equipment by the Grantee shall conform with TxGMS requirements.

C. Grantee shall initiate the purchase of all equipment approved in writing by the System Agency in accordance with the schedule approved by System Agency, as applicable. Failure to timely initiate the purchase of equipment may result in the loss of availability of funds for the purchase of equipment. Requests to purchase previously approved equipment after the first quarter in the Grant Agreement must be submitted to the assigned System Agency contract manager.

D. Controlled Assets include firearms, regardless of the acquisition cost, and the following assets with an acquisition cost of $500 or more, but less than $5,000: desktop and laptop computers (including notebooks, tablets and similar devices), non-portable printers and copiers, emergency management equipment, communication devices and systems, medical and laboratory equipment, and media equipment. Controlled Assets are considered supplies.

E. System Agency funds must not be used to purchase buildings or real property without prior written approval from System Agency. Any costs related to the initial acquisition of the buildings or real property are not allowable without written pre-approval.

ARTICLE VIII. RECORD RETENTION, AUDIT, AND CONFIDENTIALITY

8.1 RECORD MAINTENANCE AND RETENTION

A. Grantee shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the System Agency, the Texas State Auditor's Office, the United States Government, and their authorized representatives all information required to determine compliance with the terms and conditions of this Grant Agreement and all state and federal rules, regulations, and statutes. Grantee shall ensure these same requirements are included in all subcontracts.

B. Grantee shall maintain and retain legible copies of this Grant Agreement and all records relating to the performance of the Grant Agreement, including supporting fiscal documents adequate to ensure that claims for grant funds are in accordance with applicable State of Texas requirements. These records shall be maintained and retained by the Grantee for a minimum of seven (7) years after the Grant Agreement expiration date or seven (7) years after all audits, claims, litigation, or disputes involving the Grant Agreement are resolved, whichever is later. Grantee shall ensure these same requirements are included in all subcontracts.

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8.2 AGENCY'S RIGHT TO AUDIT

A. Grantee shall make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, supporting documents kept current by Grantee pertaining to the Grant Agreement for purposes of inspecting, monitoring, auditing, or evaluating by System Agency and the State of Texas. Grantee shall ensure these same requirements are included in all subcontracts.

B. In addition to any right of access arising by operation of law, Grantee and any of Grantee's affiliate or subsidiary organizations, or Subcontractors shall permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Grant Agreement. Grantee shall permit the System Agency or any of its duly authorized federal, state, or local authorities unrestricted access to and the right to examine all external contracts and or pricing models or methodologies related to the Grant Agreement. Grantee shall ensure these same requirements are included in all subcontracts. If the Grant Agreement includes federal funds, federal agencies that shall have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that shall have a right of access to records as described in this section include: the System Agency, HHS's contracted examiners, the State Auditor's Office, the Office of the Texas Attorney General, and any successor agencies. Each of these entities may be a duly authorized authority.

C. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of oversight, including, but not limited to, reviews, inspections, audits and investigations, Grantee shall produce original documents related to this Grant Agreement.

D. The System Agency and any duly authorized authority shall have the right to audit billings both before and after payment, and all documentation that substantiates the billings and payments related to the Grant Agreement, including those related to a Subcontractor.

E. Grantee shall include the System Agency's and any of its duly authorized representatives', as well as duly authorized federal, state, or local authorities, unrestricted right of access to, and examination of, sites and information related to this Grant Agreement in any Subcontract it awards.

8.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS

A. Grantee must act to ensure its and its Subcontractors' compliance with all corrections necessary to address any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle, or any other deficiency identified in any audit, review, inspection or investigation of the Grant Agreement and the services and Deliverables provided. Any such correction will be at Grantee's or its Subcontractor's sole expense. Whether Grantee's action corrects the noncompliance shall be solely the decision of the System Agency.

B. As part of the services, Grantee must provide to HHS upon request a copy of those portions of Grantee's and its Subcontractors' internal audit reports relating to the services and Deliverables provided to the State under the Grant Agreement.

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C. Grantee shall include the requirement to provide to System Agency (and any of its duly authorized federal, state, or local authorities) internal audit reports related to this Grant Agreement in any Subcontract it awards. Upon request by System Agency, Grantee shall enforce this requirement against its Subcontractor. Further, Grantee shall include in any Subcontract it awards a requirement that all Subcontractor Subcontracts must also include these provisions.

8.4 State Auditor's Right to Audit

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Grant Agreement or indirectly through a subcontract under the Grant Agreement. The acceptance of funds directly under the Grant Agreement or indirectly through a subcontract under the Grant Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Grantee shall ensure the authority to audit funds received indirectly by subcontractors through the contract and the requirement to cooperate is included in any subcontract it awards.

8.5 Confidentiality

Grantee shall maintain as confidential and shall not disclose to third parties without System Agency's prior written consent, any System Agency information including but not limited to System Agency's business activities, practices, systems, conditions and services. This Article VIII will survive termination or expiration of this Grant Agreement. Further, the obligations of Grantee under this Article VIII will survive termination or expiration of this Grant Agreement. This requirement must be included in all subcontracts awarded by Grantee.

ARTICLE IX. Grant Remedies, Termination and Prohibited Activities

9.1 Remedies

A. To ensure Grantee's full performance of the Grant Agreement and compliance with applicable law, System Agency reserves the right to hold Grantee accountable for breach of contract or substandard performance and may take remedial or corrective actions, including, but not limited to the following:

i. temporarily withholding cash disbursements or reimbursements pending correction of the deficiency;
ii. disallowing or denying use of funds for the activity or action deemed not to be in compliance;
iii. disallowing claims for reimbursement that may require a partial or whole return of previous payments or reimbursements;
iv. suspending all or part of the Grant Agreement;
v. requiring the Grantee to take specific actions in order to remain in compliance with the Grant Agreement;
vi. recouping payments made by the System Agency to the Grantee found to be in error;
vii. suspending, limiting, or placing conditions on the Grantee's continued performance of the Project;
viii. prohibiting the Grantee from receiving additional funds for other grant programs administered by the System Agency until satisfactory compliance resolution is

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obtained;

ix. withholding release of new grant agreements; and

x. imposing any other remedies, sanctions or penalties authorized under this Grant Agreement or permitted by federal or state statute, law, regulation or rule.

B. Unless expressly authorized by System Agency, Grantee may not be entitled to reimbursement for expenses incurred while the Grant Agreement is suspended.

C. No action taken by System Agency in exercising remedies or imposing sanctions will constitute or operate as a waiver of any other rights or remedies available to System Agency under the Grant Agreement or pursuant to law. Additionally, no action taken by System Agency in exercising remedies or imposing sanctions will constitute or operate as an acceptance, waiver, or cure of Grantee's breach. Unless expressly authorized by System Agency, Grantee may not be entitled to reimbursement for expenses incurred while the Grant Agreement is suspended or after termination.

9.2 TERMINATION FOR CONVENIENCE

The System Agency may terminate the Grant Agreement, in whole or in part, at any time when, in its sole discretion, the System Agency determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in the System Agency's notice of termination.

9.3 TERMINATION FOR CAUSE

A. Except as otherwise provided by the U.S. Bankruptcy Code, or any successor law, the System Agency may terminate the Grant Agreement, in whole or in part, upon either of the following conditions:

i. Material Breach

The System Agency may terminate the Grant Agreement, in whole or in part, if the System Agency determines, in its sole discretion, that Grantee has materially breached the Grant Agreement or has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, whether or not such violation prevents or substantially impairs performance of Grantee's duties under the Grant Agreement. Grantee's misrepresentation in any aspect including, but not limited to, of Grantee's Solicitation Application, if any, or Grantee's addition to the SAM exclusion list (identification in SAM as an excluded entity) may also constitute a material breach of the Grant Agreement.

ii. Failure to Maintain Financial Viability

The System Agency may terminate the Grant Agreement if the System Agency, in its sole discretion, determines that Grantee no longer maintains the financial viability required to complete the services and deliverables, or otherwise fully perform its responsibilities under the Grant Agreement.

B. System Agency will specify the effective date of such termination in the notice to Grantee. If no effective date is specified, the Grant Agreement will terminate on the date of the notification.

9.4 GRANTEE RESPONSIBILITY FOR SYSTEM AGENCY'S TERMINATION COSTS

If the System Agency terminates the Grant Agreement for cause, the Grantee shall be responsible to the System Agency for all costs incurred by the System Agency and the State of Texas to replace the Grantee. These costs include, but are not limited to, the costs of procuring a substitute grantee and the cost of any claim or litigation attributable to Grantee's failure to perform any work in accordance with the terms of the Grant Agreement.

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9.5 Inherently Religious Activities

Grantee may not use grant funding to engage in inherently religious activities, such as proselytizing, scripture study, or worship. Grantees may engage in inherently religious activities; however, these activities must be separate in time or location from the grant-funded program. Moreover, grantees must not compel program beneficiaries to participate in inherently religious activities. These requirements apply to all grantees, not just faith-based organizations.

9.6 Political Activities

Grant funds cannot be used for the following activities:

A. Grantees and their relevant sub-grantees or subcontractors are prohibited from using grant funds directly or indirectly for political purposes, including lobbying, advocating for legislation, campaigning for, endorsing, contributing to, or otherwise supporting political candidates or parties, and voter registration campaigns. Grantees may use private, or non-System Agency money or contributions for political purposes but may not charge to, or be reimbursed from, System Agency contracts or grants for the costs of such activities.

B. Grant-funded employees may not use official authority or influence to achieve any political purpose and grant funds cannot be used for the salary, benefits, or any other compensation of an elected official.

C. Grant funds may not be used to employ, in any capacity, a person who is required by Chapter 305 of the Texas Government Code to register as a lobbyist. Additionally, grant funds cannot be used to pay membership dues to an organization that partially or wholly pays the salary of a person who is required by Chapter 305 of the Texas Government Code to register as a lobbyist.

D. As applicable, Grantee will comply with 31 USC § 1352, relating to the limitation on use of appropriated funds to influence certain Federal contracting and financial transactions.

ARTICLE X. Indemnity

10.1 General Indemnity

A. GRANTEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND SYSTEM AGENCY, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES ARISING OUT OF OR RESULTING FROM ANY ACTS OR OMISSIONS OF GRANTEE OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE GRANT AGREEMENT AND ANY PURCHASE ORDERS ISSUED UNDER THE GRANT AGREEMENT.

B. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE GRANTEE TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE SYSTEM AGENCY FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE SYSTEM AGENCY OR ITS EMPLOYEES.

C. FOR THE AVOIDANCE OF DOUBT, SYSTEM AGENCY SHALL NOT INDEMNIFY GRANTEE OR ANY OTHER ENTITY UNDER THE GRANT

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AGREEMENT.

10.2 Intellectual Property

GRANTEE SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE SYSTEM AGENCY AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS, OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM:

- **i. THE PERFORMANCE OR ACTIONS OF GRANTEE PURSUANT TO THIS GRANT AGREEMENT;**
- **ii. ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR**
- **iii. SYSTEM AGENCY'S AND/OR GRANTEE'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO SYSTEM AGENCY BY GRANTEE OR OTHERWISE TO WHICH SYSTEM AGENCY HAS ACCESS AS A RESULT OF GRANTEE'S PERFORMANCE UNDER THE GRANT AGREEMENT.**

10.3 Additional Indemnity Provisions

A. GRANTEE AND SYSTEM AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY INDEMNITY CLAIM. GRANTEE SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES.

B. THE DEFENSE SHALL BE COORDINATED BY THE GRANTEE WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND GRANTEE MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL.

C. GRANTEE SHALL REIMBURSE SYSTEM AGENCY AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF THE SYSTEM AGENCY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF GRANTEE OR IF SYSTEM AGENCY IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, SYSTEM AGENCY WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND GRANTEE SHALL PAY ALL REASONABLE COSTS OF SYSTEM AGENCY'S COUNSEL.

ARTICLE XI. General Provisions

11.1 Amendments

Except as otherwise expressly provided, the Grant Agreement may only be amended by a written Amendment executed by both Parties.

11.2 No Quantity Guarantees

The System Agency makes no guarantee of volume or usage of work under this Grant

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Agreement. All work requested may be on an irregular and as needed basis throughout the Grant Agreement term.

11.3 Child Abuse Reporting Requirements

A. Grantees shall comply with child abuse and neglect reporting requirements in Texas Family Code Chapter 261. This section is in addition to and does not supersede any other legal obligation of the Grantee to report child abuse.

B. Grantee shall use the Texas Abuse Hotline Website located at https://www.txabusehotline.org/Login/Default.aspx as required by the System Agency. Grantee shall retain reporting documentation on site and make it available for inspection by the System Agency.

11.4 Certification of Meeting or Exceeding Tobacco-Free Workplace Policy Minimum Standards

A. Grantee certifies that it has adopted and enforces a Tobacco-Free Workplace Policy that meets or exceeds all of the following minimum standards of:

i. Prohibiting the use of all forms of tobacco products, including but not limited to cigarettes, cigars, pipes, water pipes (hookah), bidis, kreteks, electronic cigarettes, smokeless tobacco, snuff and chewing tobacco;

ii. Designating the property to which this Policy applies as a "designated area," which must at least comprise all buildings and structures where activities funded under this Grant Agreement are taking place, as well as Grantee owned, leased, or controlled sidewalks, parking lots, walkways, and attached parking structures immediately adjacent to this designated area;

iii. Applying to all employees and visitors in this designated area; and

iv. Providing for or referring its employees to tobacco use cessation services.

B. If Grantee cannot meet these minimum standards, it must obtain a waiver from the System Agency.

11.5 Insurance and Bonds

Unless otherwise specified in this Contract, Grantee shall acquire and maintain, for the duration of this Contract, insurance coverage necessary to ensure proper fulfillment of this Contract and potential liabilities thereunder with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount customarily carried within the industry as determined by the System Agency. Grantee shall provide evidence of insurance as required under this Contract, including a schedule of coverage or underwriter's schedules establishing to the satisfaction of the System Agency the nature and extent of coverage granted by each such policy, upon request by the System Agency. In the event that any policy is determined by the System Agency to be deficient to comply with the terms of this Contract, Grantee shall secure such additional policies or coverage as the System Agency may reasonably request or that are required by law or regulation. If coverage expires during the term of this Contract, Grantee must produce renewal certificates for each type of coverage. In addition, if required by System Agency, Grantee must obtain and have on file a blanket fidelity bond that indemnifies System Agency against the loss or theft of any grant funds, including applicable matching funds. The fidelity bond must cover the entirety of the grant term and any subsequent renewals. The failure of Grantee to comply with these requirements may subject Grantee to remedial or corrective actions detailed in section 10.1, General Indemnity, above.

These and all other insurance requirements under the Grant apply to both Grantee and its

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Subcontractors, if any. Grantee is responsible for ensuring its Subcontractors' compliance with all requirements.

11.6 Limitation on Authority

A. Grantee shall not have any authority to act for or on behalf of the System Agency or the State of Texas except as expressly provided for in the Grant Agreement; no other authority, power, or use is granted or implied. Grantee may not incur any debt, obligation, expense, or liability of any kind on behalf of System Agency or the State of Texas.
B. Grantee may not rely upon implied authority and is not granted authority under the Grant Agreement to:
   i. Make public policy on behalf of the System Agency;
   ii. Promulgate, amend, or disregard administrative regulations or program policy decisions made by State and federal agencies responsible for administration of a System Agency program; or
   iii. Unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of the System Agency regarding System Agency programs or the Grant Agreement. However, upon System Agency request and with reasonable notice from System Agency to the Grantee, the Grantee shall assist the System Agency in communications and negotiations regarding the Work under the Grant Agreement with state and federal governments.

11.7 Change in Laws and Compliance with Laws

Grantee shall comply with all laws, regulations, requirements, and guidelines applicable to a Grantee providing services and products required by the Grant Agreement to the State of Texas, as these laws, regulations, requirements, and guidelines currently exist and as amended throughout the term of the Grant Agreement. Notwithstanding Section 11.1, Amendments, above, System Agency reserves the right, in its sole discretion, to unilaterally amend the Grant Agreement to incorporate any modifications necessary for System Agency's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.

11.8 Subcontractors

Grantee may not subcontract any or all of the Work and/or obligations under the Grant Agreement without prior written approval of the System Agency. Subcontracts, if any, entered into by the Grantee shall be in writing and be subject to the requirements of the Grant Agreement. Should Grantee subcontract any of the services required in the Grant Agreement, Grantee expressly understands and acknowledges System Agency is in no manner liable to any subcontractor(s) of Grantee. In no event shall this provision relieve Grantee of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the Grant Agreement.

11.9 Permitting and Licensure

At Grantee's sole expense, Grantee shall procure and maintain for the duration of this Grant Agreement any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Grantee to provide the goods or services required by this Grant Agreement. Grantee shall be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Grantee shall be responsible for payment of any such government obligations not paid by its Subcontractors during performance of this Grant Agreement.

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11.10 INDEPENDENT CONTRACTOR

Grantee and Grantee's employees, representatives, agents, Subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the Grant Agreement. Neither Grantee nor System Agency is an agent of the other and neither may make any commitments on the other party's behalf. The Grantee is not a "governmental body" solely by virtue of this Grant Agreement or receipt of grant funds under this Grant Agreement. Grantee shall have no claim against System Agency for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The Grant Agreement shall not create any joint venture, partnership, agency, or employment relationship between Grantee and System Agency.

11.11 GOVERNING LAW AND VENUE

The Grant Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Grant Agreement is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the System Agency.

11.12 SEVERABILITY

If any provision contained in this Grant Agreement is held to be unenforceable by a court of law or equity, such construction will not affect the legality, validity, or enforceability of any other provision or provisions of this Grant Agreement. It is the intent and agreement of the Parties this Grant Agreement shall be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable while preserving its intent or, if such modification is not possible, by substituting another provision that is valid, legal and enforceable and that achieves the same objective. All other provisions of this Grant Agreement will continue in full force and effect.

11.13 SURVIVABILITY

Expiration or termination of the Grant Agreement for any reason does not release Grantee from any liability or obligation set forth in the Grant Agreement that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the Grant Agreement, including without limitation the provisions regarding return of grant funds, audit requirements, records retention, public information, warranty, indemnification, confidentiality, and rights and remedies upon termination.

11.14 FORCE MAJEURE

Neither Grantee nor System Agency shall be liable to the other for any delay in, or failure of performance, of any requirement included in the Grant Agreement caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

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11.15 No Implied Waiver of Provisions

The failure of the System Agency to object to or to take affirmative action with respect to any conduct of the Grantee which is in violation or breach of the terms of the Grant Agreement shall not be construed as a waiver of the violation or breach, or of any future violation or breach.

11.16 Funding Disclaimers and Labeling

A. Grantee shall not use System Agency's name or refer to System Agency directly or indirectly in any media appearance, public service announcement, or disclosure relating to this Grant Agreement including any promotional material without first obtaining written consent from System Agency. The foregoing prohibition includes, without limitation, the placement of banners, pop-up ads, or other advertisements promoting Grantee's or a third party's products, services, workshops, trainings, or other commercial offerings on any website portal or internet-based service or software application hosted or managed by Grantee. This does not limit the Grantee's responsibility to comply with obligations related to the Texas Public Information Act or Texas Open Meetings Act.

B. In general, no publication (including websites, reports, projects, etc.) may convey System Agency's recognition or endorsement of the Grantee's project without prior written approval from System Agency. Publications funded in part or wholly by HHS grant funding must include a statement that "HHS and neither any of its components operate, control, are responsible for, or necessarily endorse, this publication (including, without limitation, its content, technical infrastructure, and policies, and any services or tools provided)" at HHS's request.

11.17 Media Releases

A. Grantee shall not use System Agency's name, logo, or other likeness in any press release, marketing material or other announcement without System Agency's prior written approval. System Agency does not endorse any vendor, commodity, or service. Grantee is not authorized to make or participate in any media releases or public announcements pertaining to this Grant Agreement or the Services to which they relate without System Agency's prior written consent, and then only in accordance with explicit written instruction from System Agency.

B. Grantee may publish, at its sole expense, results of Grantee performance under the Grant Agreement with the System Agency's prior review and approval, which the System Agency may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from the System Agency and any Federal agency, as appropriate.

11.18 Prohibition on Non-Compete Restrictions

Grantee shall not require any employees or Subcontractors to agree to any conditions, such as non-compete clauses or other contractual arrangements, that would limit or restrict such persons or entities from employment or contracting with the State of Texas.

11.19 Sovereign Immunity

Nothing in the Grant Agreement will be construed as a waiver of the System Agency's or the State's sovereign immunity. This Grant Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the System Agency or the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the System Agency or the State of Texas under the Grant Agreement or under applicable law shall not constitute

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a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. System Agency does not waive any privileges, rights, defenses, or immunities available to System Agency by entering into the Grant Agreement or by its conduct prior to or subsequent to entering into the Grant Agreement.

11.20 ENTIRE CONTRACT AND MODIFICATION

The Grant Agreement constitutes the entire agreement of the Parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in any future document incorporated into the Grant Agreement will be harmonized with this Grant Agreement to the extent possible.

11.21 COUNTERPARTS

This Grant Agreement may be executed in any number of counterparts, each of which will be an original, and all such counterparts will together constitute but one and the same Grant Agreement.

11.22 PROPER AUTHORITY

Each Party represents and warrants that the person executing this Grant Agreement on its behalf has full power and authority to enter into this Grant Agreement.

11.23 E-VERIFY PROGRAM

Grantee certifies that it utilizes and will continue to utilize the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

A. all persons employed to perform duties within Texas during the term of the Grant Agreement; and
B. all persons, (including subcontractors) assigned by the Grantee to perform work pursuant to the Grant Agreement within the United States of America.

11.24 CIVIL RIGHTS

A. Grantee agrees to comply with state and federal anti-discrimination laws, including:
   i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.);
   ii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
   iii. Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);
   iv. Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);
   v. Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
   vi. Food and Nutrition Act of 2008 (7 U.S.C. §2011 et seq.); and
   vii. The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Grant Agreement.
B. Grantee agrees to comply with all amendments to the above-referenced laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any aid, care, service or other benefits provided by Federal or State funding, or otherwise be subjected to discrimination.
C. Grantee agrees to comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. State and federal civil rights laws require

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contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Grantee agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.

D. Grantee agrees to post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for the HHS Civil Rights Office. The posters are available on the HHS website at: https://hhs.texas.gov/about-hhs/your-rights/civil-rights-office/civil-rights-posters
E. Grantee agrees to comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
F. Upon request, Grantee shall provide HHSC's Civil Rights Office with copies of the Grantee's civil rights policies and procedures.
G. Grantee must notify HHSC's Civil Rights Office of any complaints of discrimination received relating to its performance under this Grant Agreement. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this section must be directed to:

HHSC Civil Rights Office
701 W. 51st Street, Mail CodeW206
Austin, Texas 78751
Phone Toll Free: (888) 388-6332
Phone: (512) 438-4313
Fax: (512) 438-5885
Email: HHSCivilRightsOffice@hhsc.state.tx.us

11.25 Enterprise Information Management Standards

Grantee shall conform to HHS standards for data management as described by the policies of the HHS Office of Data, Analytics, and Performance. These include, but are not limited to, standards for documentation and communication of data models, metadata, and other data definition methods that are required by HHS for ongoing data governance, strategic portfolio analysis, interoperability planning, and valuation of HHS System data assets.

11.26 Disclosure of Litigation

A. The Grantee must disclose in writing to the contract manager assigned to this Grant Agreement any material civil or criminal litigation or indictment either threatened or pending involving the Grantee. "Threatened litigation" as used herein shall include governmental investigations and civil investigative demands. "Litigation" as used herein shall include administrative enforcement actions brought by governmental agencies. The Grantee must also disclose any material litigation threatened or pending involving Subcontractors, consultants, and/or lobbyists. For purposes of this section, "material" refers, but is not limited, to any action or pending action that a reasonable person knowledgeable in the applicable industry would consider relevant to the Work under the Grant Agreement or any development such a person would want to be aware of in order to stay fully apprised of the total mix of information relevant to the Work, together with any litigation threatened or pending that may result in a substantial change in the

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Grantee's financial condition.

B. This is a continuing disclosure requirement; any litigation commencing after Grant Agreement Award must be disclosed in a written statement to the assigned contract manager within seven calendar days of its occurrence.

11.27 NO THIRD PARTY BENEFICIARIES

The Grant Agreement is made solely and specifically among and for the benefit of the Parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the Grant Agreement as a third-party beneficiary or otherwise.

11.28 BINDING EFFECT

The Grant Agreement shall inure to the benefit of, be binding upon, and be enforceable against each Party and their respective permitted successors, assigns, transferees, and delegates.

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Fiscal Federal Funding Accountability and Transparency Act (FFATA)

The certifications enumerated below represent material facts upon which DSHS relies when reporting information to the federal government required under federal law. If the Department later determines that the Contractor knowingly rendered an erroneous certification, DSHS may pursue all available remedies in accordance with Texas and U.S. law. Signor further agrees that it will provide immediate written notice to DSHS if at any time Signor learns that any of the certifications provided for below were erroneous when submitted or have since become erroneous by reason of changed circumstances. ***If the Signor cannot certify all of the statements contained in this section, Signor must provide written notice to DSHS detailing which of the below statements it cannot certify and why*.**

Legal Name of Contractor:	**FFATA Contact: (Name, Email and Phone Number):**
City of Midland Health Department	Whitney Craig wcraig@midlandtexas.gov 432-681-7645
Primary Address of Contractor: 3303 W. Illinois Ave Sp. 22 Midland, TX 79703	**Zip Code: 9-digits required www.usps.com** 79703-6232
Unique Entity ID (UEI): This number replaces the DUNS www.sam.gov CPZ1T3B85A64	**State of Texas Comptroller Vendor Identification Number (VIN) – 14 digits:** 17560006086016

Printed Name of Authorized Representative:	**Signature of Authorized Representative**
Whitney S. Craig, DrPH, MPH	DocuSigned by: Whitney S. Craig, DrPH, MPH 83EBFB35036D49F...
Title of Authorized Representative Health Services Manager	**Date Signed** March 8, 2024

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Fiscal Federal Funding Accountability and Transparency Act (FFATA) CERTIFICATION

As the duly authorized representative (Signor) of the Contractor, I hereby certify that the statements made by me in this certification form are true, complete, and correct to the best of my knowledge.

Did your organization have a gross income, from all sources, of less than $300,000 in your previous tax year? Yes No

If your answer is "Yes", skip questions "A", "B", and "C" and finish the certification. If your answer is "No", answer questions "A" and "B".

A. Certification Regarding % of Annual Gross from Federal Awards.
Did your organization receive 80% or more of its annual gross revenue from federal awards during the preceding fiscal year? Yes ☐ No ☐

B. Certification Regarding Amount of Annual Gross from Federal Awards.
Did your organization receive $25 million or more in annual gross revenues from federal awards in the preceding fiscal year? Yes ☐ No ☐

If your answer is "Yes" to both question "A" and "B", you must answer question "C".
If your answer is "No" to either question "A" or "B", skip question "C" and finish the certification.

C. Certification Regarding Public Access to Compensation Information.
Does the public have access to information about the compensation of the senior executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986? Yes ☐ No ☐

If your answer is "Yes" to this question, where can this information be accessed?

If your answer is "No" to this question, you must provide the names and total compensation of the top five highly compensated officers below.

Provide compensation information here:

City Council Meeting

Item Number: 21

Meeting Date: October 22, 2024

To: City Council / City Manager

From: Brian Rackow,

Subject: MOTION AUTHORIZING THE ACCEPTANCE OF A DONATION OF VARIOUS EQUIPMENT FROM PBEX, LLC, TO THE MIDLAND POLICE DEPARTMENT SWAT TEAM BREACHING UNIT (DISTRICT: NONE) (POLICE) (SET THE STANDARD FOR A SAFE AND SECURE CITY)

Purpose:

Motion authorizing the acceptance of a donation consisting of 4 x Kodiak Tactical Folding Bolt Cutter – Size 24" - $648.00; 4 x RAT Collapsible Sledgehammer - $1,284.00; 4 x RAT Collapsible Pry bar - $1,796.00; 4 x Braco Diamond Ripper Breaching & Rescue Saw Blades - $320.00; 1 x 60- VOL Max Cordless 7 in – 9in Large Angle Grinder (Tool Only)- $369.00; 1 x DEWALT Flexvolt 20v/60v Max Lithium-Ion 6.0Ah Battery Pack with 6 Amp Output Charger - $229.00; 1 x DEWALT Flexvolt 20V/60v Max Lithium-Ion 6.0Ah Battery Pack - $179.00
1 x DEWALT Fall Protection Zippered Gear Bag with Carrying Handle - $31.95. Items are going to be purchased by PBEX, LLC 223 W Wall St Suit 900 Midland, TX, 79701

Recommended City Council Action:

Approve

Fiscal Impact:

This donation does not have any fiscal impact on the City of Midland

Strategic Priority:

(Set the Standard for a Safe and Secure City)

Discussion:

PBEX, LLC 223 W Wall St Suit 900 Midland, TX, 79701 would like to donate equipment to the

City of Midland SWAT Breaching Unit.

Morris Williams Jr.

City Manager's Office

City Council Meeting

Item Number: 22

Meeting Date: October 8, 2024, October 22, 2024

To: City Council / City Manager

From: Daniel Humbert, Senior Planner

Subject: AN ORDINANCE VACATING AND ABANDONING THE PUBLIC RIGHT-OF-WAY ON A CITY-OWNED 0.497-ACRE TRACT OF LAND LOCATED ADJACENT TO LOT 4, BLOCK 5, MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED APPROXIMATELY 365 FEET EAST OF THE INTERSECTION OF PLISKA DRIVE AND NORTH SERVICE ROAD); RETAINING A NONEXCLUSIVE UTILITY EASEMENT; PROVIDING THAT THE CITY SHALL RETAIN OWNERSHIP OF THE AFOREMENTIONED TRACT; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT 4) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

Piper Surveying Inc., on behalf of The City of Midland, is requesting to vacate a 0.497-acre portion of right-of-way located at 9506 La Force Boulevard for the construction of an addition to the airport terminal.

Recommended City Council Action:

Approve

Fiscal Impact:

The City will need to pay to relocate the existing utilities which have been identified in the portion that is to be vacated.

Discussion:

The applicant is seeking to vacate a 0.497-acre (21649.32 square feet) of the North Service Road right-of-way to expand the Midland International Airport's terminal building area and expand the property boundary to remove future improvements out of the City's right-of-way.

Due to utilities being identified in the portion to be vacated, a nonexclusive utility easement will need to be retained until all utilities in the portion have been relocated at the cost of the City of Midland. Additionally, a replat of the property will be required to include the vacated portion into the same lot that airport terminal will be located in. The required replat is already in process and the preliminary phase was approved by the Planning & Zoning Commission on September 3, 2024 and is awaiting the approval of this vacation as well as an associated vacation request for a tract of land just south of the airport terminal. That vacation request is scheduled for the October 8, 2024 City Council meeting.

This request has been circulated and reviewed by all pertinent City departments and franchise utility companies. Their comments, conditions, and requests are as follows:

Code Compliance: (Approved)

No Oil & Gas issues.

Building Code: (Approved)

No objections.

Engineering: (Approved)

No objections to vacation. Applicant shall be responsible for relocating any utilities, if existing, or providing easements as needed. [For Applicant's Information Only.]

Fire: (Approved)

No objection.

Transportation: (Approved)

No objections to vacation. Applicant shall be responsible for relocating any utilities, if existing, or providing easements as needed.

GIS: (Approved)

No comments.

AT&T: (Approved)

We will be okay to vacate as long as we are provided with another easement to move to and payment is made for everything that's needed for us to vacate and place to the new location. Additionally, the entire process will need to go through our legal department.

Atmos: (Approved)

We would have no objection to the vacation however we would either need to maintain a utility easement or relocate our facilities. Any relocation costs would be passed onto the individual or entity requesting the vacate.

Astound: (Approved)

Astounds maps do not show that we have any communications in the highlighted area.

Oncor: (Approved)

No comments.

Altice USA: (Approved)

No comments.

Planning:

Staff recommends approval of this vacation.

Letters of Objection:

As of September 27, 2024, staff has not received any letters of objection to this request.

Attachments:

Vacation Survey (Exhibit A)
Application
Maps
PowerPoint Presentation
Responses from Franchise Utility Companies

Morris Williams Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE VACATING AND ABANDONING THE PUBLIC RIGHT-OF-WAY ON A CITY-OWNED 0.497-ACRE TRACT OF LAND LOCATED ADJACENT TO LOT 4, BLOCK 5, MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED APPROXIMATELY 365 FEET EAST OF THE INTERSECTION OF PLISKA DRIVE AND NORTH SERVICE ROAD); RETAINING A NONEXCLUSIVE UTILITY EASEMENT; PROVIDING THAT THE CITY SHALL RETAIN OWNERSHIP OF THE AFOREMENTIONED TRACT; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that the public right-of-way on a City-owned 0.497-acre tract of land located adjacent to Lot 4, Block 5, Midland International Airport Industrial Park, City and County of Midland, Texas, which is more fully described as "Tract 2" in Exhibit "A" attached hereto and made a part hereof for all legal purposes (the "Property"), is no longer needed; and

WHEREAS, the Council finds it to be in the public interest to abandon and vacate the use of the Property as a public right-of-way; provided, however, that the City shall retain ownership of the Property;

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

SECTION ONE. That the Property is hereby vacated and abandoned for all public right-of-way purposes; provided, however, that the City is hereby abandoning only the public interest in the Property as a public right-of-way, and the City shall retain ownership of the Property. For the avoidance of doubt, this ordinance does not authorize a conveyance, sale, or exchange of the Property.

SECTION TWO. That this ordinance shall not be effective until a replat of the Property is approved by the City of Midland and filed and recorded with the County Clerk of Midland County, Texas.

SECTION THREE. That the City herein retains an accessible nonexclusive utility

easement across, through, over, under, on and along the Property until all entities that were using the Property for utility purposes as of the date of approval of this ordinance have abandoned their uses of the Property.

SECTION FOUR. That the City Secretary is hereby authorized and directed to file a certified copy of this ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; 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., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

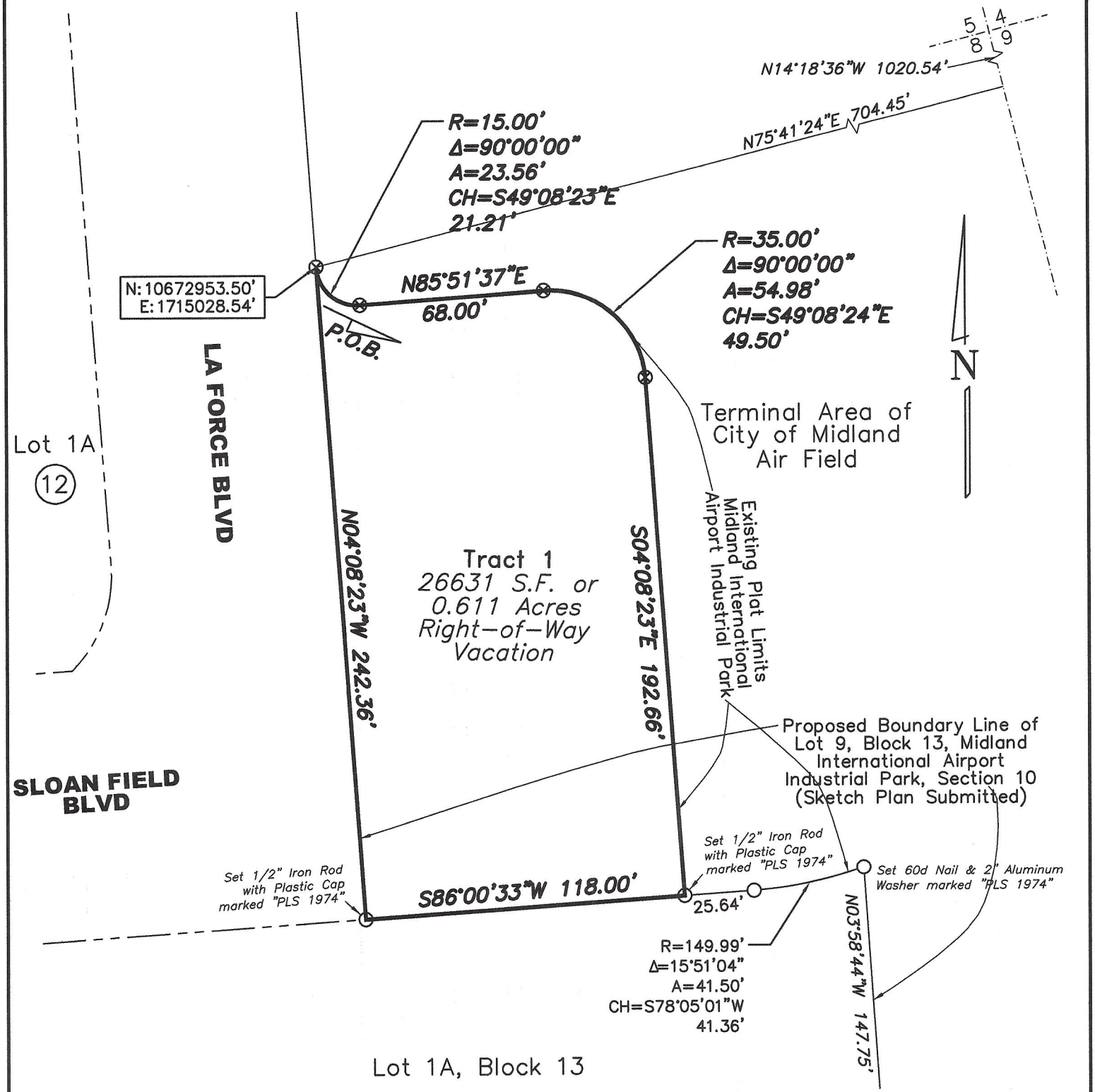
_____
Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT A

See Tract 2



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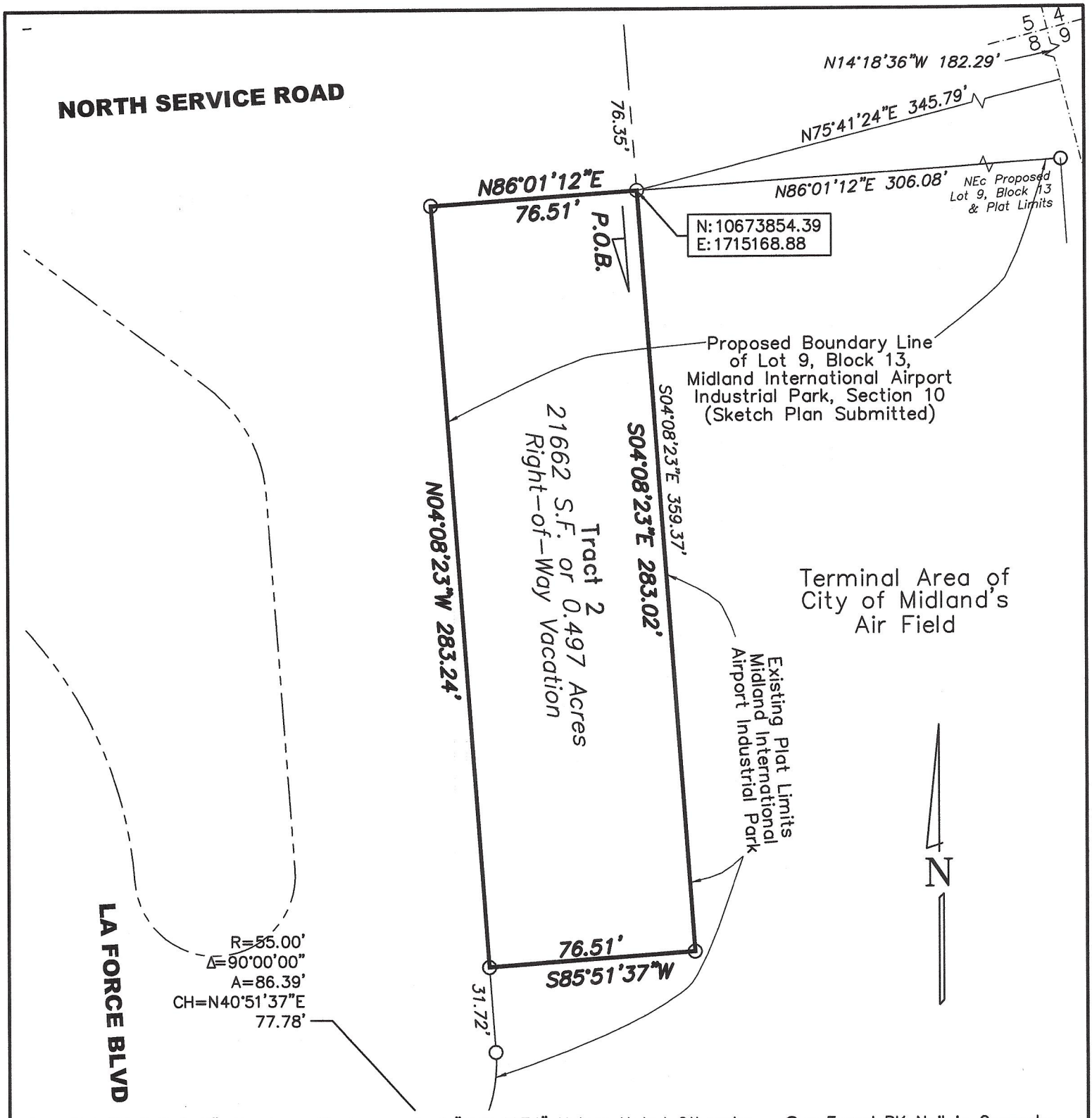
Drawing File: MIA83-93_Terminal.Dwg; Crd File: MIA Terminal Checkpoint Topo 83-88.Crd; Drawn by: Gene M. Rodriguez
Scale: 1"=50'; Date: 7/18/2024

PLAT SHOWING RIGHT-OF-WAY VACATION BEING PART OF SLOAN FIELD BOULEVARD WITHIN MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK AS RECORDED IN CABINET F, PAGE 187, P.R.M.C. LOCATED IN SECTION 8, BLOCK 40, T-2-S, T.&P. RR. CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS

Prepared for:
PARKHILL
1700 W. Wall Street
Suite 100
Midland, Texas 79701

Firm No. 10155200 Sheet 1 of 3 – See Sheet 3 of 3 for Certificate

PIPER SURVEYING P.O. BOX 60432; MIDLAND, TEXAS 79711; 432.550.7810



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PLAT SHOWING RIGHT-OF-WAY VACATION BEING PART OF LA FORCE BOULEVARD WITHIN MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK AS RECORDED IN CABINET F, PAGE 187, P.R.M.C. LOCATED IN SECTION 8, BLOCK 40, T-2-S, T.&P. RR. CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS

Prepared for:
PARKHILL
1700 W. Wall Street
Suite 100
Midland, Texas 79701

Firm No. 10155200 Sheet 2 of 3 – See Sheet 3 of 3 for Certificate

PIPER SURVEYING P.O. BOX 60432; MIDLAND, TEXAS 79711; 432.550.7810

Legal Description of Two Tracts Containing a total of 1.108 Acres of Vacation of La Force Boulevard, Sloan Field Boulevard, and North Service Road, wthin the Midland International Airport Industrial Park, as recorded in Cabinet F, Page 187, Plat Records of Midland County, located in Section 8, Block 40, T-2-S, T.&P.RR. Co., City and County of Midland, Texas

Tract 1, being further described by metes and bounds as follows;

BEGINNING at (N=10,672,953.50' E= 1,715,028.54') a PK nail found in concrete at a plat limits corner of Midland International Airport Industrial Park and the North corner of this tract, from whence the Northeast corner of said Section 8, Block 40, T-2-S, bears N75°41'24"E, a distance of 704.45 feet, and N14°18'36" W, a distance of 1020.54 feet;

THENCE with a curve turning to the left with a radius of 15.00 feet along the said plat limits in a Southeasterly direction, an arc length of 23.56 feet, a delta angle of 90°00'00", a chord distance of 21.21 feet which bearing of S49°08'23"E to a PK nail found in concrete at a point of tangency;

THENCE N85°51'37"E with said plat limits, a distance of 68.00 feet to a PK nail found in concrete at a point of curvature;

THENCE with a curve turning to the right with a radius of 35.00 feet in a Southeasterly direction, an arc length of 54.98 feet, a chord distance of 49.50 feet which bears S49°08'24"E to a found PK nail found at a point of tangency;

THENCE S04°08'23"E with said plat limits, a distance of 192.66 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" set at the Southeast corner of this tract in the North line of Lot 1A, said Block 13;

THENCE S86°00'33"W with North line of said Lot 1A and the South line of La Force Boulevard, a distance of 118.00 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" set the Southwest corner of this tract;

THENCE N04°08'23"W with the proposed ROW line of La Force Boulevard, a distance of 242.35 feet to the Point of Beginning, having an area of 26631 square feet, or 0.611 acres of land.

Tract 2, being further described by metes and bounds as follows;

BEGINNING at (N= 10,673,854.39' E= 1,715,168.88') a PK nail set in concrete in the Plat Limits at the Northeast corner of this tract, from whence the Northeast corner of said Section 8, Block 40, T-2-S, bears N75°41'24"E, a distance of 345.79 feet and N14°18'36"W, a distance of 182.29 feet;

THENCE S04°08'23"E with said Plat Limits, a distance of 283.02 feet to a PK nail found in concrete at the Southeast corner of this tract and an interior corner of said plat limits;

THENCE S85°51'37"W with said plat limits, a distance of 76.51 feet to a PK nail and 2" aluminum washer marked "PLS 1974" set at the Southwest corner of this tract;

THENCE N04°08'23"W with the proposed ROW line of La Force Boulevard, a distance of 283.24 feet to a PK nail and 2" aluminum washer marked PLS 1974" set at the Northwest corner of this tract;

THENCE N86°01'12"E with the South ROW line of the North Service Road, a distance of 76.51 feet to the Point of Beginning, having an area of 21662 square feet or 0.497 acres, for a total of 48,293 Square Feet or 1.108 Acres

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/93 Harn, Central Zone, with a combine grid factor of 0.99988171, and a theta angle equal to -0°57'55" at Spike 2 "x" cut in concrete" with values of Y= 10,672,555.08 and X= 1,715,224.50' in U.S. Survey Feet.

I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that these plats and legal descriptions is based on an actual survey made by me or under my supervision, and that the same is true and correct to the best of my knowledge and ability as surveyed on the ground on various day to July 15, 2024

J. Stan Piper July 22, 2024
Registered Professional Land Surveyor #1974

Prepared for:
Parkhill
1700 W. Wall Street, Suite 100
Midland, TX 79701

PIPER SURVEYING FIRM NO. 10155200; BOX 60432, MIDLAND, TX 79711, (432) 550-7810

MIDLAND
Planning Division

Vacate Right-of-Way/Public Utility Easement/Land/Street Application

Project Number: _____

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: City of Midland		Phone (432) 685-7100 Email lblong@midlandtexas.gov	
Address 300 N Loraine Street	City Midland	State Texas	Zip 79701

Application is hereby made to the City Council to vacate the following:

- ☒ Right-of-Way
- ☐ Public Utility Easement
- ☐ Land
- ☐ Street

Description of Address: Midland International Airport Terminal (9506 La Force Blvd, Midland, TX 79711)

Reason for Request: Additions to Terminal Building for Midland International Air and Space Port.

Reasons, in applicant's opinion, why the requested vacation will not adversely affect the public welfare or will contribute to it in a positive way: There are two areas. North Area contains 0.497 Acres and South Area contains 0.611 Acres for a total of 1.108 Acres which is primarily used for parking and taxi-que area. This will affect the public in a positive way.

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Sealed metes and bounds description of the property to be vacated (included on the map) and total square feet of vacation. Include ownership, legal and deed information for adjacent property owners
- Digital Copies of Survey (PDF/JPEG)

Utility Company Approval

Clearance is needed from the following utility companies:

- City of Midland
- AT&T
- Atmos Energy
- Suddenlink Cable TV Co.
- Oncor Electric
- Grande Communications

The City will route the request to these companies, but it is the applicant's responsibility to ensure clearance has been obtained to resolve any issues that may arise.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Justine Ruff who, being by me duly sworn, upon oath says: That (s)he is the owner of _____ or is authorized by City of 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.

Justine Ruff
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 29th day of July, 2024, to certify which witness my hand and seal of office.

ANGELA SWINDELL WRIGHT
Notary Public, State of Texas
Comm. Expires 01-21-2026
Notary ID 451179-0

Angela Swindell-Wright
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

Policies

1. If the vacation request involves only a portion of a section right-of-way, such that approval would not affect the public's ability to travel along said right-of-way, then the request will be scheduled for consideration by the City Council. No public hearing will be needed.

2. If the vacation request involves an entire section of right-of-way, such that approval would cause the public to lose all rights to use it, then the following procedures apply:

   a. Nearby land owners who have a reasonable expectation to use said right-of-way, as determined by the Transportation Division, must first agree to the proposed vacation. It is the applicant's responsibility to obtain a letter of concurrence signed by the affected landowners.

   b. If all letters are received indicating that the affected landowners agree to the request, then a public hearing before the City Council will be scheduled. The Planning Division will mail public notice of the hearing to landowners within 400 feet of the affected right-of-way.

   c. If a request is approved, the right-of-way shall be divided into two equal parts, with each half becoming the property of the respective abutting owner. If the applicant desires to own the entire width, he or she must negotiate with the opposite landowner.

****Application will not be considered for scheduling until reviewed by a planner.****

Signatures City of Midland, Justine Ruff, Director of Airports		
Applicant (signature): Justine Ruff		Date: July 29, 2024
Affected Property Owners: None, no other owners within 400 feet		
Signature:	Print:	Date:
Signature:	Print:	Date
Signature:	Print:	Date
Signature:	Print:	Date

The Vacation of right-of-way/public utility easement/land/street 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.

FOR OFFICE USE ONLY	
☐ 1 FOLDED Copy of Survey	☐ Survey in Digital Format (PDF/JPEG)
☐ Application Fee	
Check #_____	
Received By:	Date: 8 7 24

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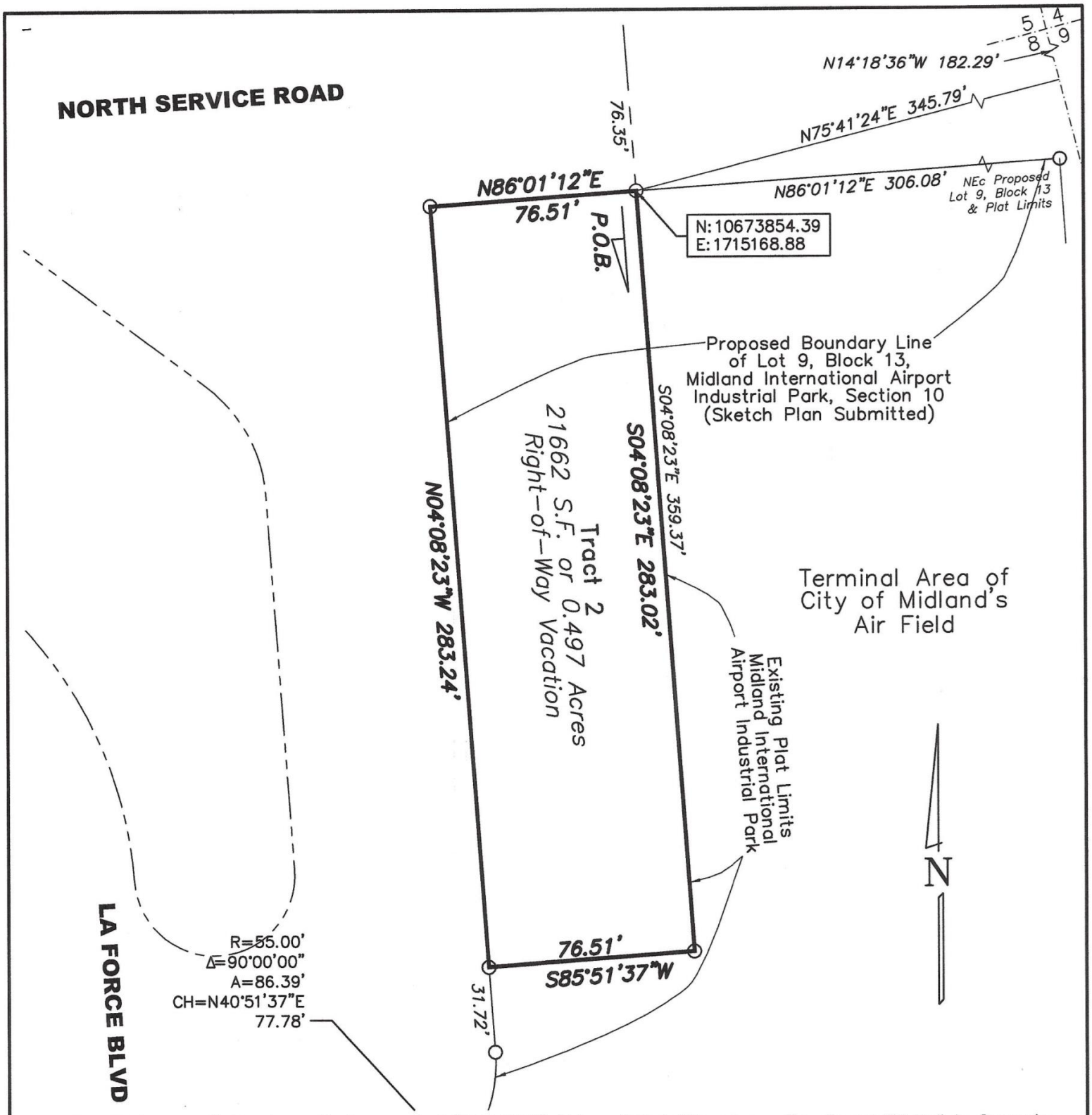
J. Stan Piper July 22, 2024
Registered Professional Land Surveyor #1974

Prepared for:
Parkhill
1700 W. Wall Street, Suite 100
Midland, TX 79701

PIPER SURVEYING FIRM NO. 10155200; BOX 60432, MIDLAND, TX 79711, (432) 550-7810



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Sheet 2 of 3 – See Sheet 3 of 3 for Certificate

Firm No. 10155200
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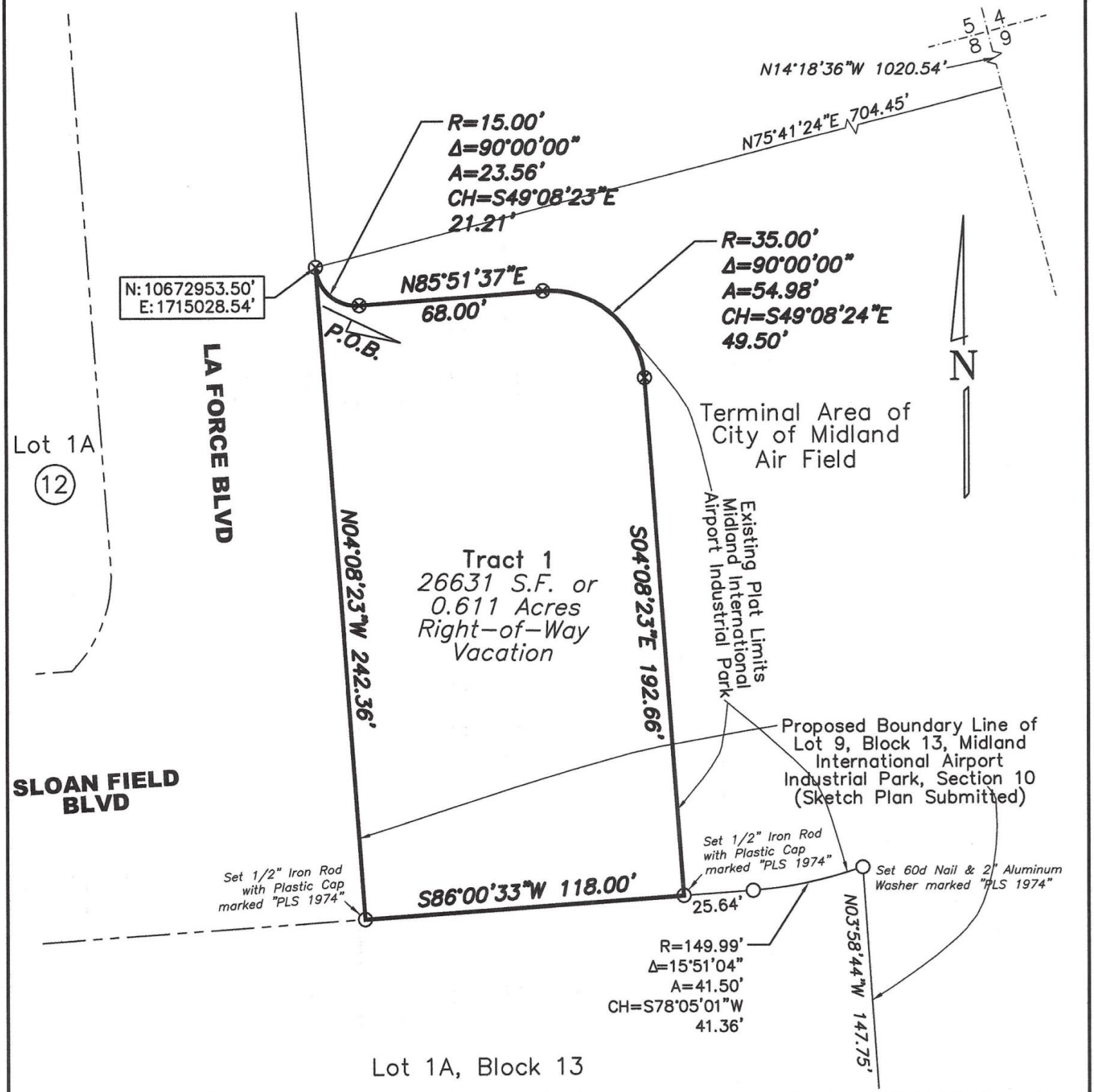

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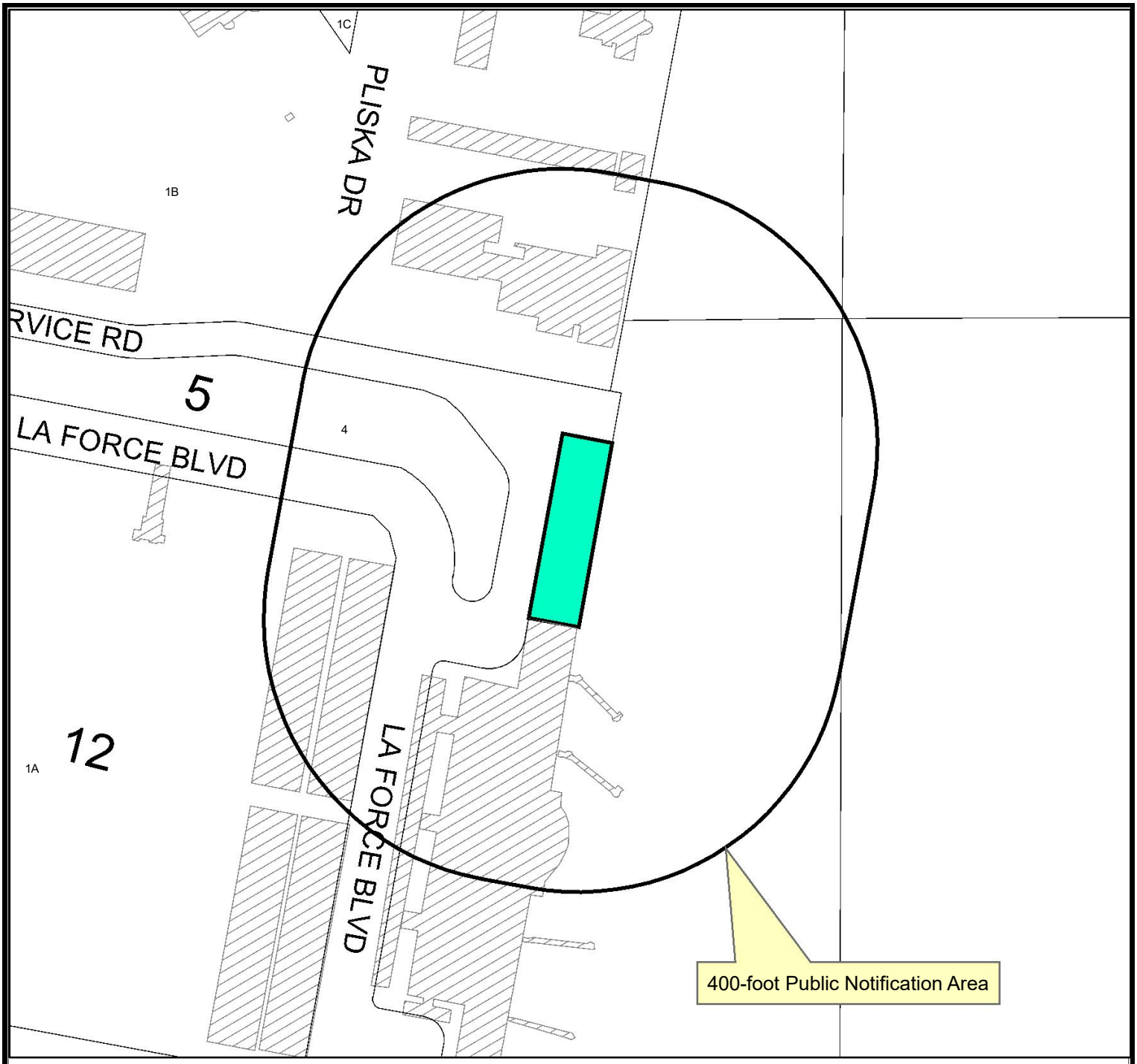


Location Map

V-24-0064 **Scale: 1" = 216'**

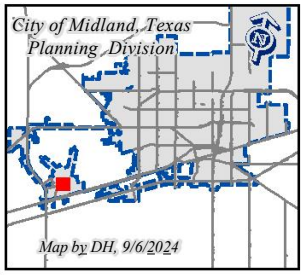
Consider a request by Piper Surveying Inc., on behalf of The City of Midland for a vacation of a 0.497-acre portion of right-of-way, located adjacent to Lot 4, Block 5, Midland International Airport Industrial Park, City and County of Midland, Texas.

(Generally located 365 feet east of the intersection of Pliska Drive and North Service Road.)
(Council District 4)

PACKET 22.17

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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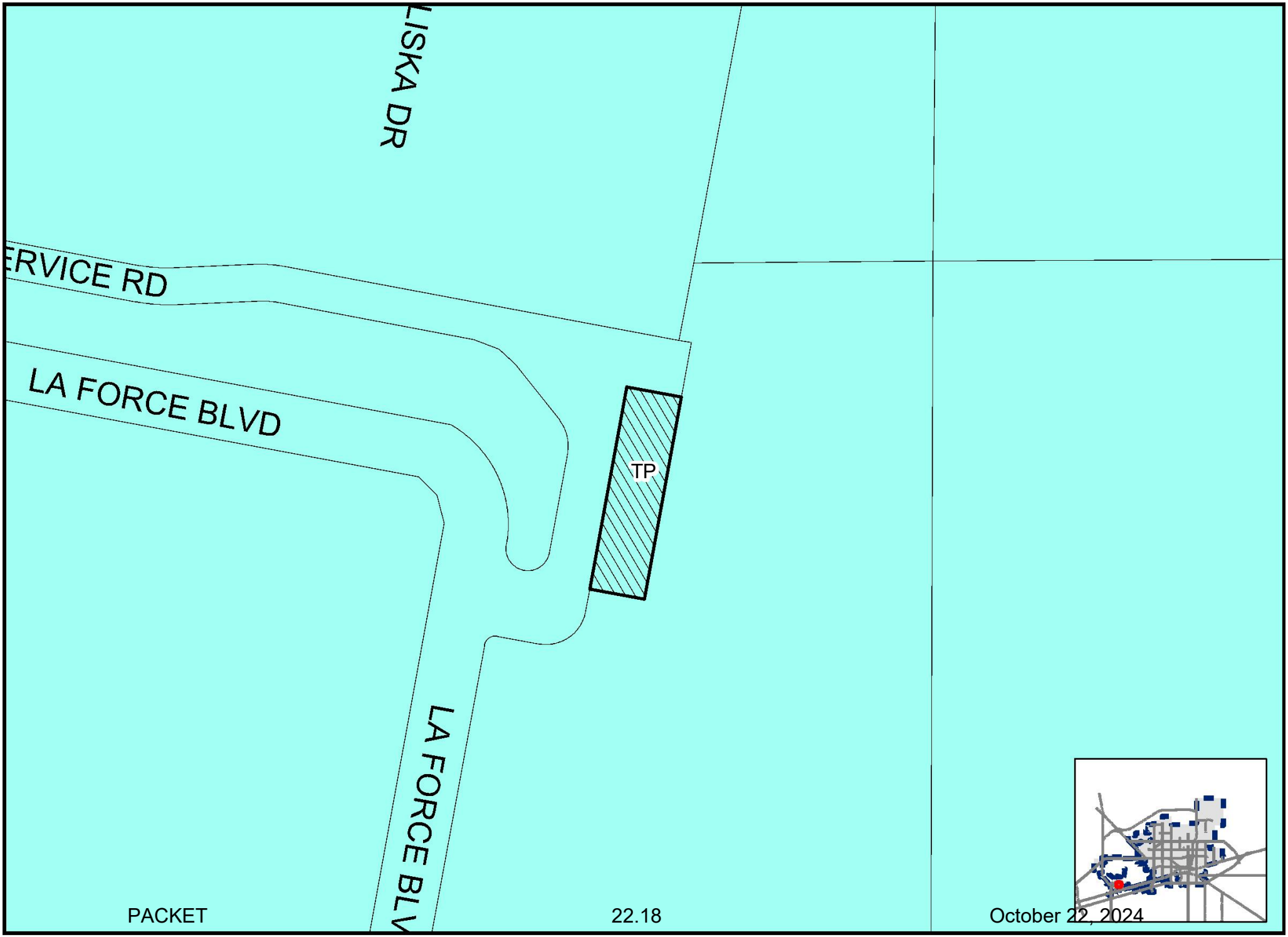
THIS DATA IS NOT A SUBSTITUTION FOR A [illegible] NOR IS IT DESIGNED TO [illegible] OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

October 22, 2024



PACKET 22.18 October 22, 2024

Map DH, 9/23/2024

V-24-0064

Scale: 1" = 166'

ZONING MAP

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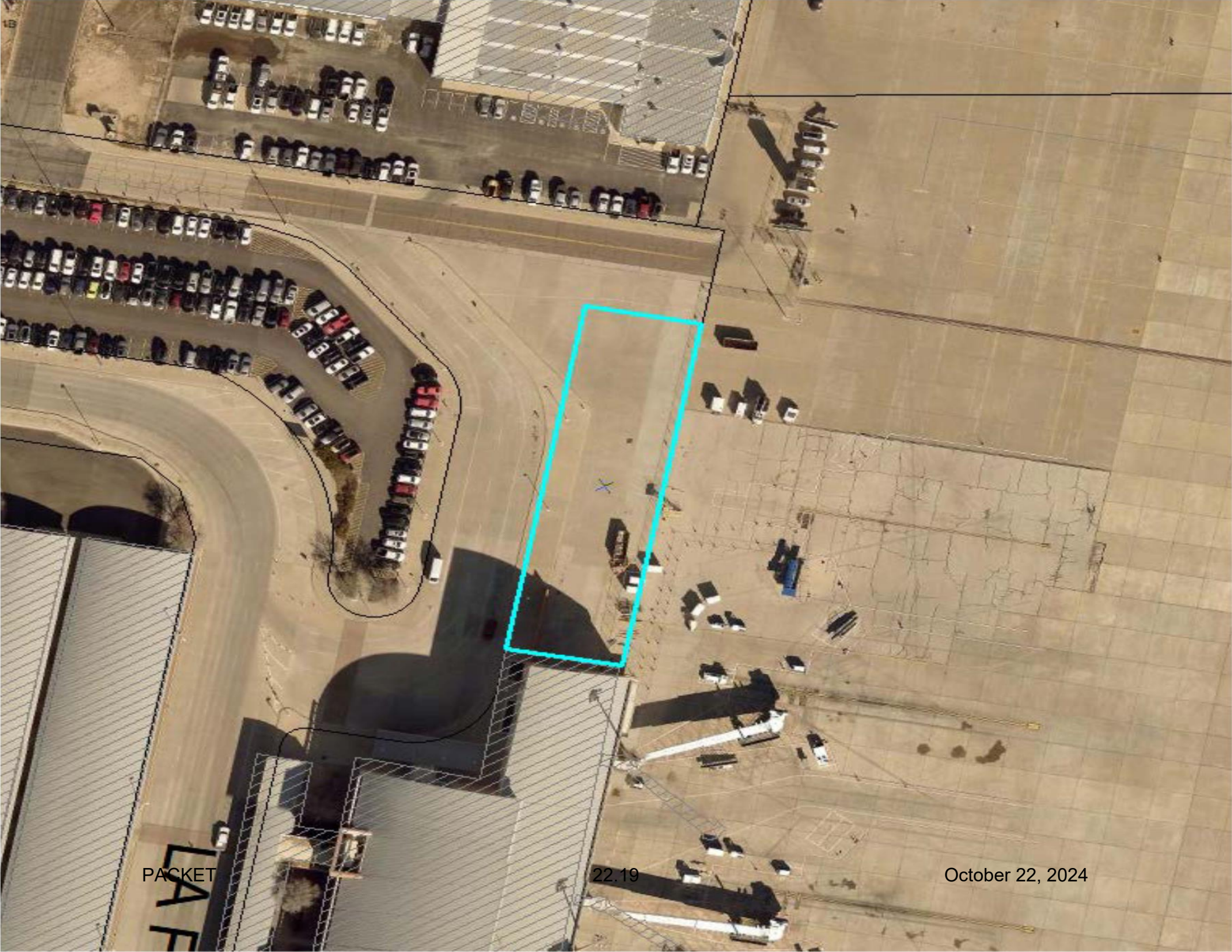


Rental Car
Return

MIDLAND INTERNATIONAL AIRPORT TERMINAL

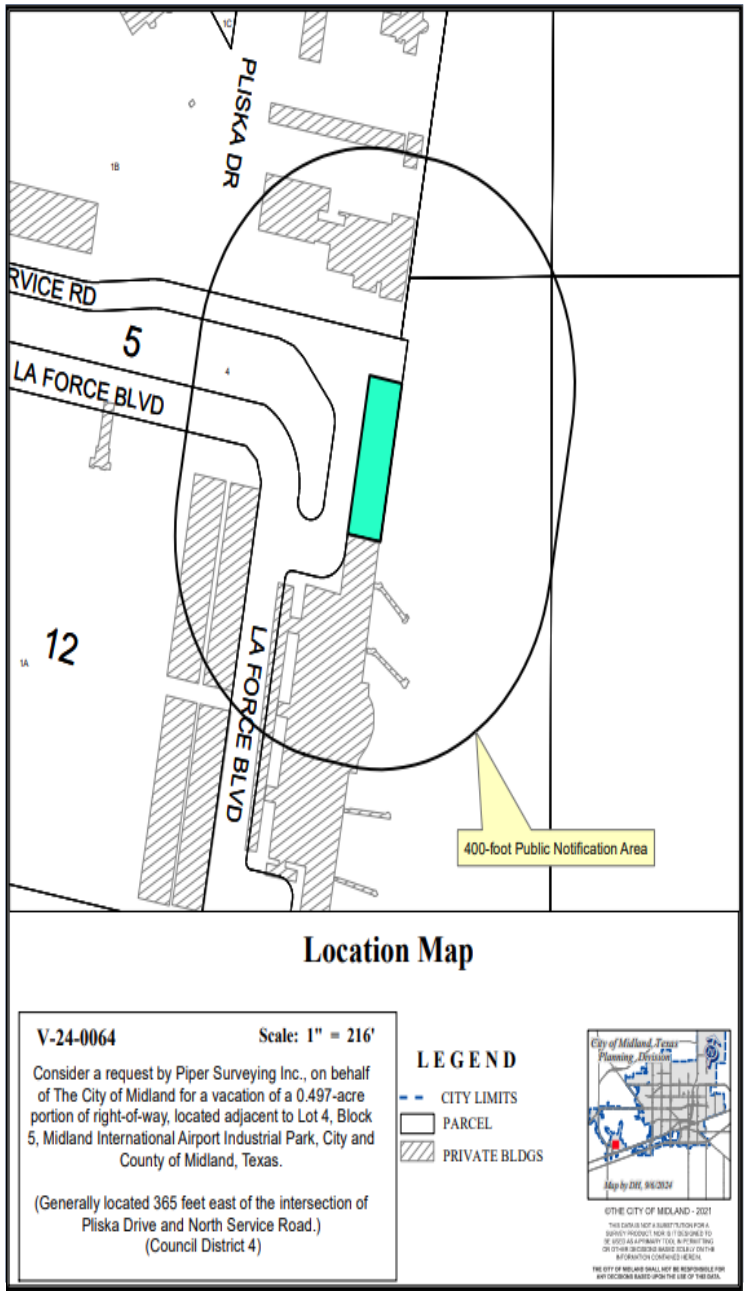
ITEM –
Vacation

October 8, 2024

Visit Our Website
MIDLANDTEXAS.GOV

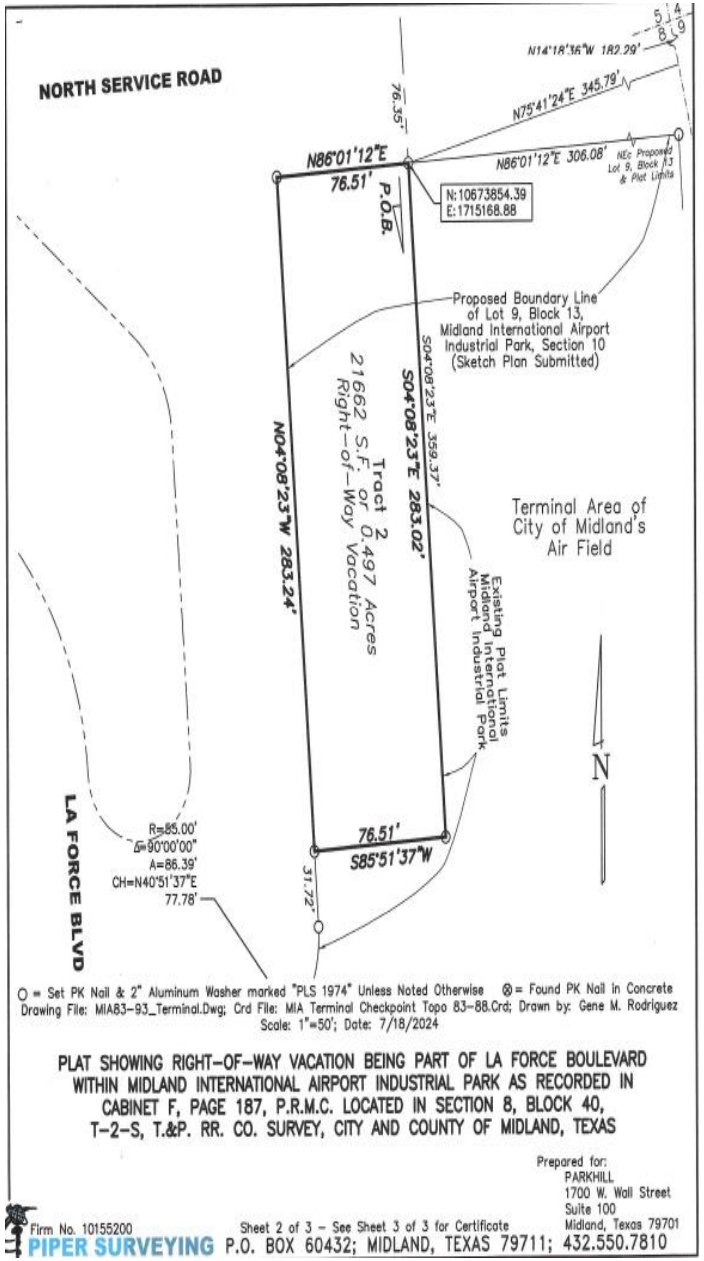
APPLICATION SUMMARY

- **Property Owner & Developer:** City of Midland
- **Representative:** Stan Piper with Piper Surveying Inc.
- **Application Type:** Vacation
- **Address:** Generally located 365 feet east of the intersection of Pliska Drive and North Service Road (District 4)



VACATION DETAILS

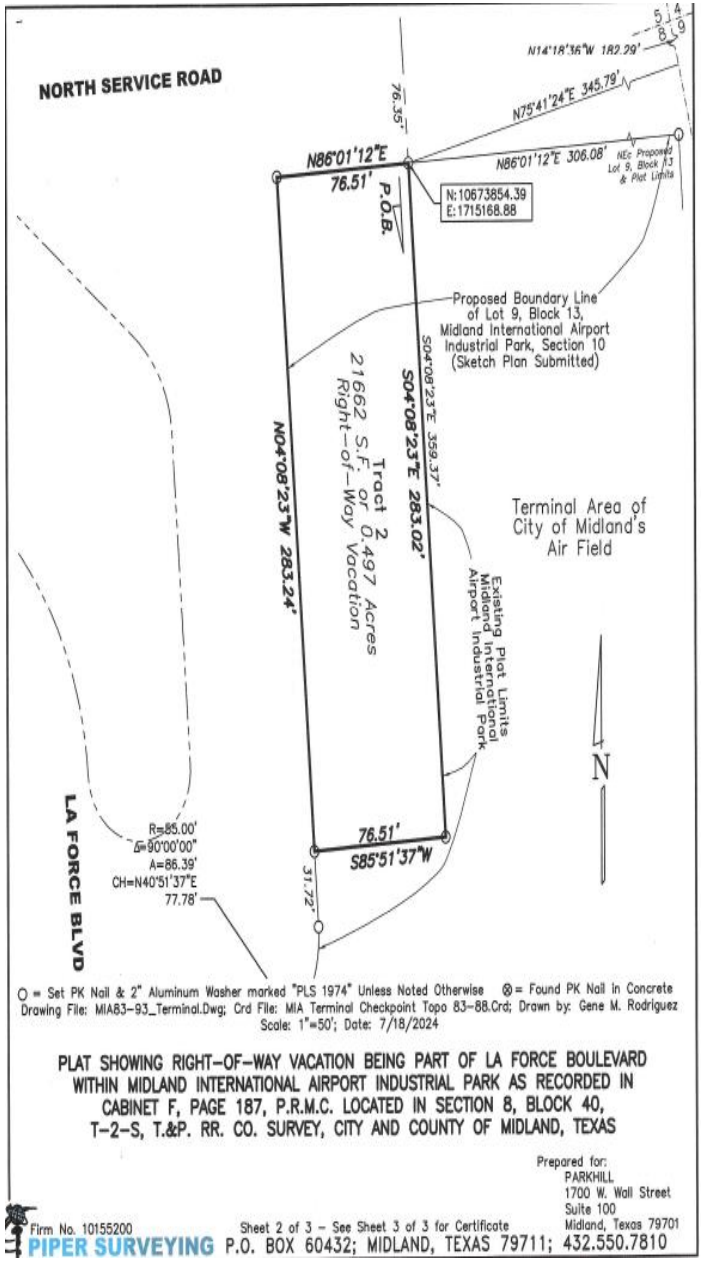
- The portion is 0.497-acres of right-of-way.
- This request for vacation is to construct a new addition to the airport terminal.
- A replat will be required to include the vacated portion in one lot.
- Utilities have been located within portion of right-of-way but can be relocated at the expense of the City.



MIDLAND
Be the Energy!

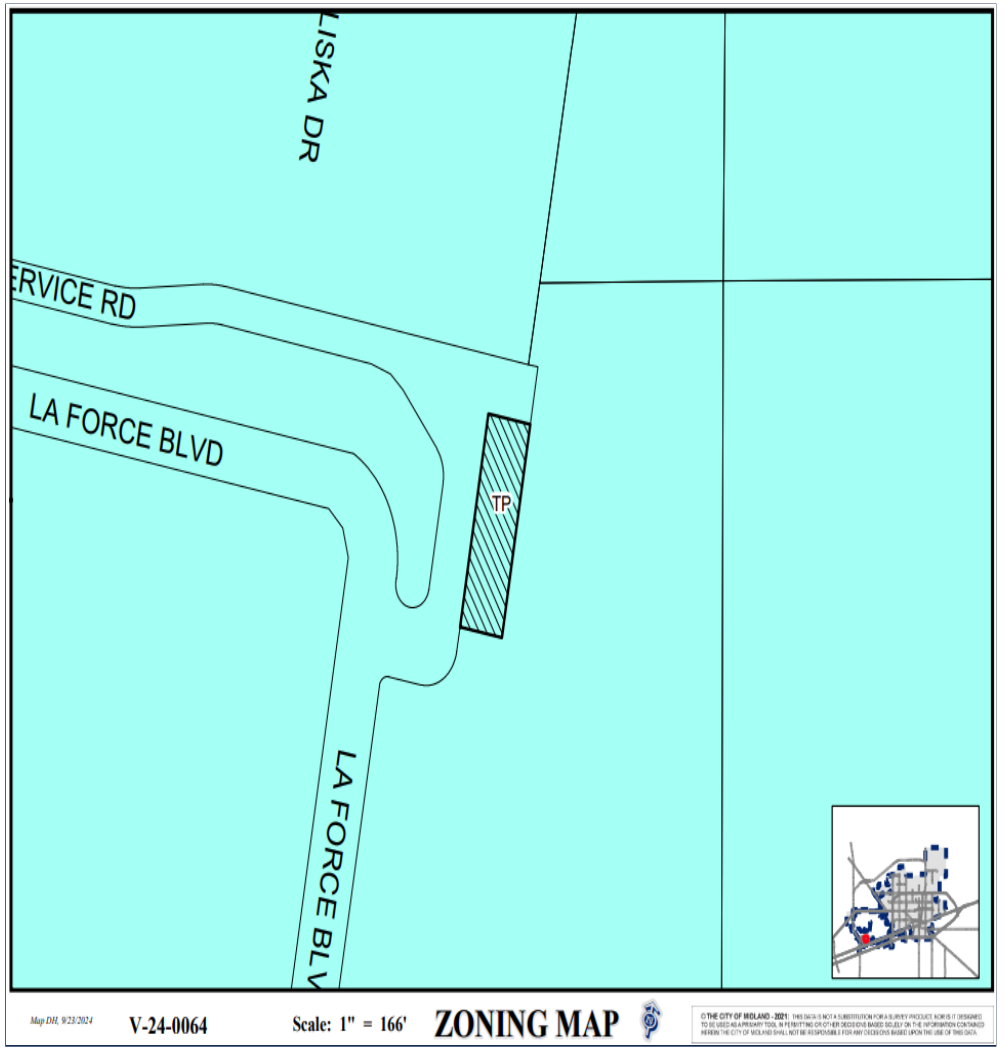
VACATION DETAILS

- A utility easement will be retained until all utilities have been relocated.



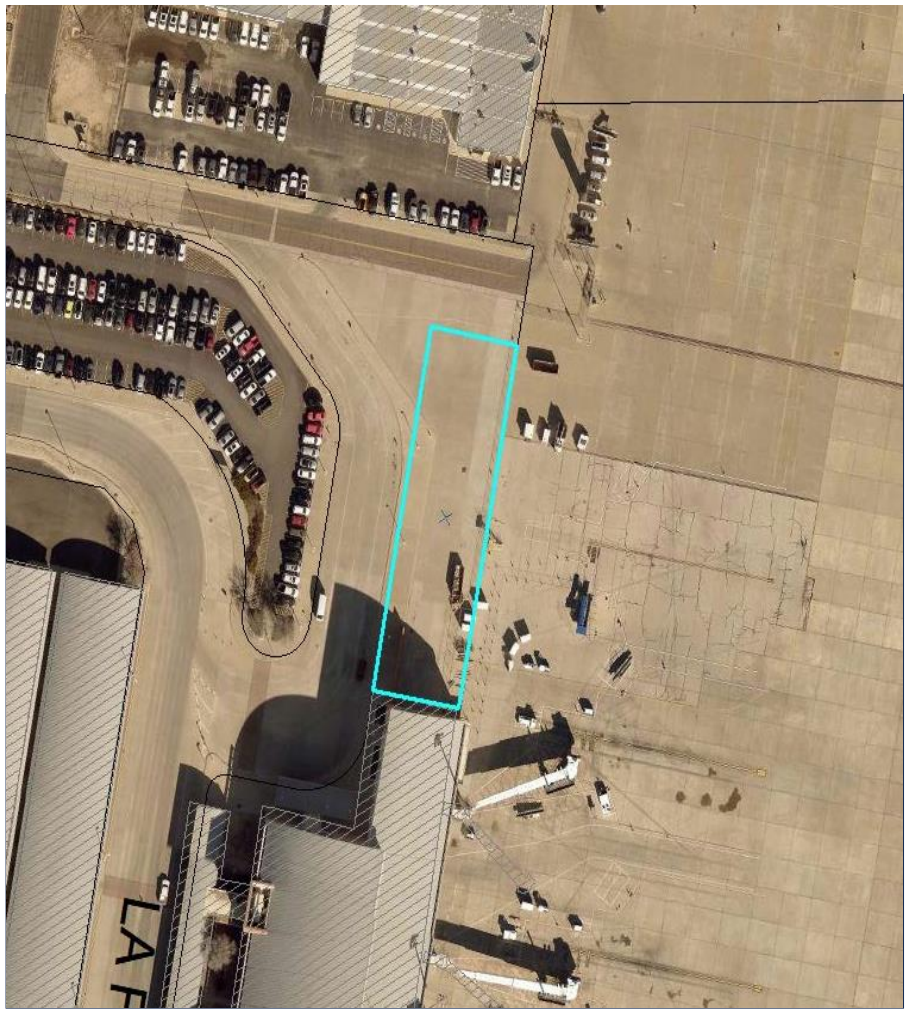
ZONING

- **Current Zoning:** Technology Park District (TP)
- **Surrounding Zoning:** Technology Park District (TP)



LAND USE

- **Current Use:** Right-of-Way
- **Proposed Use:** Terminal Addition
- **Surrounding Uses:**
  - North and West: Right-of-Way
  - South: Terminal
  - East: Terminal Plane Area



Site Photo

On La Force Boulevard, Looking South

MIDLAND
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RELATED ITEMS

- The preliminary plat associated with this request was approved on September 3, 2024, by the Planning & Zoning Commission.
- Another request to vacate a portion of right-of-way just south of the terminal is scheduled for the October 8, 2024, City Council meeting.

STAFF RECOMMENDATION

- Staff recommends approval of this vacation.

MISSION

Deliver exceptional services and promote a high quality of life and place for ALL our citizens.

City Council Meeting

Item Number: 23

Meeting Date: October 8, 2024, October 22, 2024

To: City Council / City Manager

From: Daniel Humbert, Senior Planner

Subject: AN ORDINANCE VACATING AND ABANDONING THE PUBLIC RIGHT-OF-WAY ON A CITY-OWNED 0.611-ACRE TRACT OF LAND LOCATED ADJACENT TO LOT 1A, BLOCK 13, MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED NORTHEAST OF THE INTERSECTION OF LA FORCE BOULEVARD AND SLOAN FIELD BOULEVARD); RETAINING A NONEXCLUSIVE UTILITY EASEMENT; PROVIDING THAT THE CITY SHALL RETAIN OWNERSHIP OF THE AFOREMENTIONED TRACT; AND ORDERING RECORDATION BY THE CITY SECRETARY (DISTRICT 4) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

Piper Surveying Inc., on behalf of The City of Midland, is requesting to vacate a 0.611-acre portion of right-of-way located at 9506 La Force Boulevard for the construction of an addition to the airport terminal.

Recommended City Council Action:

Approve

Fiscal Impact:

The City will need to pay to relocate existing utilities which have been identified in the portion that is to be vacated.

Discussion:

The applicant is seeking to vacate a 0.611-acre (26615.16 square feet) of the La Force Boulevard right-of-way to expand the Midland International Airport's terminal building area and expand the property boundary to remove future improvements out of the City's right-of-way.

Due to utilities being identified in the portion to be vacated, a nonexclusive utility easement will need to be retained until all utilities in the portion have been relocated at the cost of the City of Midland. Additionally, a replat of the property will be required to include the vacated portion into the same lot that airport terminal will be located in. The required replat is already in process and the preliminary phase was approved by the Planning & Zoning Commission on September 3, 2024 and is awaiting the approval of this vacation as well as an associated vacation request for a tract of land just north of the airport terminal. That vacation request is scheduled for the October 8, 2024 City Council meeting.

This request has been circulated and reviewed by all pertinent City departments and franchise utility companies. Their comments, conditions, and requests are as follows:

Code Compliance: (Approved)

No Oil & Gas issues.

Building Code: (Approved)

No objections.

Engineering: (Approved)

No objections to vacation. Applicant shall be responsible for relocating any utilities, if existing, or providing easements as needed. [For Applicant's Information Only.]

Fire: (Approved)

No objection.

Transportation: (Approved)

No objections to vacation. Applicant shall be responsible for relocating any utilities, if existing, or providing easements as needed.

GIS: (Approved)

No comments.

AT&T: (Approved)

We will be okay to vacate as long as we are provided with another easement to move to and payment is made for everything that's needed for us to vacate and place to the new location. Additionally, the entire process will need to go through our legal department.

Atmos: (Approved)

We would have no objection to the vacation however we would either need to maintain a utility easement or relocate our facilities. Any relocation costs would be passed onto the individual or entity requesting the vacation.

Astound: (Approved)

We are along the front side of the highlighted section but it does not look like we would be in the highlighted area. Looks like we are on the outside of the fence.

Oncor: (Approved)

No comments.

Altice USA: (Approved)

No comments.

Planning:

Staff recommends approval of this vacation.

Letters of Objection:

As of September 27, 2024, staff has not received any letters of objection to this request.

Attachments:

Vacation Survey (Exhibit A)
Application
Maps
PowerPoint Presentation
Responses from Franchise Utility Companies

Monte William Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE VACATING AND ABANDONING THE PUBLIC RIGHT-OF-WAY ON A CITY-OWNED 0.611-ACRE TRACT OF LAND LOCATED ADJACENT TO LOT 1A, BLOCK 13, MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED NORTHEAST OF THE INTERSECTION OF LA FORCE BOULEVARD AND SLOAN FIELD BOULEVARD); RETAINING A NONEXCLUSIVE UTILITY EASEMENT; PROVIDING THAT THE CITY SHALL RETAIN OWNERSHIP OF THE AFOREMENTIONED TRACT; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that the public right-of-way on a City-owned 0.611-acre tract of land located adjacent to Lot 1A, Block 13, Midland International Airport Industrial Park, City and County of Midland, Texas, which is more fully described as "Tract 1" in Exhibit "A" attached hereto and made a part hereof for all legal purposes (the "Property"), is no longer needed; and

WHEREAS, the Council finds it to be in the public interest to abandon and vacate the use of the Property as a public right-of-way; provided, however, that the City shall retain ownership of the Property;

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

SECTION ONE. That the Property is hereby vacated and abandoned for all public right-of-way purposes; provided, however, that the City is hereby abandoning only the public interest in the Property as a public right-of-way, and the City shall retain ownership of the Property. For the avoidance of doubt, this ordinance does not authorize a conveyance, sale, or exchange of the Property.

SECTION TWO. That this ordinance shall not be effective until a replat of the Property is approved by the City of Midland and filed and recorded with the County Clerk of Midland County, Texas.

SECTION THREE. That the City herein retains an accessible nonexclusive utility

easement across, through, over, under, on and along the Property until all entities that were using the Property for utility purposes as of the date of approval of this ordinance have abandoned their uses of the Property.

SECTION FOUR. That the City Secretary is hereby authorized and directed to file a certified copy of this ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; 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., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

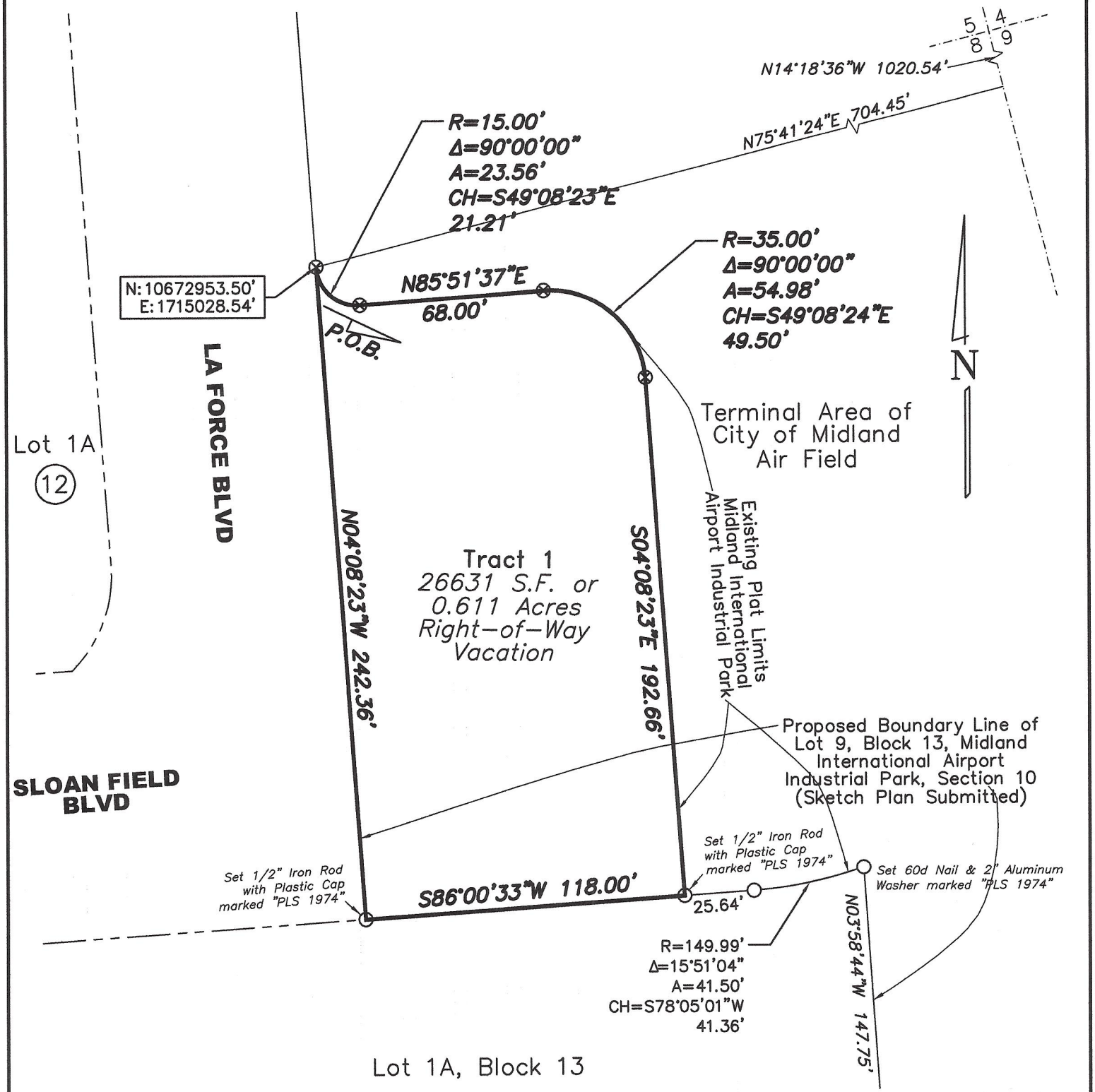
_____
Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

EXHIBIT A

See Tract 1



Lot 1A, Block 13

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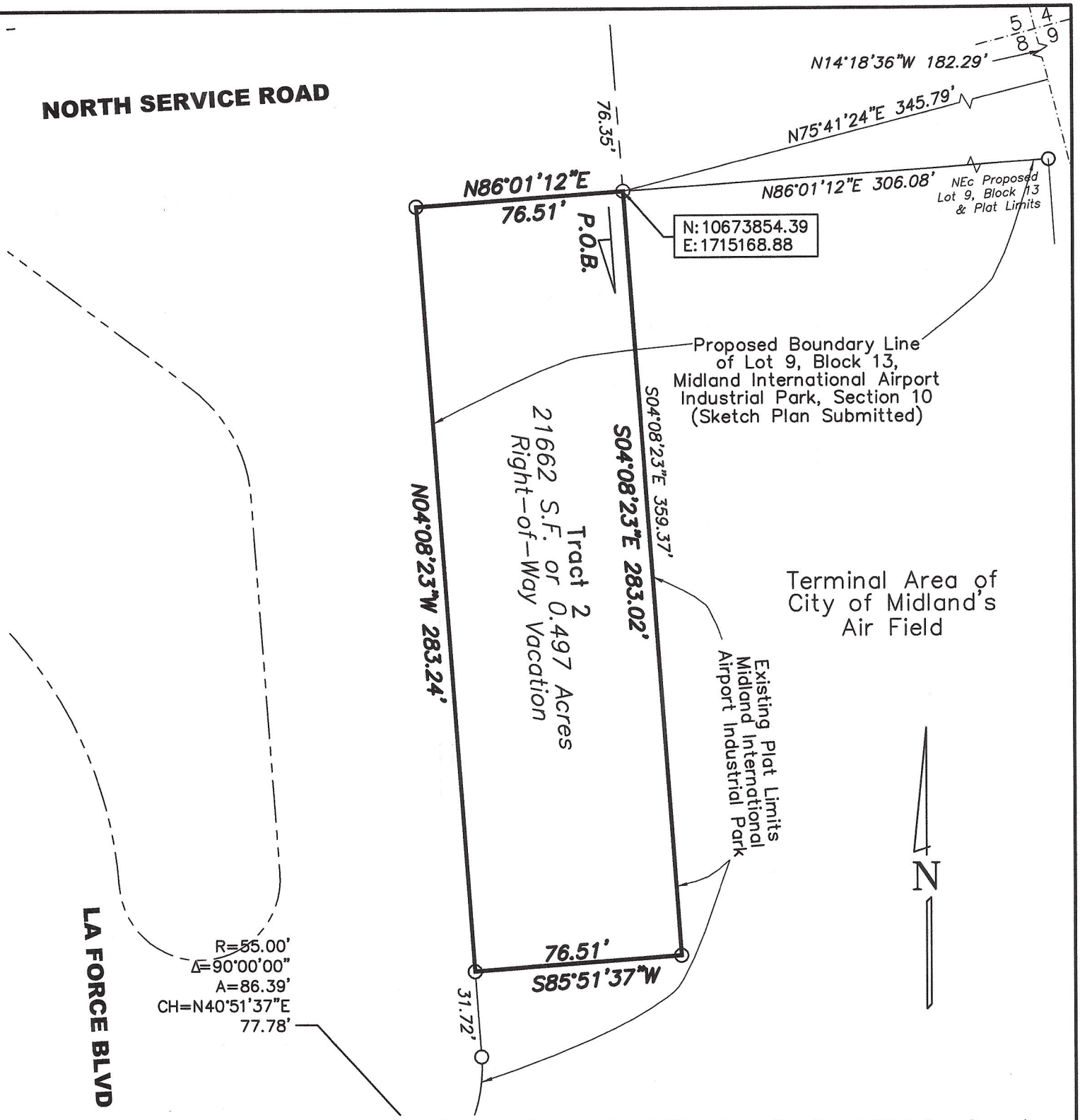
Drawing File: MIA83-93_Terminal.Dwg; Crd File: MIA Terminal Checkpoint Topo 83-88.Crd; Drawn by: Gene M. Rodriguez
Scale: 1"=50'; Date: 7/18/2024

PLAT SHOWING RIGHT-OF-WAY VACATION BEING PART OF SLOAN FIELD BOULEVARD WITHIN MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK AS RECORDED IN CABINET F, PAGE 187, P.R.M.C. LOCATED IN SECTION 8, BLOCK 40, T-2-S, T.&P. RR. CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS

Prepared for:
PARKHILL
1700 W. Wall Street
Suite 100
Midland, Texas 79701

Sheet 1 of 3 – See Sheet 3 of 3 for Certificate

Firm No. 10155200
PIPER SURVEYING P.O. BOX 60432; MIDLAND, TEXAS 79711; 432.550.7810



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Scale: 1"=50'; Date: 7/18/2024

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Prepared for:
PARKHILL
1700 W. Wall Street
Suite 100
Midland, Texas 79701

Firm No. 10155200 Sheet 2 of 3 – See Sheet 3 of 3 for Certificate

PIPER SURVEYING P.O. BOX 60432; MIDLAND, TEXAS 79711; 432.550.7810

Legal Description of Two Tracts Containing a total of 1.108 Acres of Vacation of La Force Boulevard, Sloan Field Boulevard, and North Service Road, wthin the Midland International Airport Industrial Park, as recorded in Cabinet F, Page 187, Plat Records of Midland County, located in Section 8, Block 40, T-2-S, T.&P.RR. Co., City and County of Midland, Texas

Tract 1, being further described by metes and bounds as follows;

BEGINNING at (N=10,672,953.50' E= 1,715,028.54') a PK nail found in concrete at a plat limits corner of Midland International Airport Industrial Park and the North corner of this tract, from whence the Northeast corner of said Section 8, Block 40, T-2-S, bears N75°41'24"E, a distance of 704.45 feet, and N14°18'36" W, a distance of 1020.54 feet;

THENCE with a curve turning to the left with a radius of 15.00 feet along the said plat limits in a Southeasterly direction, an arc length of 23.56 feet, a delta angle of 90°00'00", a chord distance of 21.21 feet which bearing of S49°08'23"E to a PK nail found in concrete at a point of tangency;

THENCE N85°51'37"E with said plat limits, a distance of 68.00 feet to a PK nail found in concrete at a point of curvature;

THENCE with a curve turning to the right with a radius of 35.00 feet in a Southeasterly direction, an arc length of 54.98 feet, a chord distance of 49.50 feet which bears S49°08'24"E to a found PK nail found at a point of tangency;

THENCE S04°08'23"E with said plat limits, a distance of 192.66 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" set at the Southeast corner of this tract in the North line of Lot 1A, said Block 13;

THENCE S86°00'33"W with North line of said Lot 1A and the South line of La Force Boulevard, a distance of 118.00 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" set the Southwest corner of this tract;

THENCE N04°08'23"W with the proposed ROW line of La Force Boulevard, a distance of 242.35 feet to the Point of Beginning, having an area of 26631 square feet, or 0.611 acres of land.

Tract 2, being further described by metes and bounds as follows;

BEGINNING at (N= 10,673,854.39' E= 1,715,168.88') a PK nail set in concrete in the Plat Limits at the Northeast corner of this tract, from whence the Northeast corner of said Section 8, Block 40, T-2-S, bears N75°41'24"E, a distance of 345.79 feet and N14°18'36"W, a distance of 182.29 feet;

THENCE S04°08'23"E with said Plat Limits, a distance of 283.02 feet to a PK nail found in concrete at the Southeast corner of this tract and an interior corner of said plat limits;

THENCE S85°51'37"W with said plat limits, a distance of 76.51 feet to a PK nail and 2" aluminum washer marked "PLS 1974" set at the Southwest corner of this tract;

THENCE N04°08'23"W with the proposed ROW line of La Force Boulevard, a distance of 283.24 feet to a PK nail and 2" aluminum washer marked PLS 1974" set at the Northwest corner of this tract;

THENCE N86°01'12"E with the South ROW line of the North Service Road, a distance of 76.51 feet to the Point of Beginning, having an area of 21662 square feet or 0.497 acres, for a total of 48,293 Square Feet or 1.108 Acres

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/93 Harn, Central Zone, with a combine grid factor of 0.99988171, and a theta angle equal to -0°57'55" at Spike 2 "x" cut in concrete" with values of Y= 10,672,555.08 and X= 1,715,224.50' in U.S. Survey Feet.

I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that these plats and legal descriptions is based on an actual survey made by me or under my supervision, and that the same is true and correct to the best of my knowledge and ability as surveyed on the ground on various day to July 15, 2024

J. Stan Piper July 22, 2024
Registered Professional Land Surveyor #1974

Prepared for:
Parkhill
1700 W. Wall Street, Suite 100
Midland, TX 79701

PIPER SURVEYING FIRM NO. 10155200; BOX 60432, MIDLAND, TX 79711, (432) 550-7810

MIDLAND
Planning Division

Vacate Right-of-Way/Public Utility Easement/Land/Street Application

Project Number: _____

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: City of Midland		Phone (432) 685-7100 Email lblong@midlandtexas.gov	
Address 300 N Loraine Street	City Midland	State Texas	Zip 79701

Application is hereby made to the City Council to vacate the following:

- ☒ Right-of-Way
- ☐ Public Utility Easement
- ☐ Land
- ☐ Street

Description of Address: Midland International Airport Terminal (9506 La Force Blvd, Midland, TX 79711)

Reason for Request: Additions to Terminal Building for Midland International Air and Space Port.

Reasons, in applicant's opinion, why the requested vacation will not adversely affect the public welfare or will contribute to it in a positive way: There are two areas. North Area contains 0.497 Acres and South Area contains 0.611 Acres for a total of 1.108 Acres which is primarily used for parking and taxi-que area. This will affect the public in a positive way.

Submittal and Fees

Items to be submitted with this application form:

- Application Fee – Payable to the 'City of Midland'
- Sealed metes and bounds description of the property to be vacated (included on the map) and total square feet of vacation. Include ownership, legal and deed information for adjacent property owners
- Digital Copies of Survey (PDF/JPEG)

Utility Company Approval

Clearance is needed from the following utility companies:

- City of Midland
- AT&T
- Atmos Energy
- Suddenlink Cable TV Co.
- Oncor Electric
- Grande Communications

The City will route the request to these companies, but it is the applicant's responsibility to ensure clearance has been obtained to resolve any issues that may arise.

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Justine Ruff who, being by me duly sworn, upon oath says: That (s)he is the owner of _____ or is authorized by City of 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.

Justine Ruff
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 29th day of July, 2024, to certify which witness my hand and seal of office.

ANGELA SWINDELL WRIGHT
Notary Public, State of Texas
Comm. Expires 01-21-2026
Notary ID 451179-0

Angela Swindell-Wright
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

Policies

1. If the vacation request involves only a portion of a section right-of-way, such that approval would not affect the public's ability to travel along said right-of-way, then the request will be scheduled for consideration by the City Council. No public hearing will be needed.

2. If the vacation request involves an entire section of right-of-way, such that approval would cause the public to lose all rights to use it, then the following procedures apply:

   a. Nearby land owners who have a reasonable expectation to use said right-of-way, as determined by the Transportation Division, must first agree to the proposed vacation. It is the applicant's responsibility to obtain a letter of concurrence signed by the affected landowners.

   b. If all letters are received indicating that the affected landowners agree to the request, then a public hearing before the City Council will be scheduled. The Planning Division will mail public notice of the hearing to landowners within 400 feet of the affected right-of-way.

   c. If a request is approved, the right-of-way shall be divided into two equal parts, with each half becoming the property of the respective abutting owner. If the applicant desires to own the entire width, he or she must negotiate with the opposite landowner.

****Application will not be considered for scheduling until reviewed by a planner.****

Signatures City of Midland, Justine Ruff, Director of Airports		
Applicant (signature): Justine Ruff		Date: July 29, 2024
Affected Property Owners: None, no other owners within 400 feet		
Signature:	Print:	Date:
Signature:	Print:	Date
Signature:	Print:	Date
Signature:	Print:	Date

The Vacation of right-of-way/public utility easement/land/street 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.

FOR OFFICE USE ONLY	
☐ 1 FOLDED Copy of Survey	☐ Survey in Digital Format (PDF/JPEG)
☐ Application Fee	
Check #_____	
Received By:	Date: 8 7 24

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J. Stan Piper July 22, 2024
Registered Professional Land Surveyor #1974

Prepared for:
Parkhill
1700 W. Wall Street, Suite 100
Midland, TX 79701

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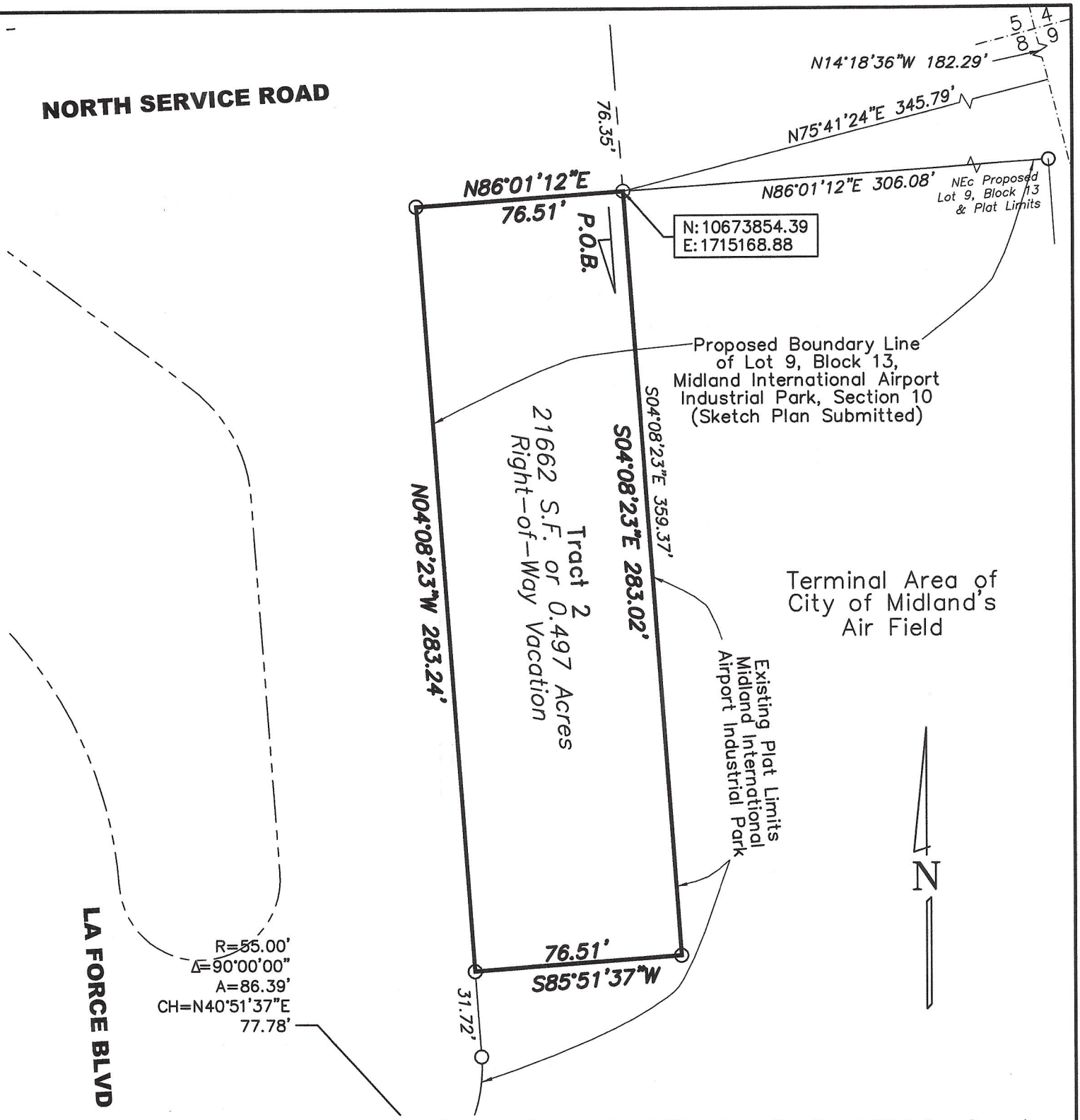

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Sheet 2 of 3 - See Sheet 3 of 3 for Certificate
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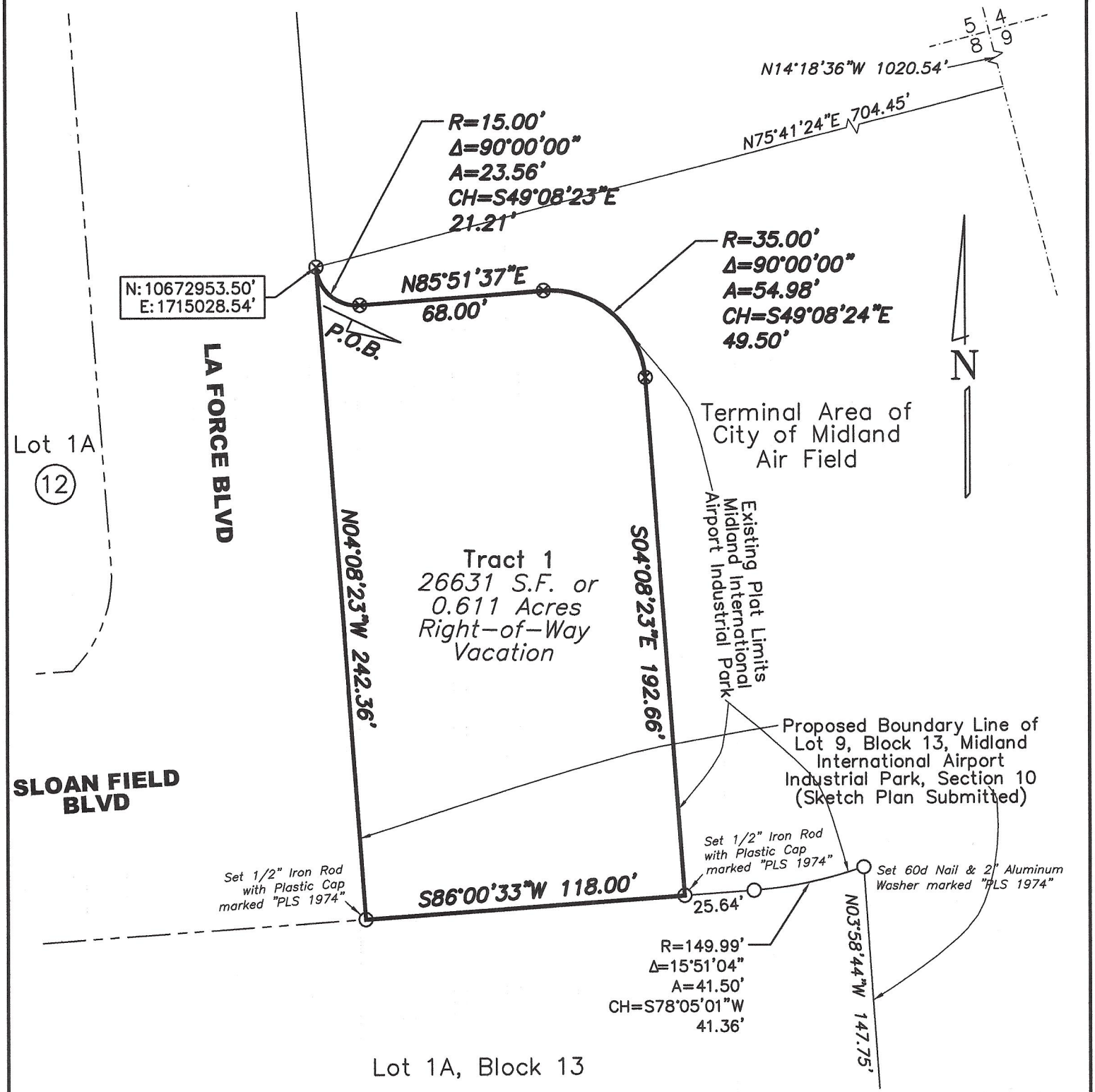

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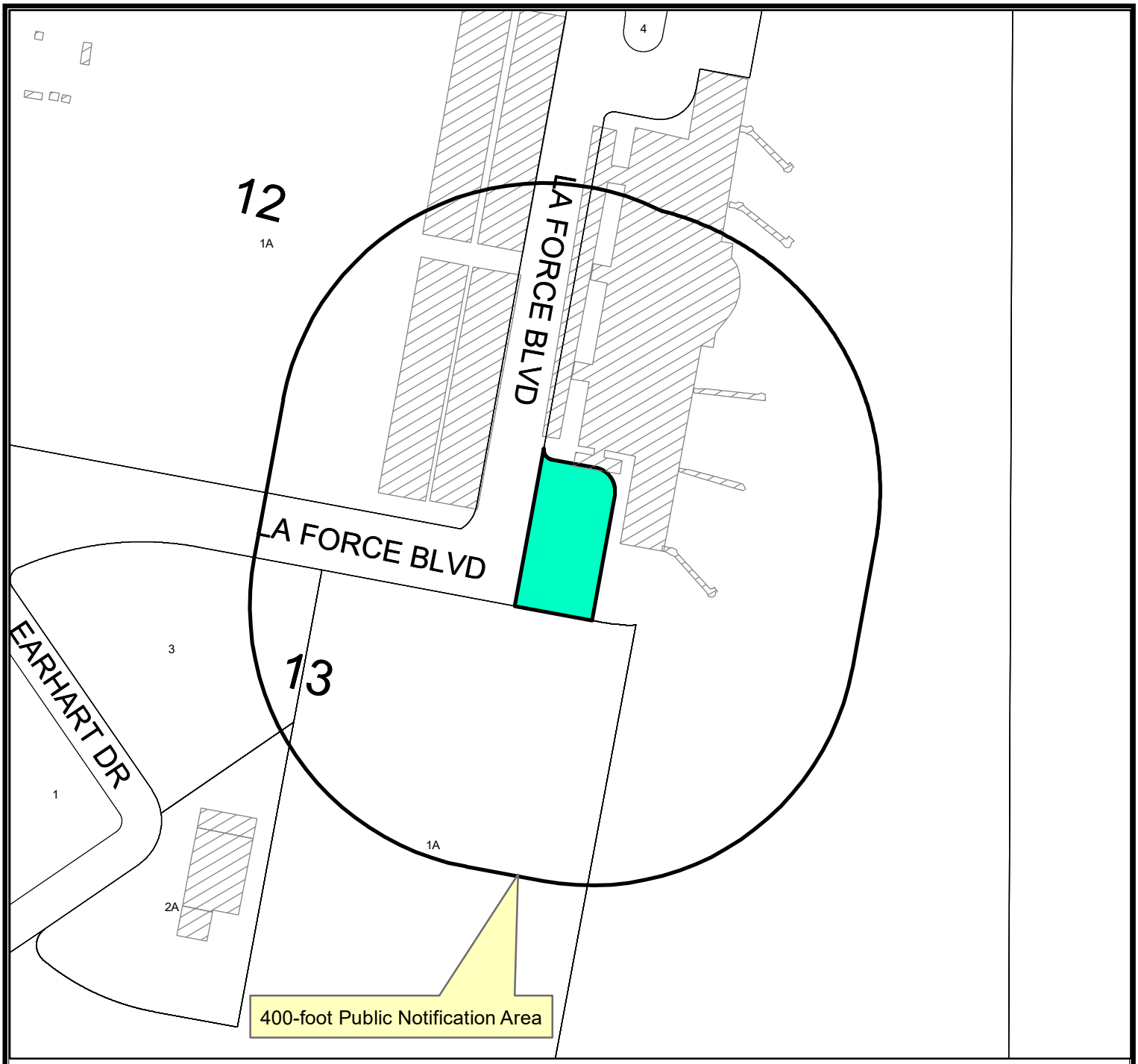
PIPER SURVEYING P.O. BOX 60432; MIDLAND, TEXAS 79711; 432.550.7810

Sheet 1 of 3 – See Sheet 3 of 3 for Certificate



Location Map

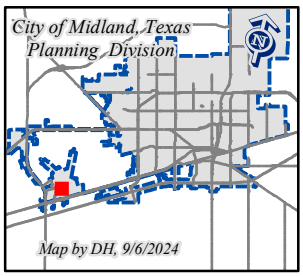
V-24-0064 **Scale: 1" = 216'**

Consider a request by Piper Surveying Inc., on behalf of The City of Midland for a vacation of a 0.611-acre portion of right-of-way, located adjacent to Lot 1A, Block 13, Midland International Airport Industrial Park, City and County of Midland, Texas.

(Generally located northeast of the intersection of La Force Boulevard and Sloan Field Boulevard.)
(Council District 4)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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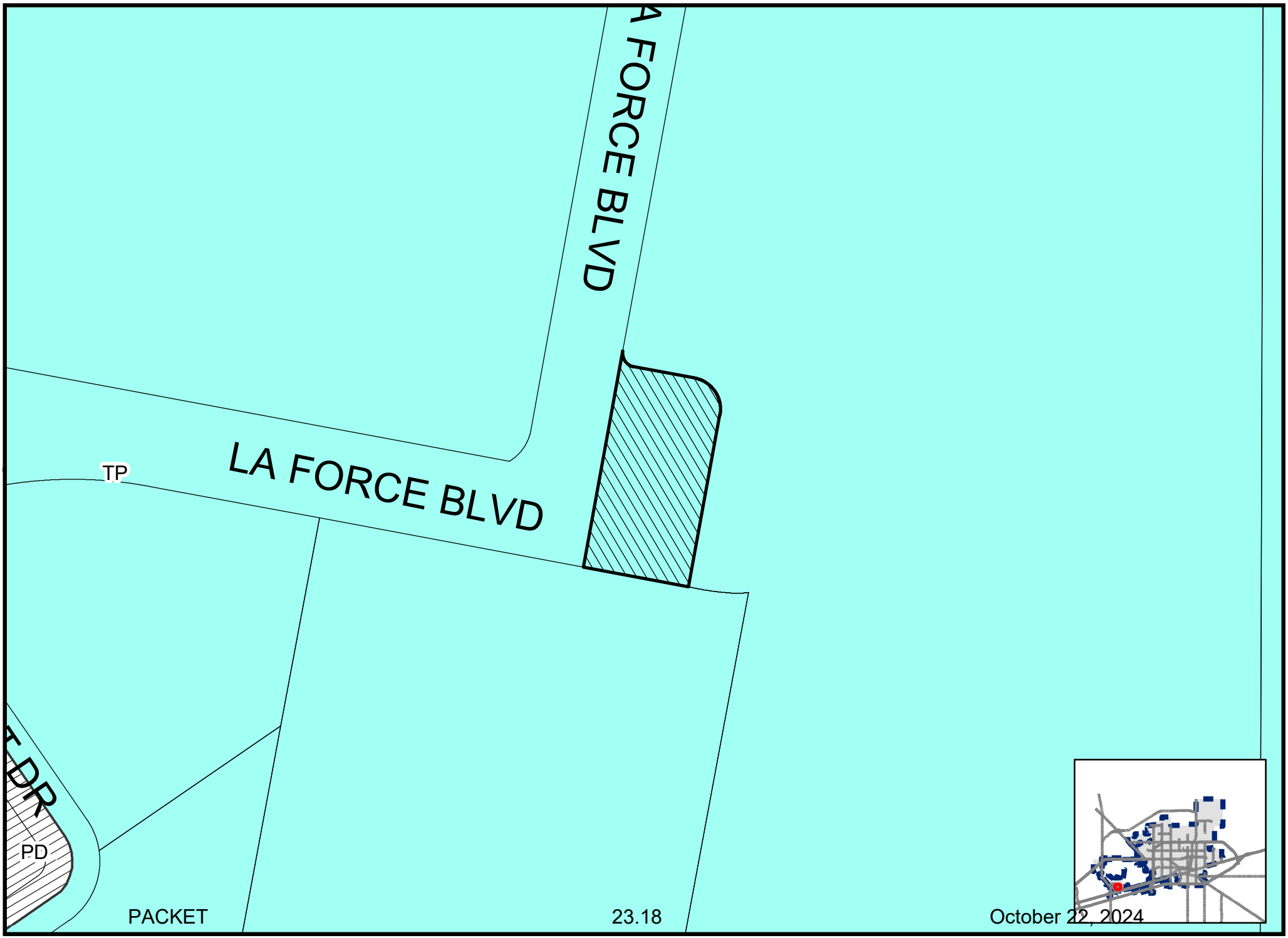

Map DH, 9/23/2024

V-24-0064

Scale: 1" = 133'

ZONING MAP

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VD
CE BLVD

Midland International Airport Terminal

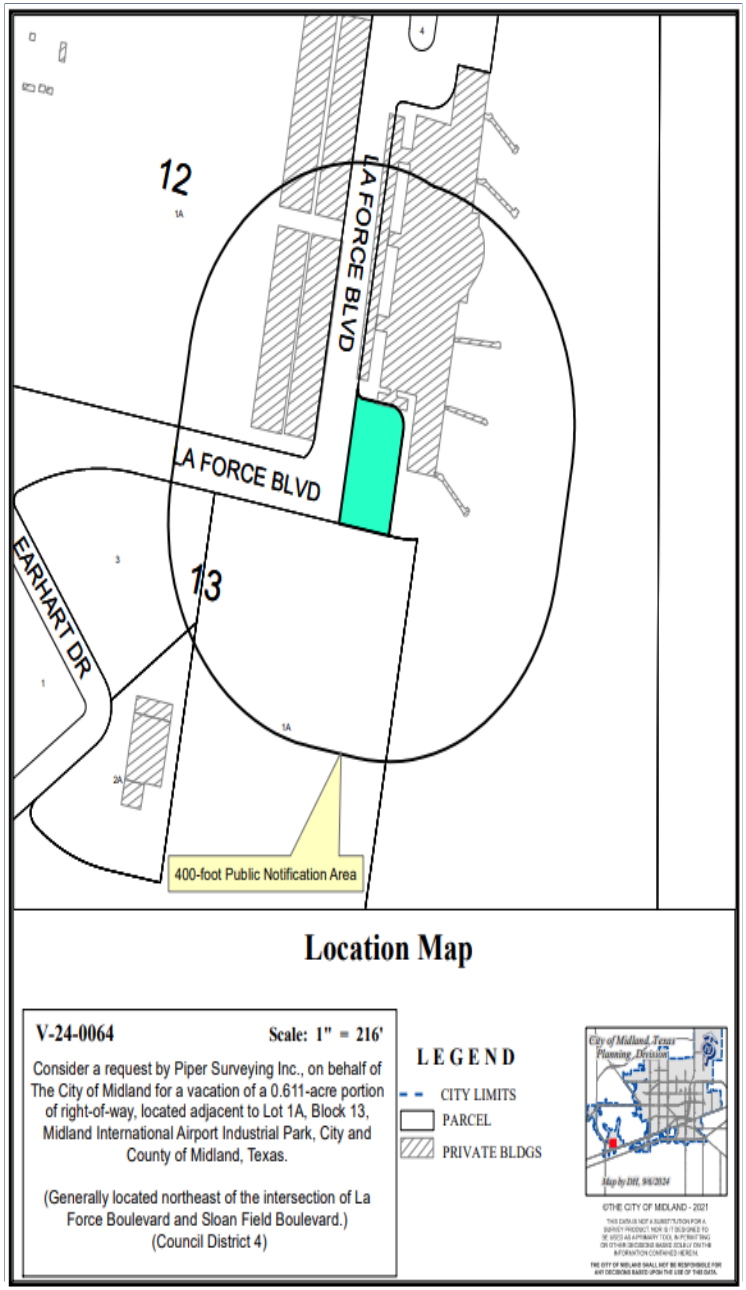
ITEM _
Vacation

October 8, 2024

Visit Our Website
MIDLANDTEXAS.GOV

APPLICATION SUMMARY

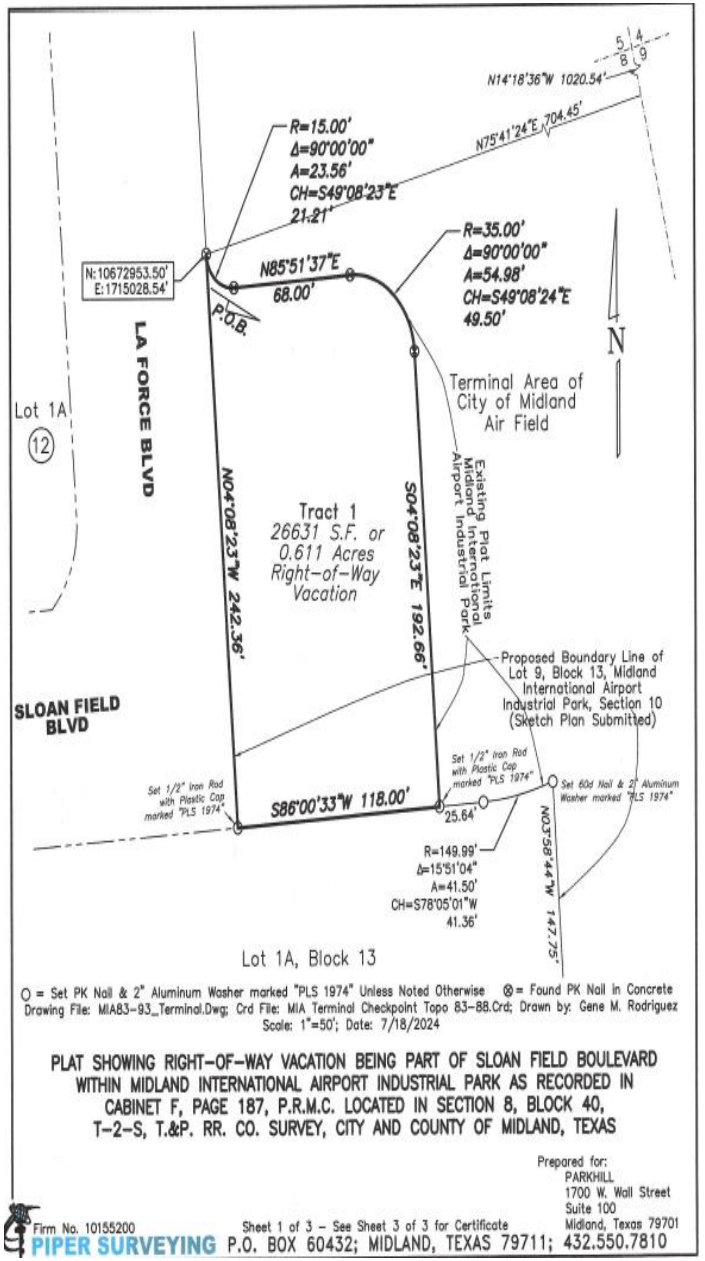
- **Property Owner & Developer:** City of Midland
- **Representative:** Stan Piper with Piper Surveying Inc.
- **Application Type:** Vacation
- **Address:** Generally located northeast of the intersection of La Force Boulevard and Sloan Field Boulevard. (District 4)



MIDLAND
Be the Energy!

VACATION DETAILS

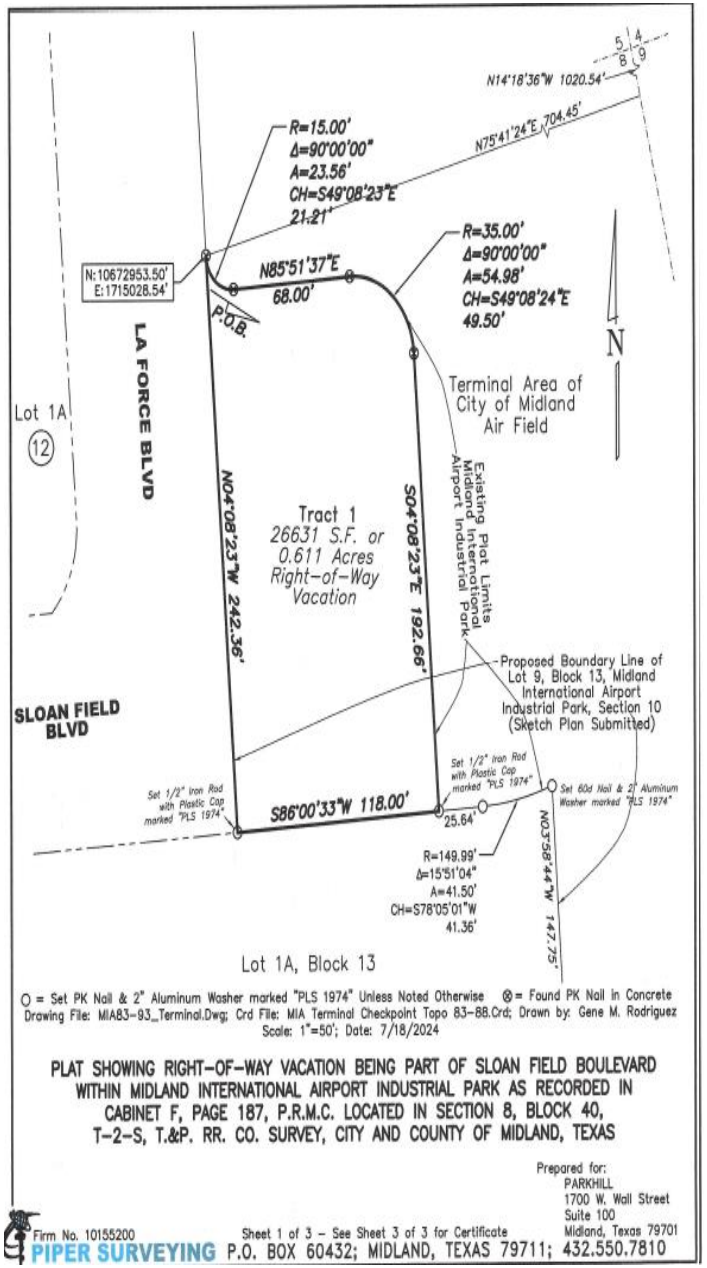
- The portion is 0.611-acres of right-of-way.
- This request for vacation is to construct a new addition to the airport terminal.
- A replat will be required to include the vacated portion in one lot.
- Utilities have been located within portion of right-of-way but can be relocated at the expense of the City.



MIDLAND
Be the Energy!

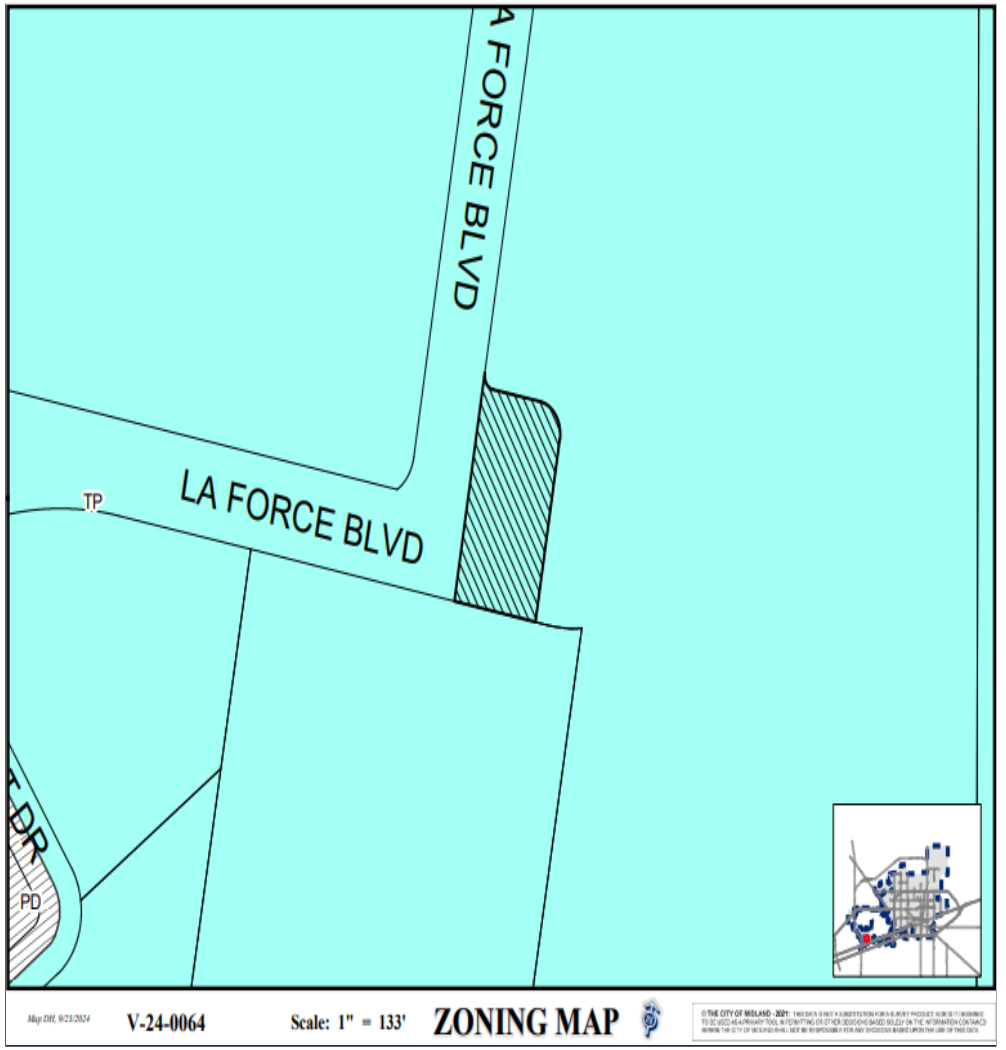
VACATION DETAILS

- A utility easement will be retained until all utilities have been relocated.



ZONING

- **Current Zoning:** Technology Park District (TP)
- **Surrounding Zoning:** Technology Park District (TP)



LAND USE

- **Current Use:** Right-of-Way
- **Proposed Use:** Terminal Addition
- **Surrounding Uses:**
  - North: Terminal
  - West: Right-of-Way
  - South: Terminal
  - East: Terminal and Right-of-Way

Site Photo

On La Force Boulevard, Looking South

RELATED ITEMS

- The preliminary plat associated with this request was approved on September 3, 2024, by the Planning & Zoning Commission.
- Another request to vacate a portion of right-of-way just north of the terminal is scheduled for the October 8, 2024, City Council meeting.

STAFF RECOMMENDATION

- Staff recommends approval of this vacation.

MISSION

Deliver exceptional services and promote a high quality of life and place for ALL our citizens.

City Council Meeting

Item Number: 24

Meeting Date: October 8, 2024, October 22, 2024

To: City Council / City Manager

From: Carl Craigo, Director

Subject: AN ORDINANCE AMENDING TITLE III, "DEPARTMENTS", CHAPTER 1, "WATER DEPARTMENT", SECTION 2, "RATES", SECTION 25, "TERMINATION PROCEDURES", AND SECTION 27, "SEPTAGE WASTE HAULER DISCHARGES AND FEES", OF THE CITY CODE OF MIDLAND, TEXAS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION (DISTRICT: ALL) (UTILITIES) (TRANSPARENT & CONSISTENT COMMUNICATION)

Purpose:

This amendment will remove Fees of this section of the City Code of Midland and to allow fees to be updated in the Fee Schedule previously approved by the Council. The termination procedures will also be updated to better reflect the process.

Recommended City Council Action:

Approve

Fiscal Impact:

N/A

Strategic Priority:

(Transparent & Consistent Communication)

Discussion:

This amendment will remove Fees of this section of the City Code of Midland and to allow fees to be updated in the Fee Schedule previously approved by the Council. The termination

procedures will also be updated to better reflect the process.

Morris Williams Jr.

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE III, "DEPARTMENTS", CHAPTER 1, "WATER DEPARTMENT", SECTION 2, "RATES", SECTION 25, "TERMINATION PROCEDURES", AND SECTION 27, "SEPTAGE WASTE HAULER DISCHARGES AND FEES", OF THE CITY CODE OF MIDLAND, TEXAS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION

WHEREAS, the City of Midland desires to consolidate the utility fee structure into the Fee Schedule ordinance and amend the water termination appeal process; and

WHEREAS, the City Council finds that utility customers will benefit from a concise fee structure and streamlined appeal process;

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

SECTION ONE. That the facts and recitations contained in the preamble of this Ordinance are hereby found and declared to be true and correct and are adopted as part of this Ordinance for all purposes.

SECTION TWO. That Title III, "Departments", Chapter 1, "Water Department", Section 2, "Rates", of the City Code of Midland, Texas, shall be amended to hereafter read as follows:

§ 3-1-2. Rates.

(A) Customers inside of City Limits:

1. Water rates: The monthly water rates or charges for services furnished by the City's waterworks system shall be at the rates set by the Fee Schedule ordinance, as amended.

    a. All non-residential customers, which shall include apartments, that use water furnished by the City's waterworks system for outside landscape irrigation purposes shall have installed, by the City, a separate water meter with separate water lines used exclusively for irrigation purposes.

        i. Said water meter must be installed by the City, at the customer's expense.

        ii. The City shall own said water meter.

iii. The customer, at the customer's expense, shall be responsible for the installation of any water lines, fittings and appurtenances thereto necessary to connect to customer's outside landscape irrigation system according to the City's standard specifications.

iv. The requirement that a customer install said separate water meter with said separate water lines shall apply when the submission of a landscape plan or an amended landscape plan is required in connection with a request for a building permit for new construction or the expansion of an existing structure, as set forth in Chapter 11-9 of the City Code of Midland, Texas.

v. The penalty for violation of this section 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 $500.00.

b. For apartments, the minimum charge shall be at the rates set by the Fee Schedule ordinance, as amended.

2. Sewer rates: The monthly rates or charges for services of users of the City's sewer system shall be as follows:

a. Residential (Winter Average). December, January, and February will be the residential winter average months. The average of the lowest two months out of the three will become the monthly charge for the following year. The residential charges shall be at the rates set by the Fee Schedule ordinance, as amended.

b. Commercial. Commercial sewer rates shall be based on actual water consumption at the rates set by the Fee Schedule ordinance, as amended.

(B) Customers outside of City Limits: All customers who obtain water or sewer service outside of the City limits shall pay rates set by the Fee Schedule ordinance, as amended.

SECTION THREE. That Title III, "Departments", Chapter 1, "Water Department", Section 25, "Termination procedures", of the City Code of Midland, Texas, shall be amended to hereafter read as follows:

§ 3-1-25. Termination procedures.

(A) Nonemergency Termination. Whenever the City is authorized to terminate a customer's water services without that customer's consent and under the provisions of this subsection or whenever the City otherwise terminates water services to a customer in a nonemergency situation other than by the customer's request, the City shall first provide notice to the customer in the form and manner described below and afford the customer an opportunity to a hearing in the form and manner described below before the termination of such services. If, after the City has complied with the

notice requirements as described below, and the customer does not request a hearing for review of the termination within the specified time, the City may terminate water services to the customer on the day specified in the notice to the customer or within five calendar days thereafter. Any time elapsing after the declared termination date, the elapsing of which is due to the pendency of a hearing or the extension of time granted pursuant to a hearing, shall not be considered when calculating the five days in which the City may terminate water after a declared termination date.

1. Notice. Past due notice shall be sent five days after the due date informing the customer of the outstanding balance and late fee. This notice can be transmitted by text, email, or mail. Ten days after the due date, the City shall send out a termination notice informing the customer that the customer has five days before the customer's water will be shut off. The notice may be sent by the methods set out above or by door hanger. Said notice shall include:

   (a) The name of the customer whose service is proposed to be terminated.

   (b) The address where service is proposed to be terminated.

   (c) The reason for the proposed termination, including the amount of delinquency if nonpayment of charges is the reason for termination.

   (d) The day on which the water service will be terminated unless the conditions bringing about the termination are sooner remedied.

   (e) That the customer has the right to appear and be heard at a hearing to contest the proposed termination prior to the date of termination.

   (f) The means by which the customer may request the hearing for review of the proposed termination.

   (g) The deadline by which the customer must request the hearing, which must be requested no later than one day prior to the termination date.

2. After the deadline for requesting a hearing, as described in subsection 3-1-25(A)1(g), has passed, a customer may still request a hearing to review the decision to terminate the customer's water service within ten days of the deadline upon providing to the City Manager or the City Manager's designee an affidavit declaring that the customer, through no fault of the customer, did not receive notice of termination in time to act upon the same. When a hearing pursuant to this subsection is requested, the City Manager or the City Manager's designee shall, as soon as practicable, determine whether the appeal appears to be meritorious, and if the City Manager or the City Manager's designee finds it is meritorious, then the City Manager or the City Manager's designee shall order the continuation or restoration of services pending the appeal.

3. If the customer whose water service is proposed for termination is a landlord who supplies water services to tenant water users, the City shall attempt to give notice to the tenant water users pursuant to subsection (C) of this Section.

4. Hearing. Should the customer request a hearing to review the decision to

terminate the customer's water services, the hearing shall be presided over by the City Manager or the City Manager's designee, said designee not having been involved in the original decision to terminate services, hereafter in this context known as the hearing officer. The hearing shall be held no sooner than the next business day nor later than fifteen business days after being requested by the customer. The hearing officer may, in the hearing officer's discretion, delay or advance the hearing time upon showing of good cause by the customer. At the hearing, the customer shall be given the opportunity to be heard in person to present the customer's case, to present testimony from other persons, and to admit documents. The customer may be represented by counsel, though the City shall in no case provide counsel. The customer shall be given the opportunity to confront and cross examine any witnesses appearing against the customer at the hearing. The customer may request that a representative of the City be present at the hearing and be subject to questioning. However, the rules of evidence for civil or criminal trials shall not apply. The City's reasons for terminating the customer's water service shall be stated at the hearing. Upon reaching a final determination, the hearing officer shall state the reasons for making that determination. Should the hearing officer find in favor of the customer, the customer's water service shall continue. Should the hearing officer find against the customer, the customer's water service shall be terminated. The hearing officer shall have the power to grant an extension of time for payment, offer a payment plan, or uphold the termination.

(B) Emergency Termination. Whenever the City is specifically authorized by this Code to act pursuant to this subsection or whenever the City shall deem it necessary due to an emergency situation to terminate a customer's water service prior to giving notice and an opportunity for a hearing, the City shall give the customer whose water service has been terminated notice of that termination in accordance with the requirements described below and afford that customer an opportunity for a post-termination hearing to review the decision to terminate.

1. Notice. Whenever the City terminates a customer's water service pursuant to this subsection, the City shall post notice on the door of the premises to which water service was terminated, if possible, and shall, on that day, mail notice to the customer at the customer's usual billing address. The notice shall be in writing and shall clearly communicate the following information:

(a) The name of the customer.

(b) The address to which service has been terminated.

(c) The reason for the termination.

(d) That the customer has the right to appear and be heard at a hearing to review the termination.

(e) That the customer must request the hearing for review of the termination within twenty days of the termination.

(f) The means by which the customer may request the hearing for review of the termination.

If the customer whose water service has been terminated is a landlord who supplies water services to tenant water users, the City shall attempt to give notice to the tenant water users pursuant to the procedure set forth in subsection (C) of this Section.

2. Hearing. If the customer shall request a hearing to review the emergency termination of that customer's services, the request shall be made by the customer no later than twenty days after the emergency termination. Should the hearing officer find in favor of the customer, water service shall be reconnected, otherwise the customer's water service shall remain disconnected. The hearing shall in all other respects, nature, procedures, and resolutions be identical to that described in subsection (A)4 of this Section.

(C) Notice to Tenant Users. If a customer to whom water service is proposed to be terminated or has been terminated, pursuant to the foregoing provisions of this Section, is a landlord who supplies water to tenant users, and the City is aware or should be aware that the customer supplies water to tenant users, then the City shall provide notice to the tenant users of the proposed termination or past termination. The notice to the tenant user need not state the name of that tenant user nor the name of the water customer, but must communicate sufficient information to inform the tenant user that the tenant user's premises are covered by the proposed or actual termination. The tenant user shall have the same rights to appeal that the customer of the water services has under the foregoing provisions of this Section and shall be so informed by the notice. The notice to the tenant users shall in all other respects comply with the requirements of subsection (A)1 of this Section if water service is proposed to be terminated or with subsection (B)1 of this Section if services have already been terminated. Notices to tenant users may be sent by United States mail addressed to the appropriate street address of the dwelling or commercial unit, or posted on the door of the dwelling or commercial unit, or hand delivered to the tenant or any other person residing at or employed at the tenant's premises. If the appropriate physical facilities are in place and the tenant otherwise meets the requirements of this Chapter, the tenant user may establish water service in the tenant user's own name without being held responsible for any delinquencies owed by the landlord.

SECTION FOUR. That Title III, "Departments", Chapter 1, "Water Department", Section 27, "Septage waste hauler discharges and fees", of the City Code of Midland, Texas, shall be amended to hereafter read as follows:

§ 3-1-27. Septage waste hauler discharges and fees.

(A) Origin of septage.

1. The water pollution control plant operated by the City of Midland may accept domestic septage in loads originating exclusively from the following:

(a) Those shown to have originated completely within the City of Midland or Midland County, Texas, as shown on appropriate manifests; or

(b) Municipalities with which the City of Midland has a duly executed interlocal agreement to accept domestic septage.

2. No person, corporation or association shall discharge or cause to be discharged at the water pollution control plant domestic septage that originated from a location other than those described above.

(B) Content of Loads.

1. Loads accepted by the water pollution control plan must consist completely and entirely of domestic septage. Loads containing any material other than domestic septage will not be accepted.

2. All septage loads are subject to analytical testing at the hauler's expense to verify that the load does not contain any material other than domestic septage.

3. No person, corporation or association shall discharge or cause to be discharged at the water pollution control plant a load containing any material other than domestic septage.

(C) Septage hauler's discharge fee.

1. In addition to any other applicable fees and charges, a septage hauler's discharge fee will be applied to all vehicles each time they enter the water pollution control plant operated by the City of Midland to dispose of domestic septage.

2. The septage hauler's discharge fee shall be in accordance with the Fee Schedule ordinance, amended.

(D) Compliance with Sewage Quality Control Requirements. All requirements set forth in Section 3-1-24 of this Code shall apply.

(E) Penalty. Any person, corporation or association, as that term is defined by Texas Penal Code § 1.07(a), violating a provision of subsection (A), (B), or (D) above shall, upon conviction, be fined in any sum not exceeding $1,000.00. Each and every day that a provision of subsection (A), (B), or (D) above is violated shall constitute a separate and distinct offense.

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 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., 2024; 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., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

RECOMMENDED AND APPROVED:

_____
Tommy Gonzalez, City Manager

APPROVED AS TO FORM ONLY:

_____
John Ohnemiller, City Attorney

City Council Meeting

Item Number: 25

Meeting Date: October 22, 2024

To: City Council / City Manager

From: Britton Murry, Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 6, BLOCK 62, PARK AVENUE HEIGHTS 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 ON THE WEST SIDE OF SOUTH MADISON STREET, APPROXIMATELY 200 FEET NORTH OF CLOVERDALE 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 2) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, Serafin Lopez, is requesting a Zone Change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District for the construction of a single-family residence located at 810 South Madison.

Recommended City Council Action:

Approve

Fiscal Impact:

The request has no significant impact on the City's budget.

Strategic Priority:

Strengthen and sustain our Infrastructure**.**

Discussion:

Current Zoning:

MF-22. Multiple-Family Dwelling District

Surrounding Zoning and Land Use:

The properties to the north and south are zoned MF-22, Multiple-Family Dwelling District, and are used for single-family dwellings. The properties to the east and west are zoned MF-22, Multiple-Family Dwelling District, and are currently vacant lots.

Analysis:

The applicant is seeking this zone change in order to construct a single-family residence, which is not allowed in the MF-22 district. This vacant lot is located in a residential neighborhood that is developed with single-family homes. Changing this zoning would help the future residential development of this area. This lot does meet the requirements for the SF-3, Single-Family Dwelling District zoning.

This request is consistent with the Tall City Tomorrow Comprehensive Plan, which designated this area as Urban Residential-Medium (UR-M). This designation calls for any single-family zoning 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 comments

Oil and Gas: (Approved)

No Oil & Gas Issues

Engineering: (Approved)

No objections to zone change. [For Applicant’s Information Only.] 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. [For Applicant’s Information Only.]

Code: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2023 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on the time of new code editions adopted in the City of Midland and date of permit application.

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. [For the Applicant's information only.] No objection to zone change. [For the Applicant's information only.]

Planning:

The Planning and Zoning Commission recommended approval of this request on October 7, 2024.

Therefore, staff recommends approval of this Zone Change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

Letters of Objection:

As of October 11, 2024, staff has received no letters of objection for this request.

Attachments:

Application
Survey
Location Map
Zoning Map
Aerial
Site Photo
PowerPoint Presentation

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 6, BLOCK 62, PARK AVENUE HEIGHTS 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 ON THE WEST SIDE OF SOUTH MADISON STREET, APPROXIMATELY 200 FEET NORTH OF CLOVERDALE 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 Lot 6, Block 62, Park Avenue Heights Addition, Section 2, City and County of Midland, Texas (the "Property") to SF-3, Single-Family Dwelling District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as

that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; 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., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: _____

Case Number: _____

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Serafin Lopez		Phone (432) 2383364 Email lopezroofing1990@gmail.com	
Address 802 N. Weatherford	City Midland	State Tx	Zip 79701

Property Owner Printed Name: Serafin Lopez		Phone ( ) Email same	
Address 802 N. Weatherford	City Midland	State Tx	Zip 79701

Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 810 South Madison

Legal Description
Lot: Block: Subdivision:

Current Zoning: MF	**Proposed Zone:** *(List by tracts if more than one district is requested)* SF

Reason for Zone Change Request: To build a SF home

Present Use of Property: vacant lot

Proposed Use of Property: House

How would this zone change affect the public health, safety and welfare? no affect, there are SF homes already built next to property

Describe how conditions affecting the property have changed since present zoning designation: SF homes have been built adjacent to lot

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): Serafin Lopez	Date: 8-29-24
Applicant (printed): Serafin Lopez	
Property Owner (signature): Serafin Lopez	Date: 8.29.24
Property Owner (printed) : Serafin Lopez	

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*)

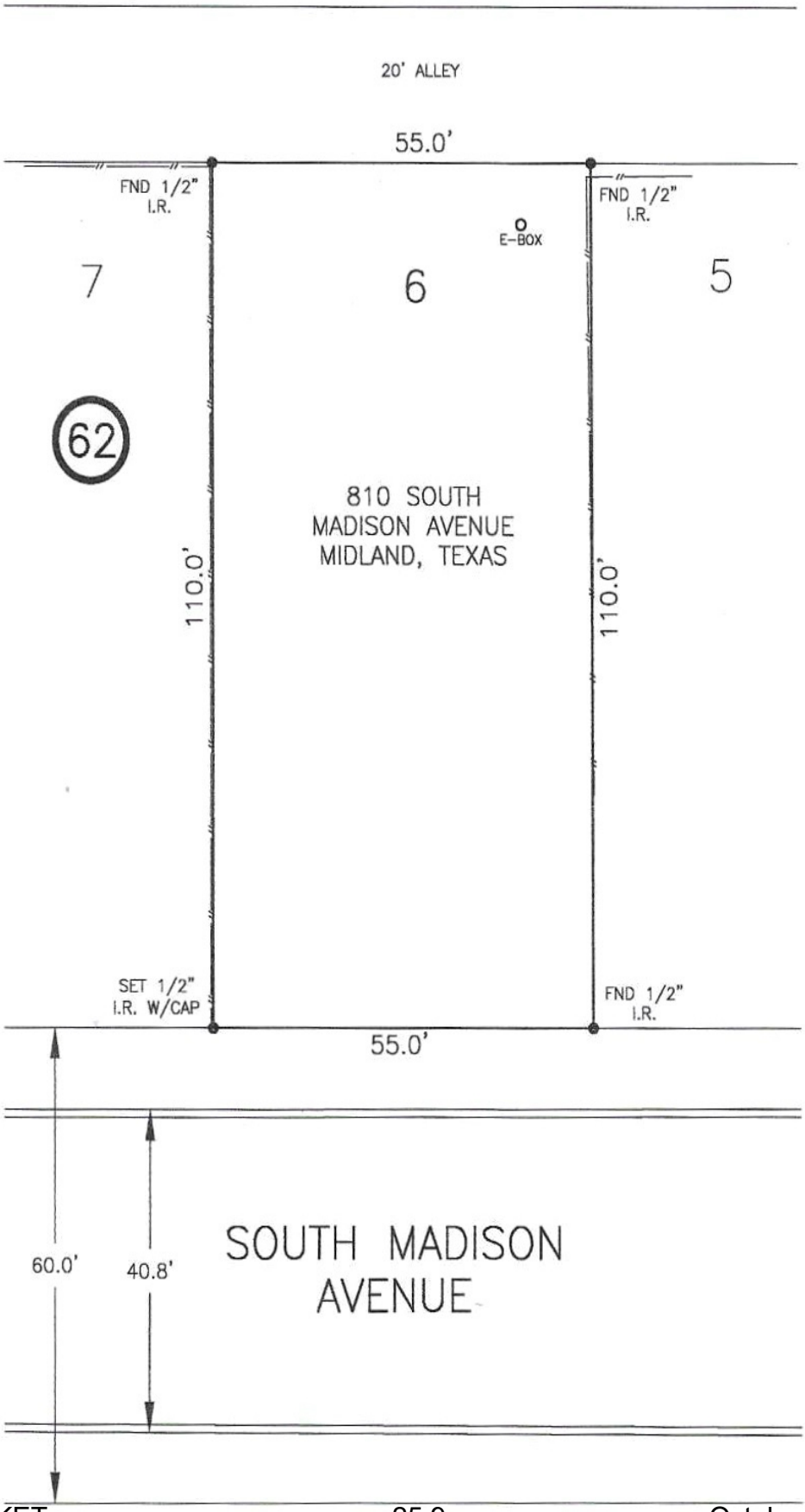
Subscribed and sworn to before me, this_____day of_____, 20____, to certify which witness my hand and seal of office.

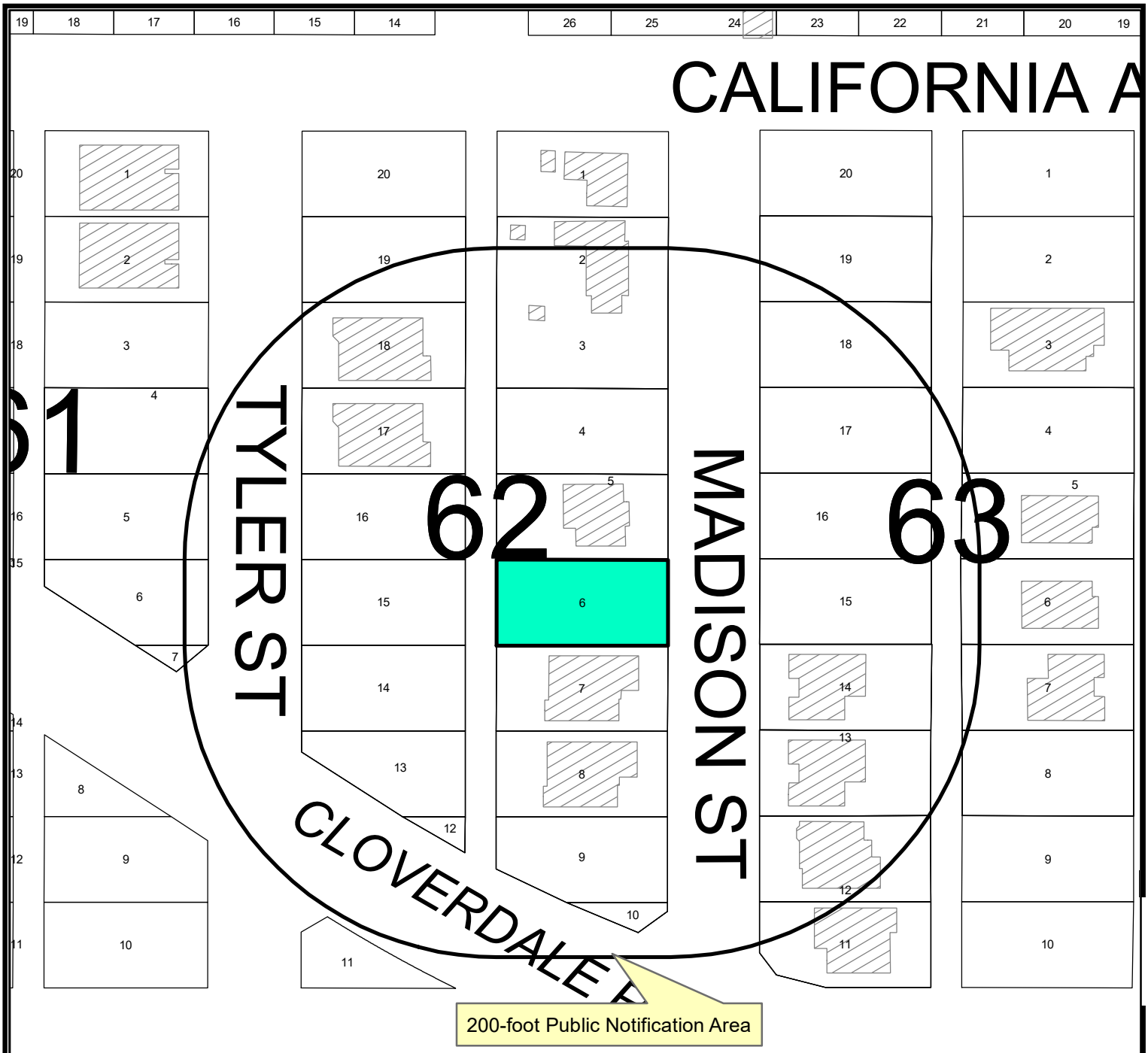
_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
☐ Property Owner Authorization	☐ Dimensioned Site Plan
☐ Application Fee	☐ Plans in Digital Format (PDF/JPEG)
Check #_____	
Received By:	Date:

****Application will not be considered for scheduling until reviewed by a planner.****

Site Plan 810 South Madison





Location Map

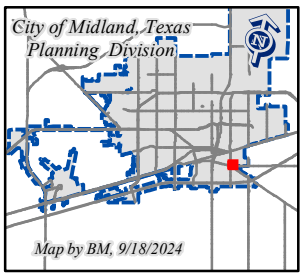
Z-24-0391 **Scale: 1" = 93'**

Consider a request by Serafin Lopez for a zone change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District on Lot 6, Block 62, Park Avenue Heights Addition, Section 2, City and County of Midland, Texas.

Generally located on the west side of South Madison Street, approximately 200 feet north of Cloverdale Road. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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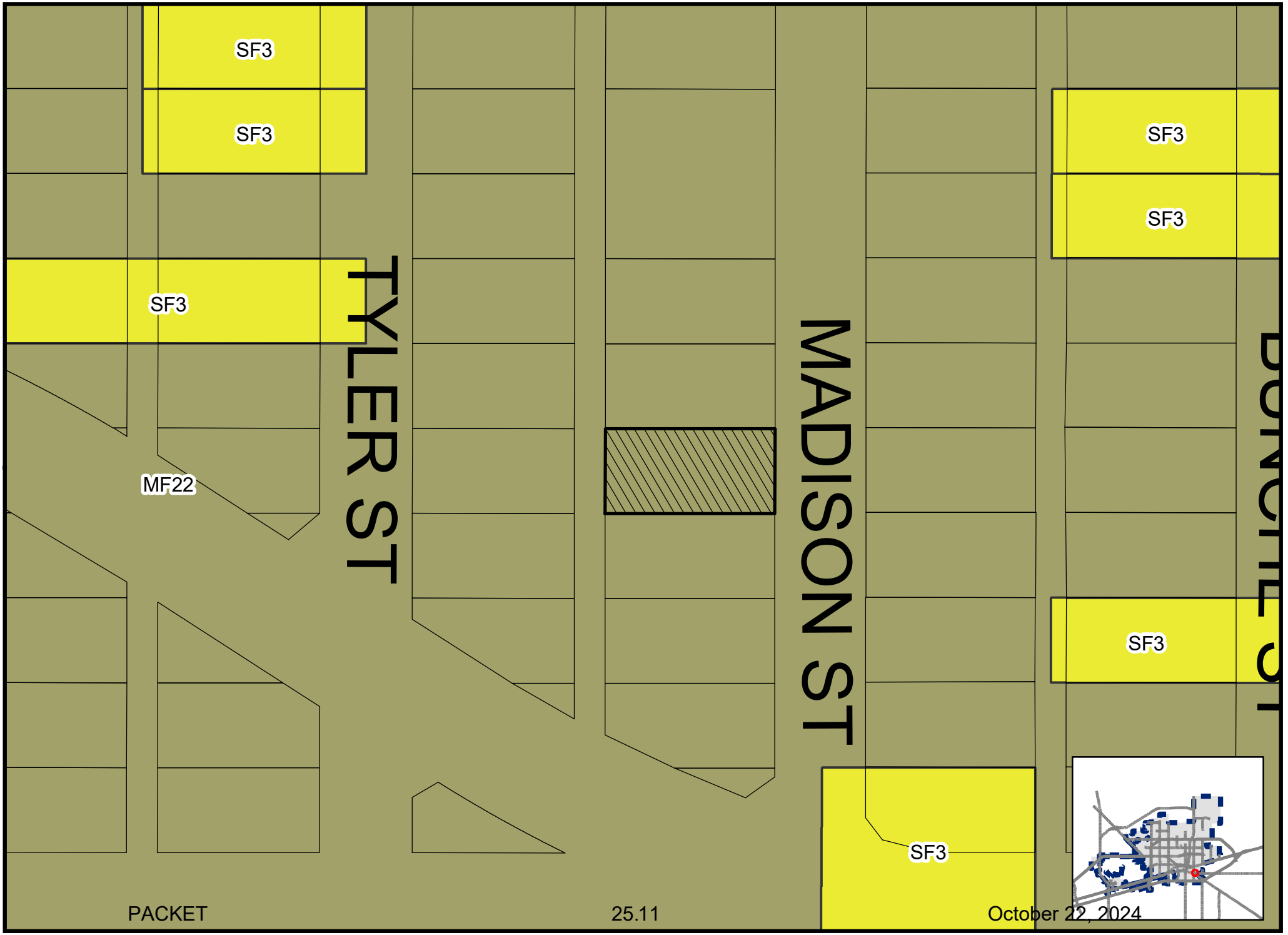

Map BM, 9/18/2024

Z-24-0391

Scale: 1" = 78'

ZONING MAP

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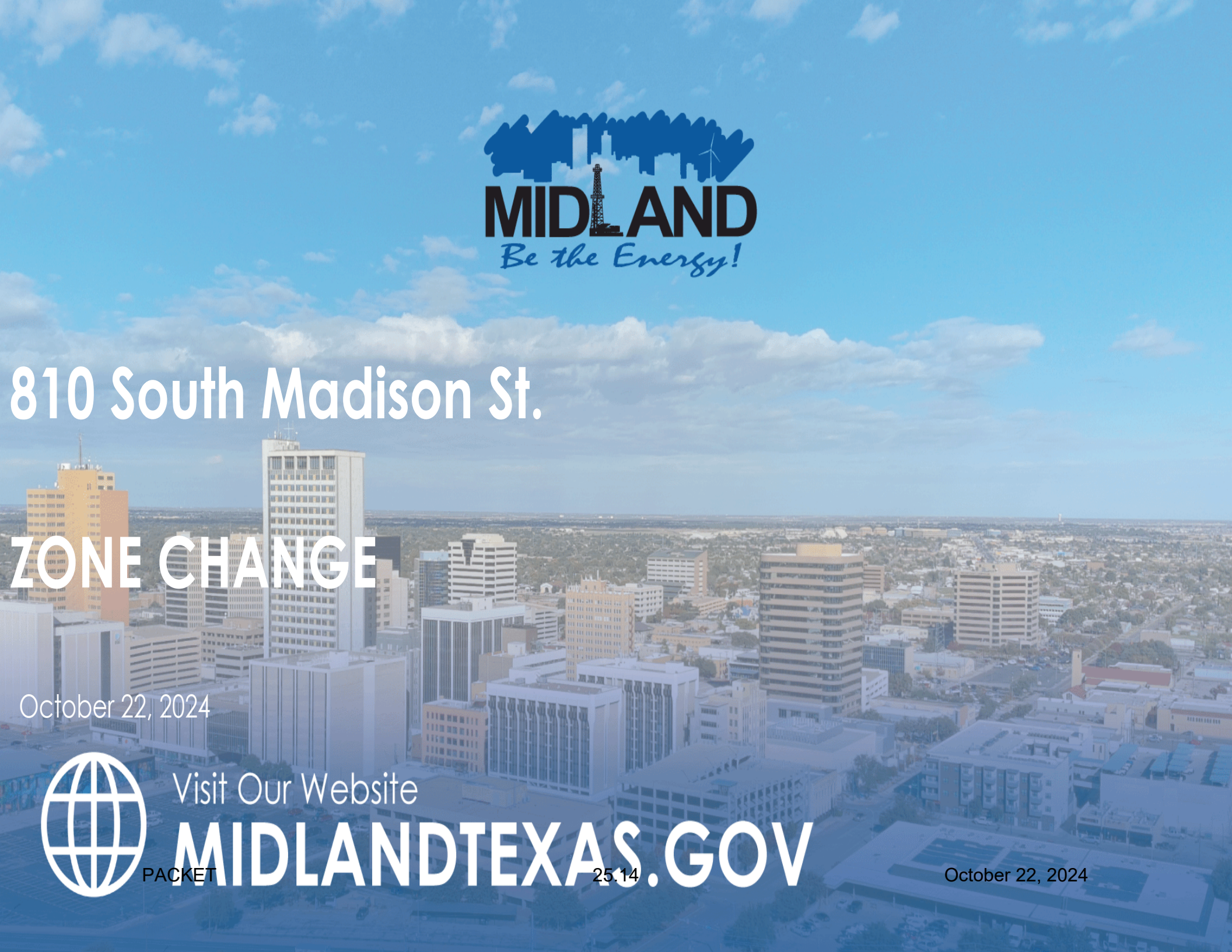
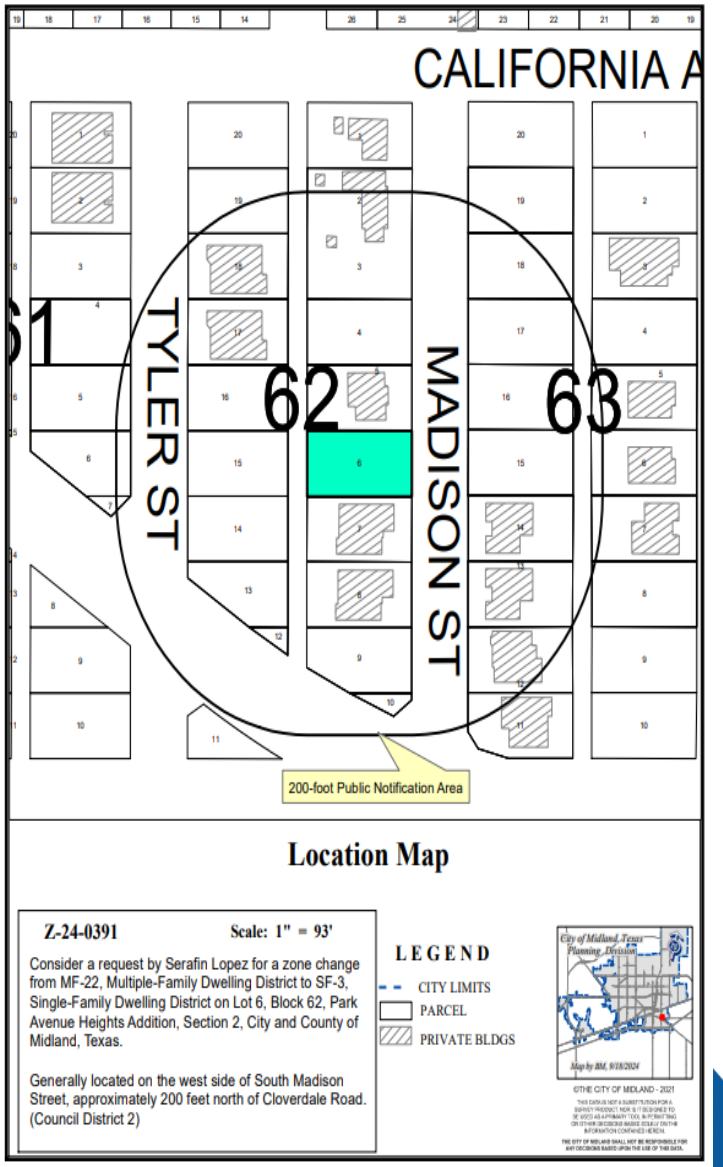
CALIFORNIA AV
TYLER ST
MADISON ST
BUNCHE ST
61
62
63


MIDLAND
Be the Energy!
810 South Madison St.
ZONE CHANGE
October 22, 2024
Visit Our Website
MIDLANDTEXAS.GOV

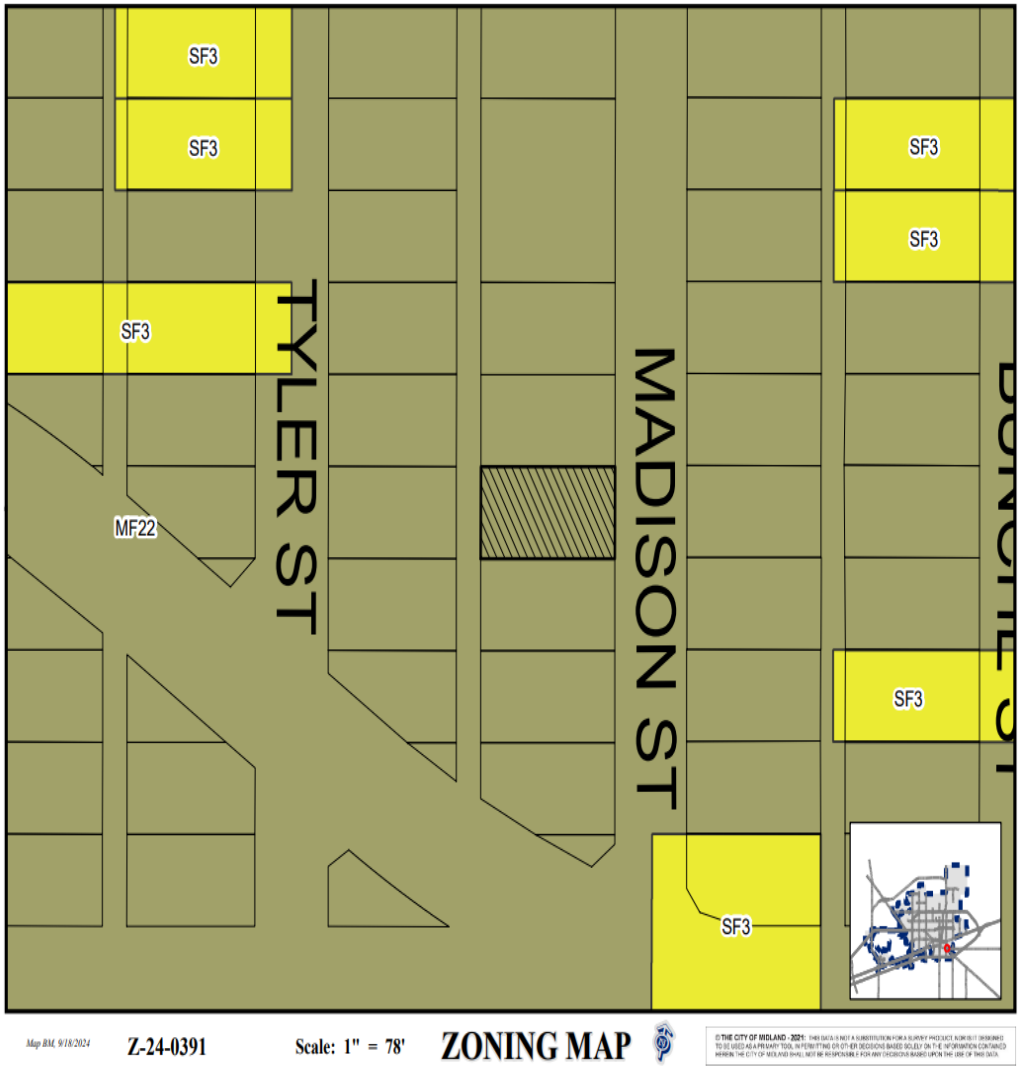
Application Summary

- **Property Owner & Applicant:** Serafin Lopez
- Zone Change
- **Address:** 810 South Madison Street (District 2)
- **Reason for Request:** To allow for future single-family residential development



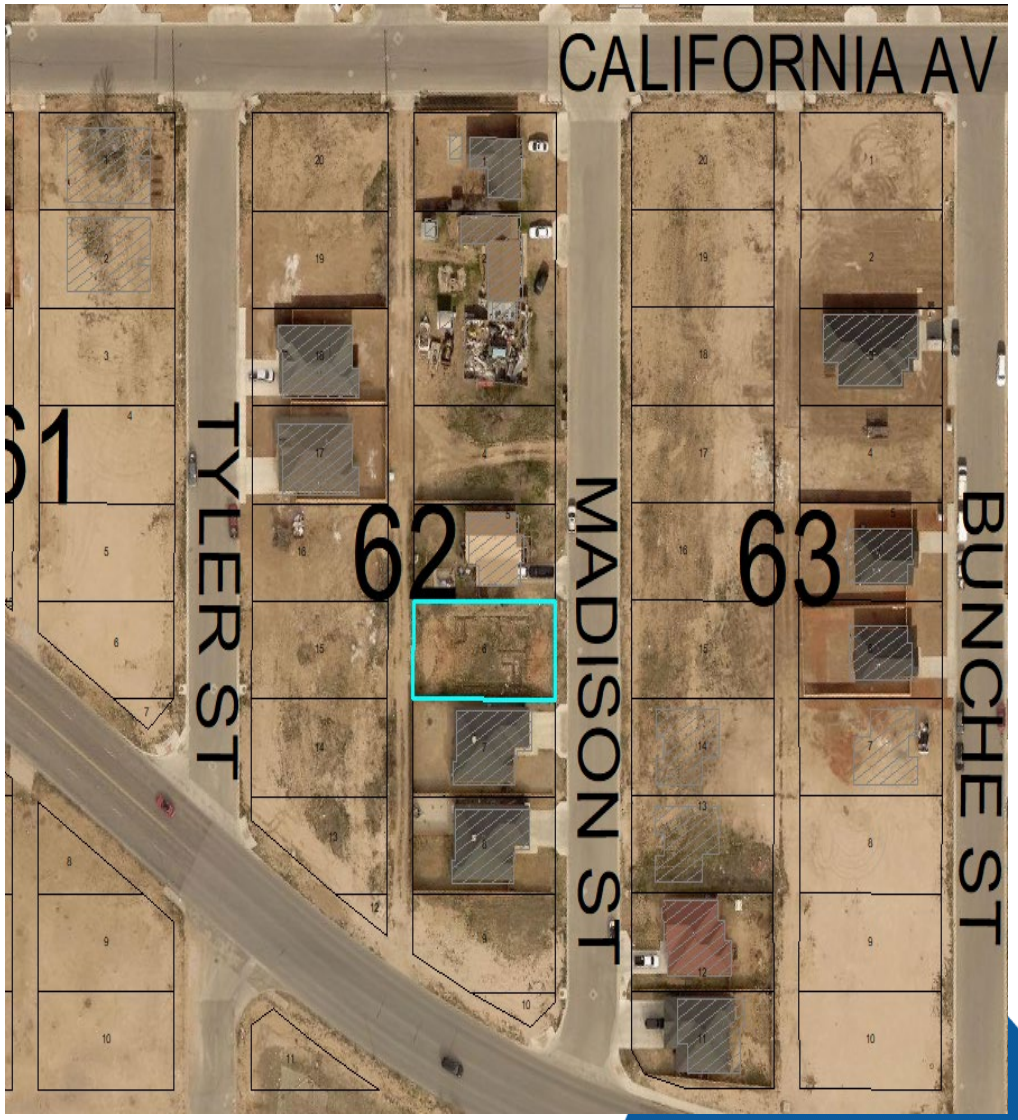
Zoning

- **Current Zoning:** MF-22, Multiple-Family Dwelling District
- **Surrounding Zoning:**
  - North, South, East, & West: MF-22, Multiple-Family Dwelling District
  - **Proposed Zoning:** SF-3, Single-Family Dwelling District



Land Use

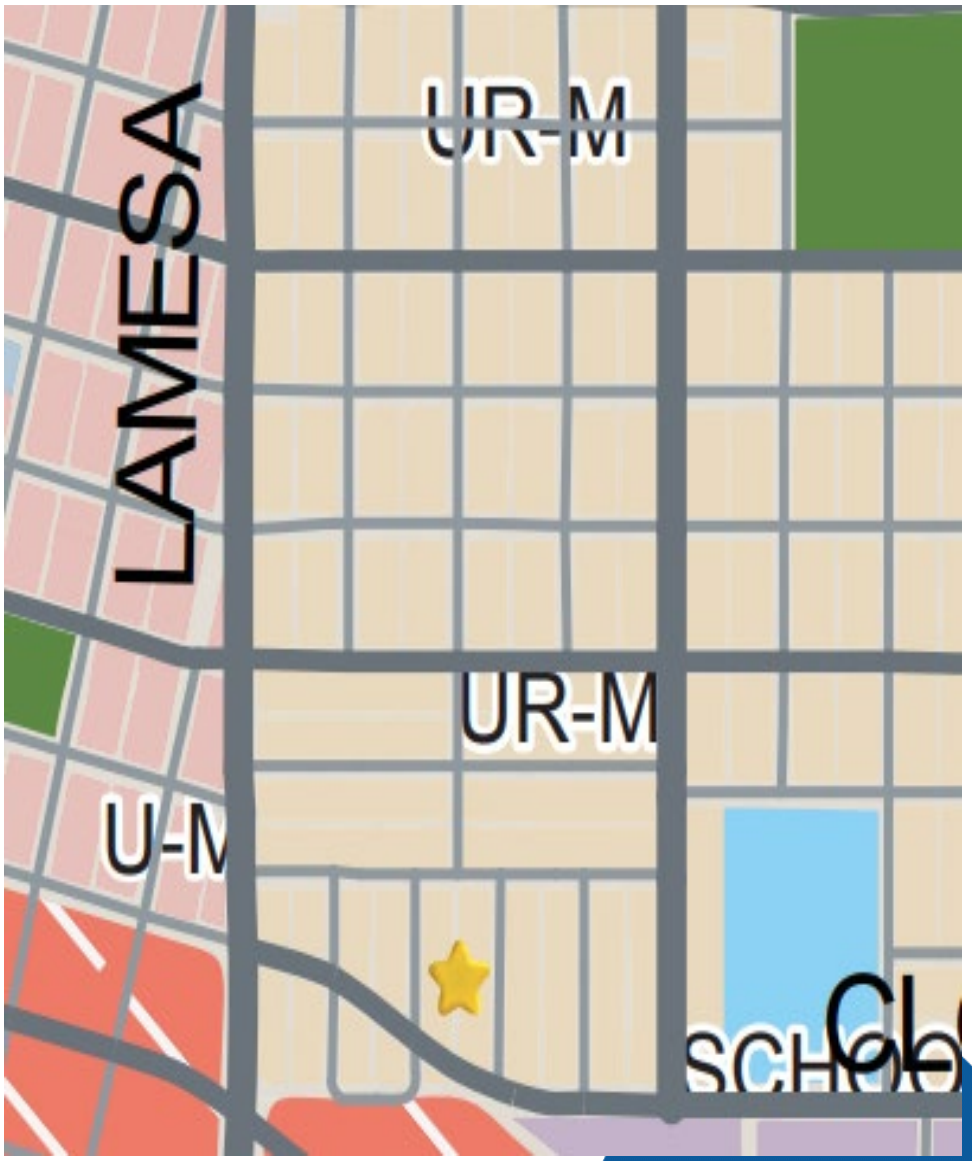
- **Current Use of the Property:** Vacant
- **Proposed Use of the Property:** Single-family dwelling
- **Surrounding Uses:**
  - North & South: Single-family dwelling
  - East & West: Vacant



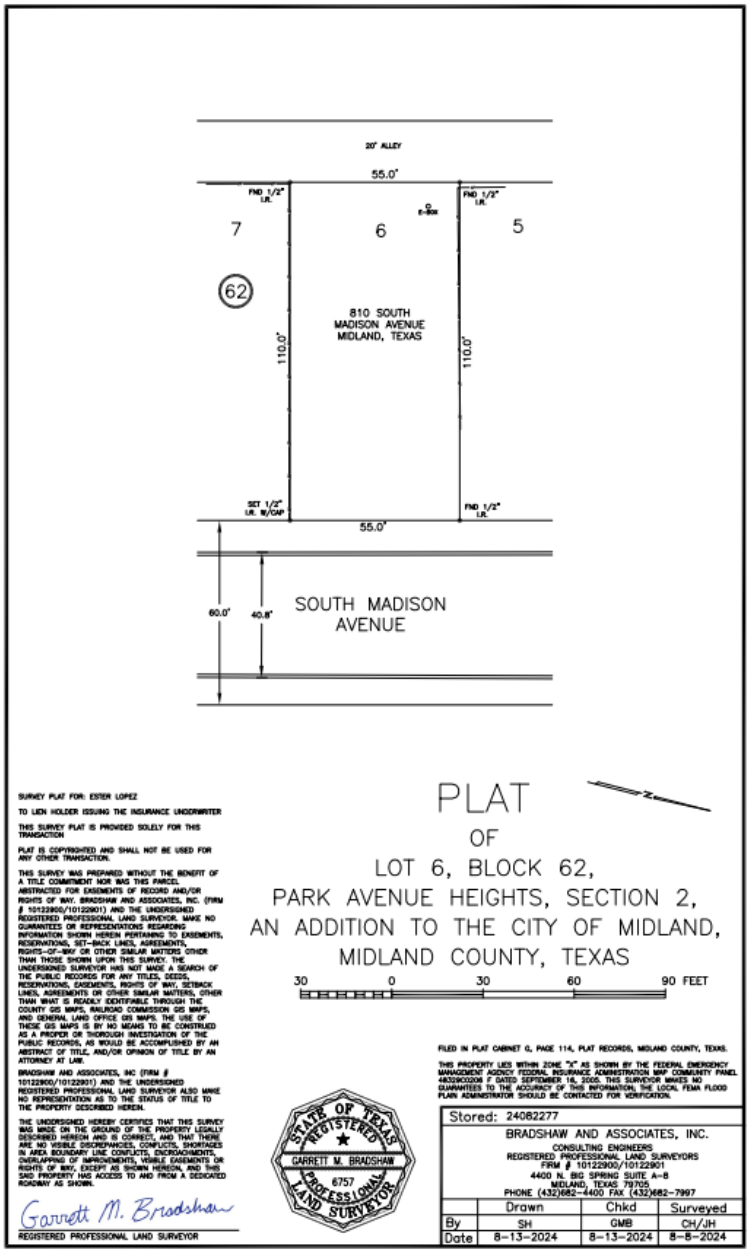
On South Madison Street, Looking West

Comprehensive Plan

- **TCT Land Use Designation:** Urban-Residential-Medium (UR-M)
- **Supported Uses:**
  - Supports Restrictive land use, emphasizing a mix of housing styles including single-family detached, single-family attached, and townhouses.
  - Limited multi-family development may be allowed with special review and criteria.
  - Civic uses are generally allowed, with special permission for higher intensity uses.
- Request is compatible with the surrounding area and the Tall City Tomorrow Plan.



810 South Madison St.



Survey

Staff's Recommendation

- No objections received.
- The Planning and Zoning Commission Recommended approval of this request on October 7, 2024.
- Staff recommends APPROVAL of this zone change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

MISSION

Deliver exceptional services and promote a high quality of life and place for ALL our citizens.

City Council Meeting

Item Number: 26

Meeting Date: October 22, 2024

To: City Council / City Manager

From: Britton Murry, Planner

Subject: AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 3, BLOCK 61, PARK AVENUE HEIGHTS 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 ON THE WEST SIDE OF SOUTH TYLER STREET, APPROXIMATELY 120 FEET SOUTH 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) (QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, George Bell, is requesting a Zone Change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District for the development of a single-family residence located at 804 South Tyler Steet.

Recommended City Council Action:

Approve

Fiscal Impact:

The request has no significant impact on the City's budget.

Strategic Priority:

Quality of Life and Place.

Discussion:

Current Zoning:

MF-22, Multiple-Family Dwelling District

Surrounding Zoning and Land Use:

The properties to the north and south are zoned SF-3, Single-Family Dwelling District, and are currently vacant lots. The property to the east and is zoned MF-22, Multiple-Family Dwelling District, and consists of a single-family dwelling. The property to the west is zoned MF-22, Multiple Family Dwelling District, and is currently a vacant lot.

Analysis:

The applicant is seeking this zone change in in order to construct a single-family home, which is not allowed in the MF-22 district. This vacant lot is located in a residential neighborhood that is developed with single-family homes. Changing this zoning would help the future residential development of this area. This lot does meet the requirements for the SF-3, Single-Family Dwelling District zoning.

This request is consistent with the Tall City Tomorrow Comprehensive Plan, which designated this area as Urban Residential-Medium (UR-M). This designation calls for any single-family zoning 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 comments

Oil and Gas: (Approved)

No Oil & Gas well concern for Zoning. Informational: Future plats will need to identify any Oil or Gas wells and include 500 ft. radius for a city permitted well or the 135 ft. radius for non-permitted well radius on plat. Please note if oil & gas wells are not identified or left off a plat, this could prevent receiving city permits for structures. Any plugged and abandoned (P&A) well would need to be identified with comments- No structure shall be built over an abandoned well.

Engineering: (Approved)

No objections to zone change. [For Applicant's Information Only.] 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. [For Applicant's Information Only.]

Code: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2023 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on the time of new code editions adopted in the City of Midland and date of permit application.

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. [For the Applicant's information only.] No objection to zone change. [For the Applicant's information only.]

Planning:

The Planning and Zoning Commission recommended approval of this request on October 7, 2024.

Therefore, staff recommends approval of this Zone Change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

Letters of Objection:

As of October 11, 2024, staff has received no letters of objection for this request.

Attachments:

Application
Survey
Location Map
Zoning Map
Aerial
Site Photo
PowerPoint Presentation

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 3, BLOCK 61, PARK AVENUE HEIGHTS 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 ON THE WEST SIDE OF SOUTH TYLER STREET, APPROXIMATELY 120 FEET SOUTH 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 3, Block 61, Park Avenue Heights Addition, Section 2, City and County of Midland, Texas (the "Property") to SF-3, Single-Family Dwelling District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as

that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; 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., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: _____

Case Number: Z-24-0392

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: George A. Bell		Phone (432) 296-1106 Email Pastorbell1@juno.com	
Address 4095 Main St.	City Midland	State TX	Zip 79701

Property Owner Printed Name: St. Andrews Investments		Phone (432) 296-1106 Email Pastorbell1@juno.com	
Address 4095 Main St.	City Midland	State TX	Zip 79701

Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 804 S Tyler St.

Legal Description
Lot: 003 Block: 061 Subdivision: Park Avenue, Heights Sec 2

Current Zoning: MF2

Proposed Zone: SF3
(List by tracts if more than one district is requested)

Reason for Zone Change Request: Lots are zoned for MF, But this zoning is outdated, the lot is sized for SF, and not big enough for MF.

Present Use of Property: Vacant Lot

Proposed Use of Property: Build New Home - Affordable Housing

How would this zone change affect the public health, safety and welfare? Improve the Community by providing affordable housing.

Describe how conditions affecting the property have changed since present zoning designation: Zoning is out dated lots are not big enough for Multible family housing!

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): George A. Bell	Date: 9-10-2024
Applicant (printed): George A. Bell	
Property Owner (signature): George A. Bell	Date: 9-10-2024
Property Owner (printed) : St. Andrews Investments	

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 George A. Bell who, being by me duly sworn, upon oath says: That (s)he is the owner of _____ or authorized by St. Andrews Inv! , 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.

George A. Bell
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 10th day of September, 2024, to certify which witness my hand and seal of office.

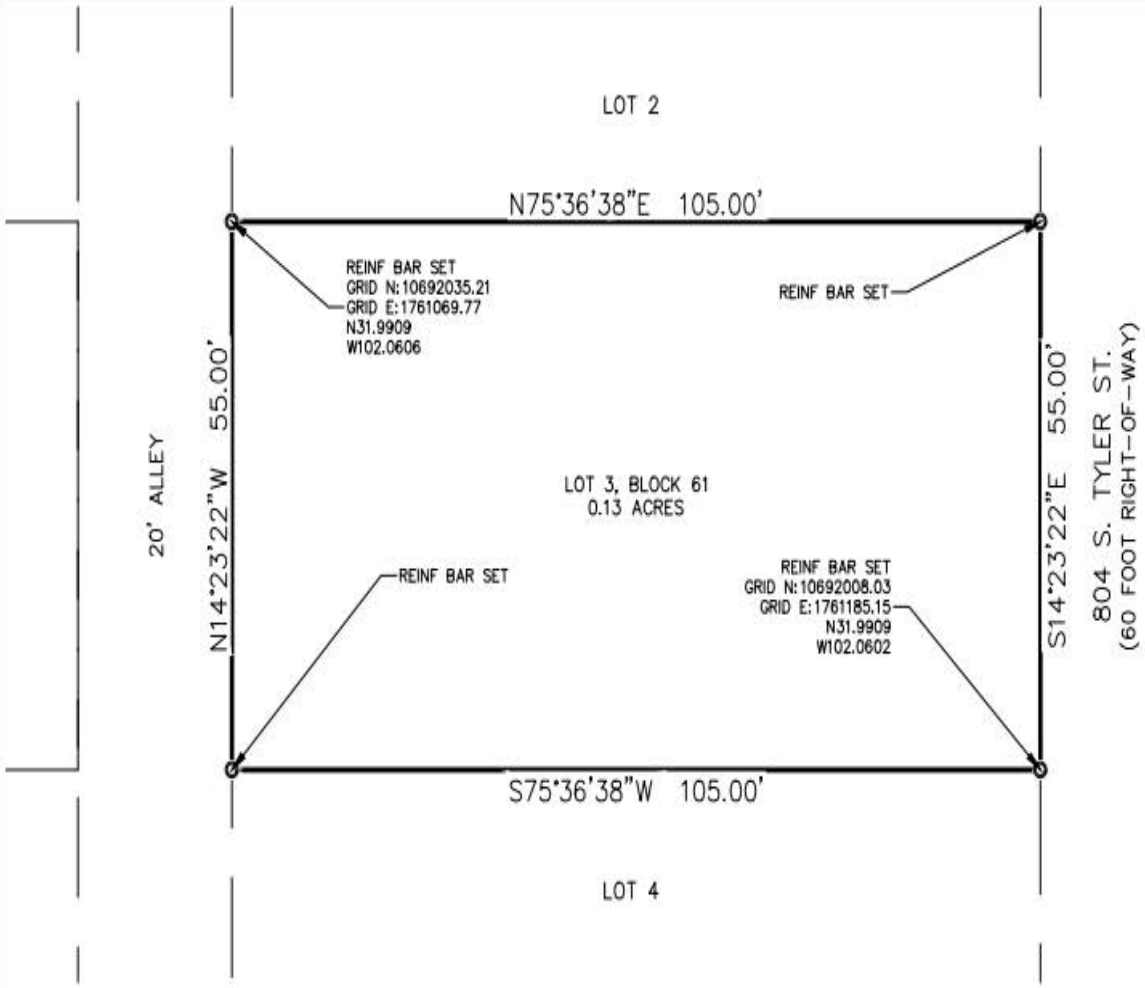
ROSALIND PERKINS
Notary Public, State of Texas
Comm. Expires 09-26-2027
Notary ID 124554482

Rosalind Perkins
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☐ Property Owner Authorization	☐ Dimensioned Site Plan
☐ ~~Application~~ Fee waived	☐ Plans in Digital Format (PDF/JPEG)
Check # _____	
Received By: Madeline Gaynor	Date: RECEIVED SEP 10 2024
	BY:

****Application will not be considered for scheduling until reviewed by staff.****



NOTES:

BEARINGS AND DISTANCES SHOWN ARE BASED ON GPS OBSERVATIONS AND CONFORM TO THE "TEXAS COORDINATE SYSTEM" TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.

THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF TITLE COMMITMENT. NOT ALL EASEMENTS OR MATTERS OF TITLE MAY BE SHOWN.

MONUMENTS ARE A REINFORCING BAR SET WITH PLASTIC CAP STAMPED "SCHUMANN" UNLESS OTHERWISE NOTED.

Surveyor Certification

TO THE LIENHOLDERS, GREATER IDEAL BAPTIST CHURCH

(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, 2024

STATE OF TEXAS REGISTERED RJ DAUM 4826 PROFESSIONAL LAND SURVEYOR

RJ DAUM
TEXAS RPLS 4826

LEGEND:

- MONUMENT AS DESCRIBED
- PROPERTY LINE
- ADJOINING PROPERTIES

MAGRYM

800 N. MARIENFELD STREET
SUITE 100
MIDLAND, TEXAS 79701

TEXAS FIRM No. 10149500
Office (432) 684-5548

SURVEY

LOT 3, BLOCK 61,

PARK AVENUE ADDITION

SECTION 2.

AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN THE OFFICE OF THE COUNTY CLERK OF

MIDLAND COUNTY, TEXAS

SCALE: 1" = 20'

PROJECT: 24-505
JOB NO.: 24-505

Location Map

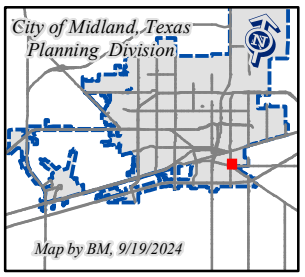
Z-24-0392 **Scale: 1" = 93'**

Consider a request by St. Andrews Investments for a zone change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District on Lot 3, Block 61, Park Avenue Heights Addition, Section 2, City and County of Midland, Texas.

Generally located on the west side of South Tyler Street, approximately 120 feet south of East California Avenue. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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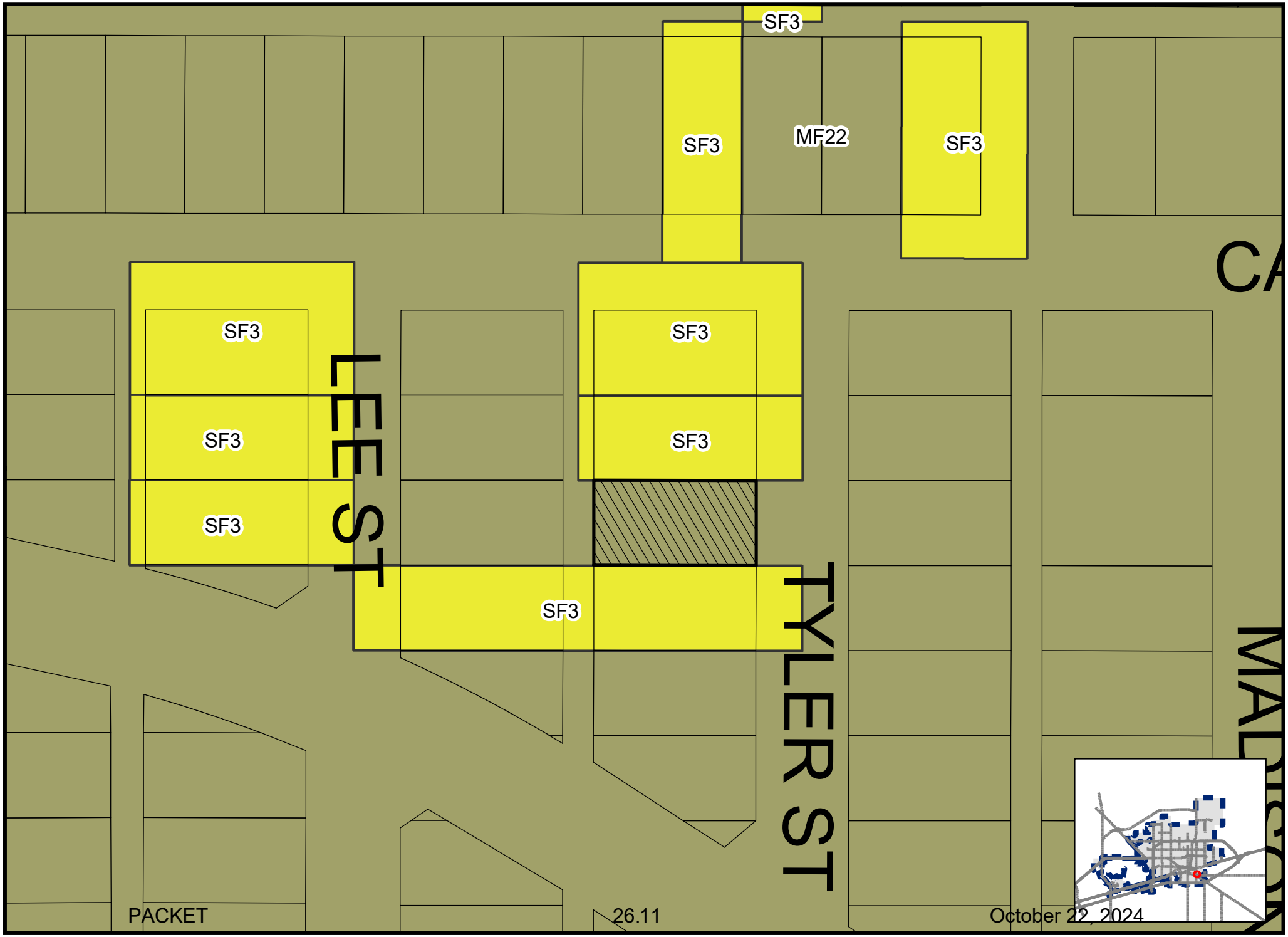

Map BM, 9/18/2024

Z-24-0392

Scale: 1" = 78'

ZONING MAP

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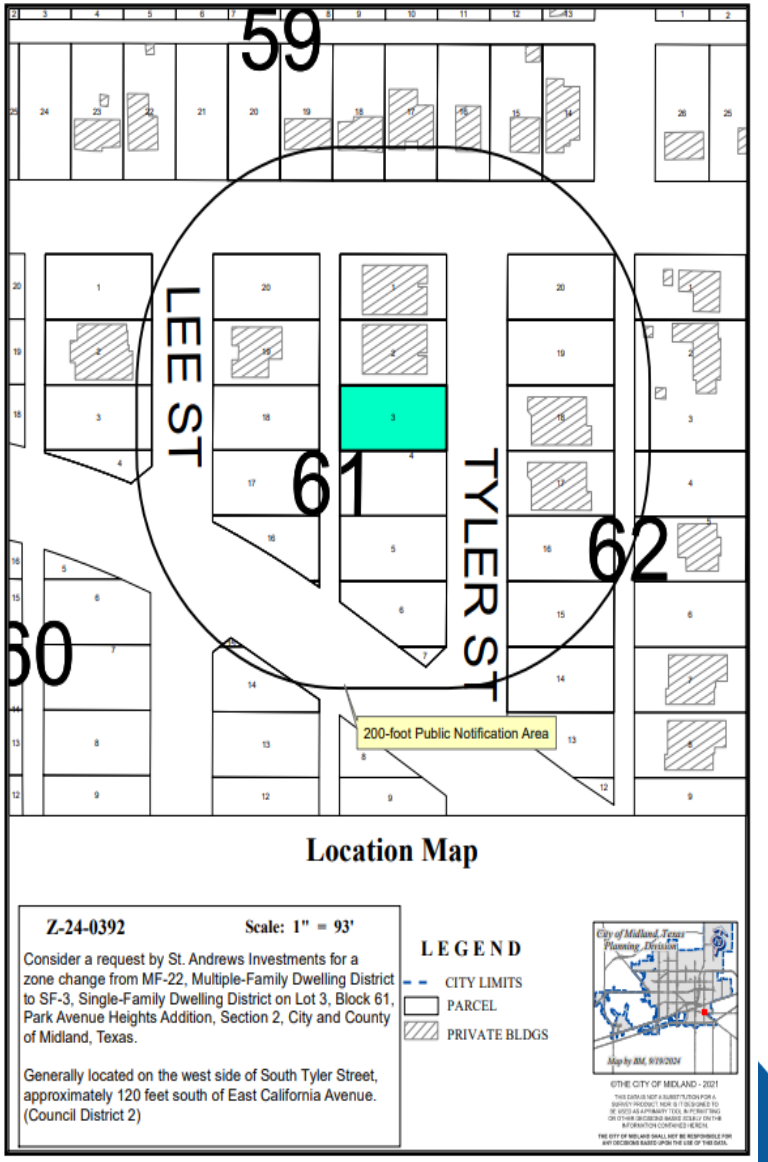
CA
LEE ST
TYLER ST
MADISON ST
60
61
62

804
804

MIDLAND
Be the Energy!
804 South Tyler St.
ZONE CHANGE
October 22, 2024
Visit Our Website
MIDLANDTEXAS.GOV

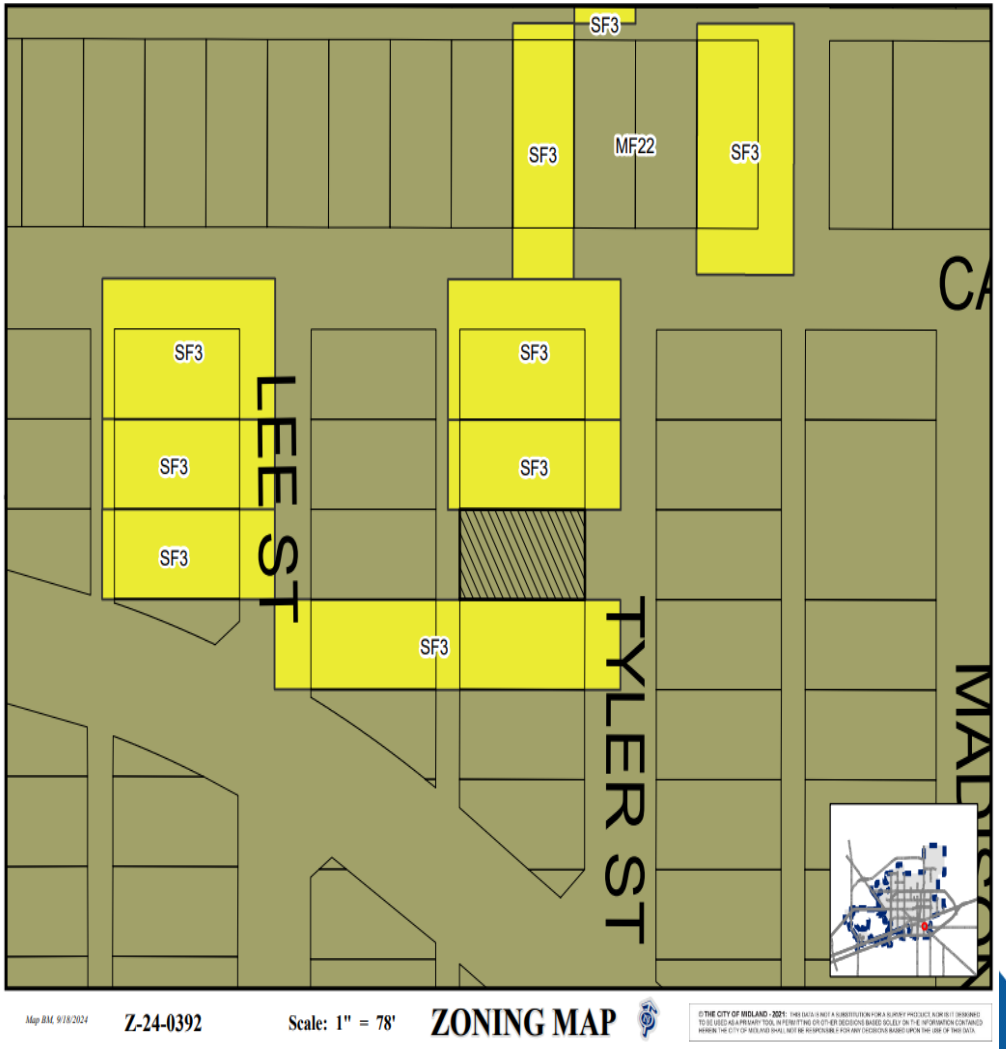
Application Summary

- **Property Owner:** St. Andrews Investments
- **Applicant:** George A. Bell
- Zone Change
- **Address:** 804 South Tyler Street (District 2)
- **Reason for Request:** To allow for future single-family residential development



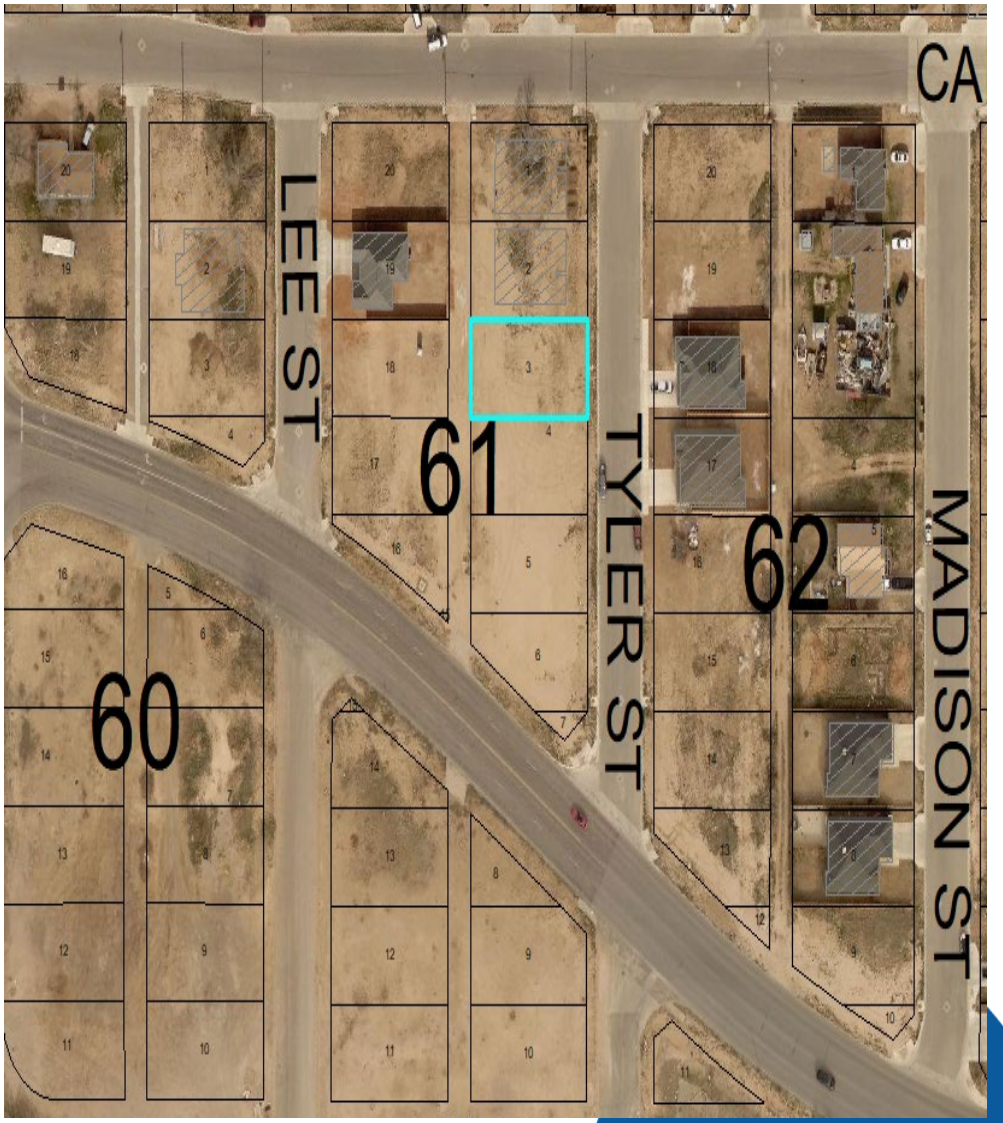
Zoning

- **Current Zoning: :** MF-22, Multiple-Family Dwelling District
- **Surrounding Zoning:**
  - North & South: SF-3, Single-Family Dwelling District
  - East & West: MF-22, Multiple-Family Dwelling District
- Proposed Zoning: SF-3, Single-Family Dwelling District



Land Use

- **Current Use of the Property:** Vacant
- **Proposed Use of the Property:** Single-family dwelling
- **Surrounding Uses:**
  - South & West: Vacant
  - North & East: Single-family dwelling



On South Tyler Street, Looking West

Comprehensive Plan

- **TCT Land Use Designation** Urban-Residential-Medium (UR-M)
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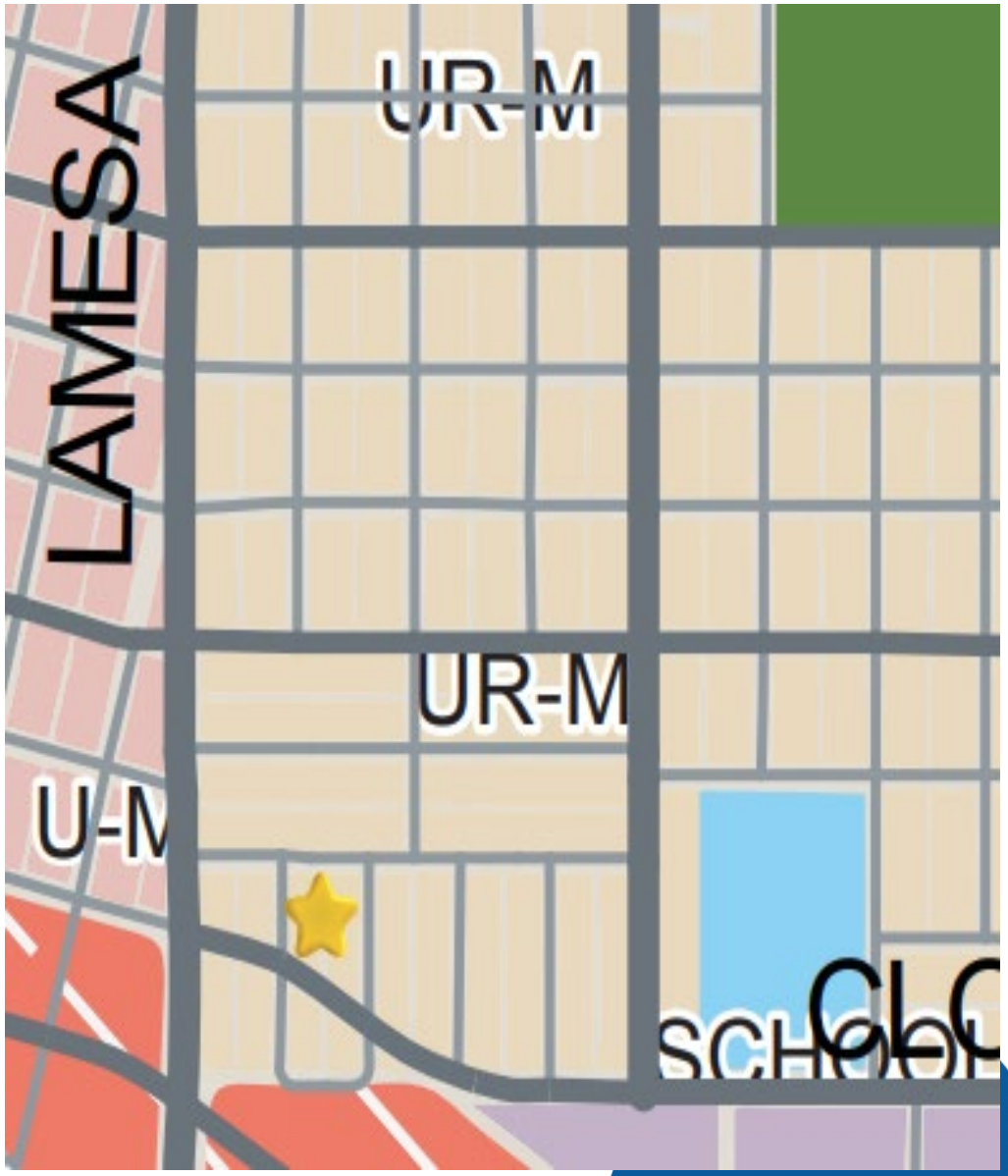
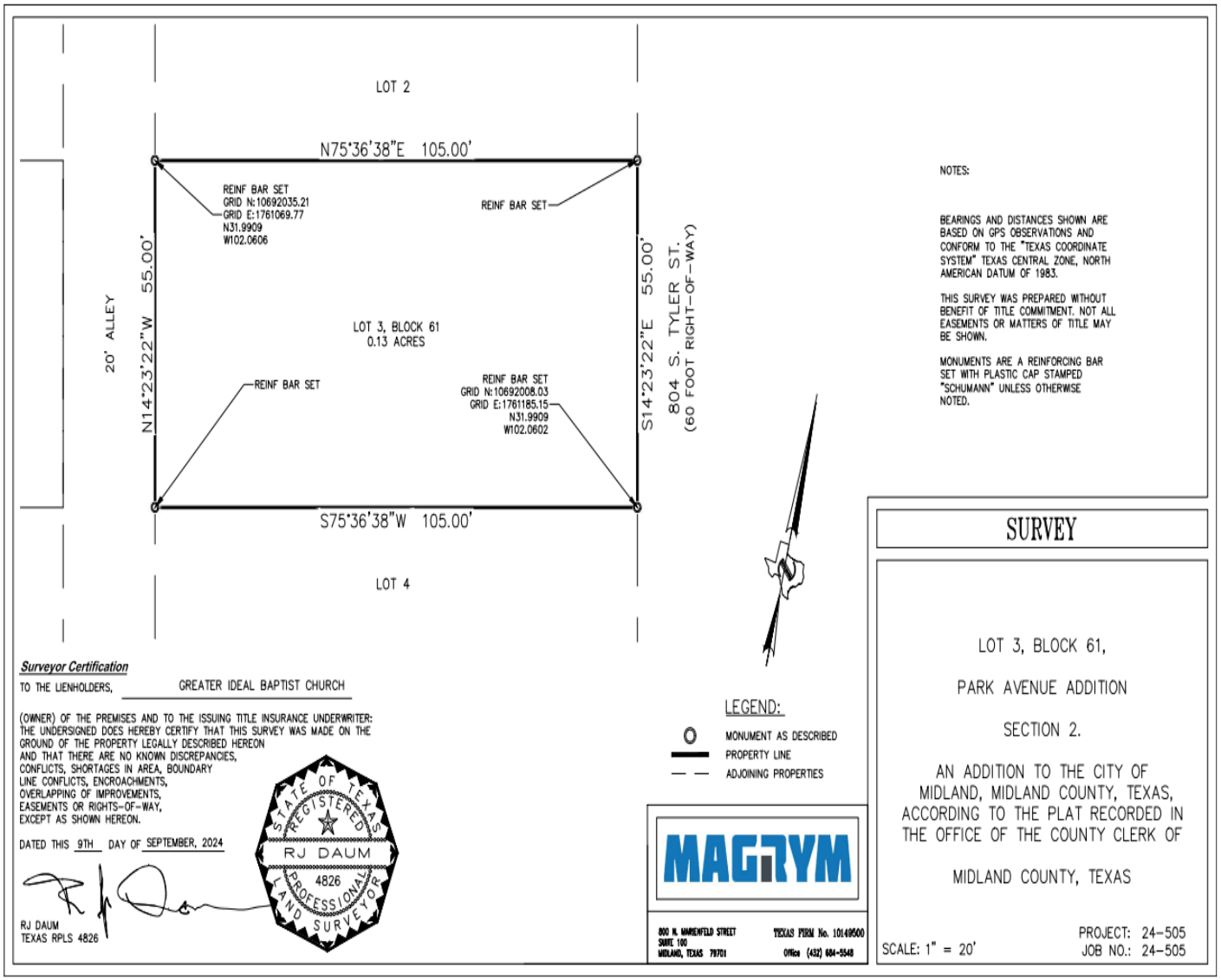
  - Supports Restrictive land use, emphasizing a mix of housing styles including single-family detached, single-family attached, and townhouses.
  - Limited multi-family development may be allowed with special review and criteria.
  - Civic uses are generally allowed, with special permission for higher intensity uses.
- Request is compatible with the surrounding area and the Tall City Tomorrow Plan.




LOT 2
N75°36'38"E 105.00'
REINF BAR SET
GRID N:10692035.21
GRID E:1761069.77
N31.9909
W102.0606
REINF BAR SET
20' ALLEY
N14°23'22"W 55.00'
LOT 3, BLOCK 61
0.13 ACRES
S14°23'22"E 55.00'
804 S. TYLER ST.
(60 FOOT RIGHT-OF-WAY)
REINF BAR SET
REINF BAR SET
GRID N:10692008.03
GRID E:1761185.15
N31.9909
W102.0602
S75°36'38"W 105.00'
LOT 4
NOTES:
BEARINGS AND DISTANCES SHOWN ARE BASED ON GPS OBSERVATIONS AND CONFORM TO THE "TEXAS COORDINATE SYSTEM" TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.
THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF TITLE COMMITMENT. NOT ALL EASEMENTS OR MATTERS OF TITLE MAY BE SHOWN.
MONUMENTS ARE A REINFORCING BAR SET WITH PLASTIC CAP STAMPED "SCHUMANN" UNLESS OTHERWISE NOTED.
Surveyor Certification
TO THE LIENHOLDERS, GREATER IDEAL BAPTIST CHURCH
(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, 2024
STATE OF TEXAS
REGISTERED
RJ DAUM
4826
PROFESSIONAL
LAND SURVEYOR
RJ DAUM
TEXAS RPLS 4826
LEGEND:
MONUMENT AS DESCRIBED
PROPERTY LINE
ADJOINING PROPERTIES
MAGRYM
800 N. MARIENFELD STREET
SUITE 100
MIDLAND, TEXAS 79701
TEXAS FIRM No. 10149500
Office (432) 684-5548
SURVEY
LOT 3, BLOCK 61,
PARK AVENUE ADDITION
SECTION 2.
AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN THE OFFICE OF THE COUNTY CLERK OF
MIDLAND COUNTY, TEXAS
SCALE: 1" = 20'
PROJECT: 24-505
JOB NO.: 24-505

Survey

Staff's Recommendation

- No objections received.
- The Planning and Zoning Commission Recommended approval of this request on October 7, 2024.
- Staff recommends APPROVAL of this zone change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

MISSION

Deliver exceptional services and promote a high quality of life and place for ALL our citizens.

City Council Meeting

Item Number: 27

Meeting Date: October 22, 2024

To: City Council / City Manager

From: Beatriz Quezada, Planner

Subject: **AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 3, BLOCK 20, GREENWOOD ADDITION, THIRD, FOURTH, AND 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 WEST SIDE OF SOUTH TILDEN STREET, APPROXIMATELY 110 FEET SOUTH OF EAST WASHINGTON 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) (QUALITY OF LIFE AND PLACE)**

Purpose:

The applicant, Legado Construction Group LP, is requesting a Zone Change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District to build an addition to the current residential structure at 504 South Tilden Street.

Recommended City Council Action:

Approve

Fiscal Impact:

None.

Strategic Priority:

(Quality of Life and Place)

Discussion:

Current Zoning:

MF-22, Multiple-Family Dwelling District

Surrounding Zoning and Land Use:

The adjacent lots to the north, east and south are zoned MF-22, Multiple-Family Dwelling District and SF-3, Single-Family Dwelling District to the west. This property and all abutting property is part of a single-family residential neighborhood.

Analysis:

The subject property is zoned MF-22, Multiple-Family Dwelling District. Legado Construction Group LP is seeking this zone change to construct an addition to the current residential structure, which is a current nonconforming structure. Changing this zoning would help the future residential development of this area have more uniformity.

This request is consistent with the Tall City Tomorrow Comprehensive Plan, Chapter 3, which designated this area as UR-M, Urban-Medium Neighborhood. This designation calls for any single-family zoning 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.

Oil and Gas: (Approved)

No Oil & Gas Issues.

Engineering: (Approved)

No objections to zone change. [For Applicant's Information Only.]
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. [For Applicant's Information Only.]

Code: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2023 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on the time of new code editions adopted in the City of Midland and date of permit application.

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. [For the Applicant's information only.]

No objection to zone change. [For the Applicant's information only.]

Planning:

The Planning and Zoning Commission recommended approval of this request on October 7, 2024.

Therefore, staff recommends approval of this Zone Change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

Letters of Objection:

As of October 11, 2024, staff has not received any letters of objection for this request.

Attachments:

Application
Site Plan
Maps
PowerPoint Presentation

Jose E. Ortiz

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 3, BLOCK 20, GREENWOOD ADDITION, THIRD, FOURTH, AND 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 WEST SIDE OF SOUTH TILDEN STREET, APPROXIMATELY 110 FEET SOUTH OF EAST WASHINGTON 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 3, Block 20, Greenwood Addition, Third, Fourth, and 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., 2024; 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., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

MIDLAND Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: _____

Case Number: Z-24-0390

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: Legado Construction Group LP		Phone (432) 553-1514 Email Robert@Legadocg.com	
Address 6 Desta Dr. Ste 2615	City Midland	State Tx.	Zip 79705

Property Owner Printed Name: Maribel G. Tavarez		Phone (432) 312-0366 Email Tavarezmaribel21@gmail.com	
Address 504 S. Tilden Ave.	City Midland	State Tx.	Zip 79701

Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 504 S. Tilden Ave Midland, TX. 79701

Legal Description
Lot: 003 Block: 020 Subdivision: Greenwood

Current Zoning: MF-22

Proposed Zone: SF-3
(List by tracts if more than one district is requested)

Reason for Zone Change Request: To construct an addition to the home.

Present Use of Property: Single family home

Proposed Use of Property: Single family home

How would this zone change affect the public health, safety and welfare? None.

Describe how conditions affecting the property have changed since present zoning designation: Unable to add addition because current zoning requires a minimum of 2 acres For additions.

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): Robert DeLaGarza	Date: 9/10/24
Applicant (printed): Robert DeLaGarza	
Property Owner (signature): Maribel Tavarez	Date: 9/10/24
Property Owner (printed) : Maribel Tavarez	

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 Maribel Tavarez who, being by me duly sworn, upon oath says: That (s)he is the owner of 504 S. Tilden 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.

Maribel Tavarez
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 10 day of September, 20 24, to certify which witness my hand and seal of office.

BIANCA M REYES
Notary ID #133704295
My Commission Expires
April 13, 2026

Bianca M. Reyes
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☐ Property Owner Authorization	☐ Dimensioned Site Plan
☐ Application Fee	☐ Plans in Digital Format (PDF/JPEG)
Check # _____	
Received By:	Date:

Application will not be considered for scheduling until reviewed by a planner.

Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

General Warranty Deed with Vendor's Lien

Date: 26th day of August, 2024

Grantor: **Joyce Davis**

Grantor's Mailing Address: 400 S Carver Midland TX 79701

Grantee: **Maribel Tavarez Gallegos, unmarried woman**

Grantee's Mailing Address: 211 East H Street, Monahans, TX 79756

Consideration: Cash and a note of even date executed by Grantee and payable to the order of **Guaranteed Rate, Inc.** in the principal amount of **$146,629.00**. The note is secured by a first and superior vendor's lien and superior title retained in this deed in favor of **Guaranteed Rate, Inc.**, and by a first-lien deed of trust of even date from Grantee to **Allan B. Polunsky**, Trustee. **Guaranteed Rate, Inc.**, at Grantee's request, has paid in cash to Grantor that portion of the purchase price of the Property that is evidenced by the note. The first and superior vendor's lien against and superior title to the Property are retained for the benefit of **Guaranteed Rate, Inc.** and are transferred to **Guaranteed Rate, Inc.** without recourse against Grantor.

Property (including any improvements): **LOT 3, BLOCK 20, GREENWOOD, THIRD, FOURTH & FIFTH SECTIONS, AN ADDITION IN THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME/CABINET B, PAGE(S) 56, DEED/PLAT RECORDS OF MIDLAND COUNTY, TEXAS.**

Reservations from Conveyance: None.

Exceptions to Conveyance and Warranty:

This conveyance is made and accepted subject to all restrictions, covenants, conditions, rights-of-way, assessments, outstanding royalty and mineral reservations and easements, if any, affecting the above described property that are valid, existing and properly of record as of the date hereof and subject, further, to taxes for the year **2024** and subsequent years.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have

and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

The vendor's lien against and superior title to the Property are retained until each note described is fully paid according to its terms, at which time this deed will become absolute.

When the context requires, singular nouns and pronouns include the plural.

Joy Davis

Joyce Davis

STATE OF TEXAS
COUNTY OF MIDLAND

Before me, Ali Martin, on this day personally appeared Joyce Davis, known to me or proved to me on the oath of _____ or through DL to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he (she) executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 26th day of August, 2024.

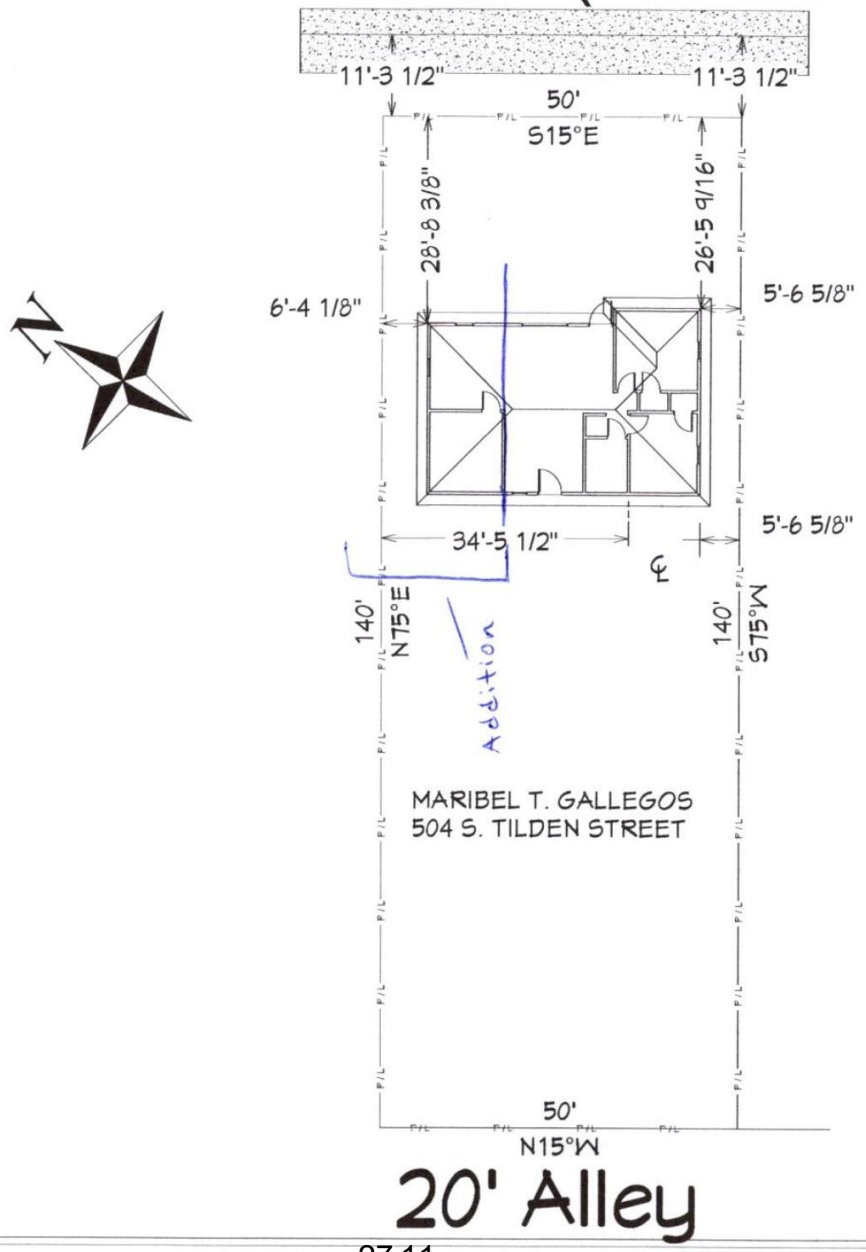
Ali Martin

Notary Public Signature

ALI MARTIN
Notary Public, State of Texas
Comm. Expires 01-30-2028
Notary ID 125788058

After recording, please return to:
Maribel Tavarez Gallegos
211 East H Street
Monahans, TX 79756

South Tilden (60' wide)



square footage
Current: 664 sqft
Addition: 242 sqft
Total: 906 sqft

REVISION TABLE		
NUMBER	DATE	REVISED BY	DESCRIPTION

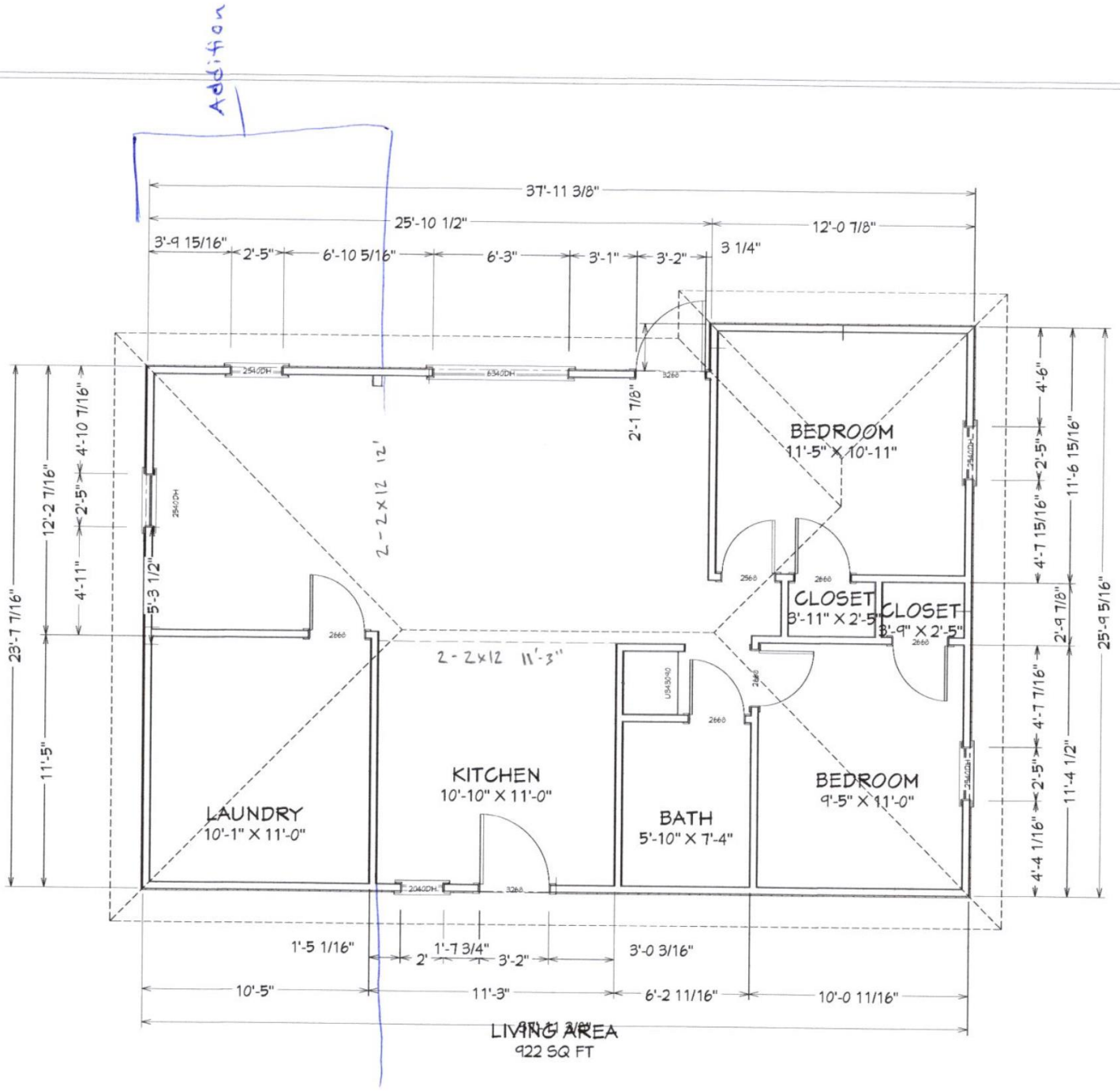
504 S. Tilden

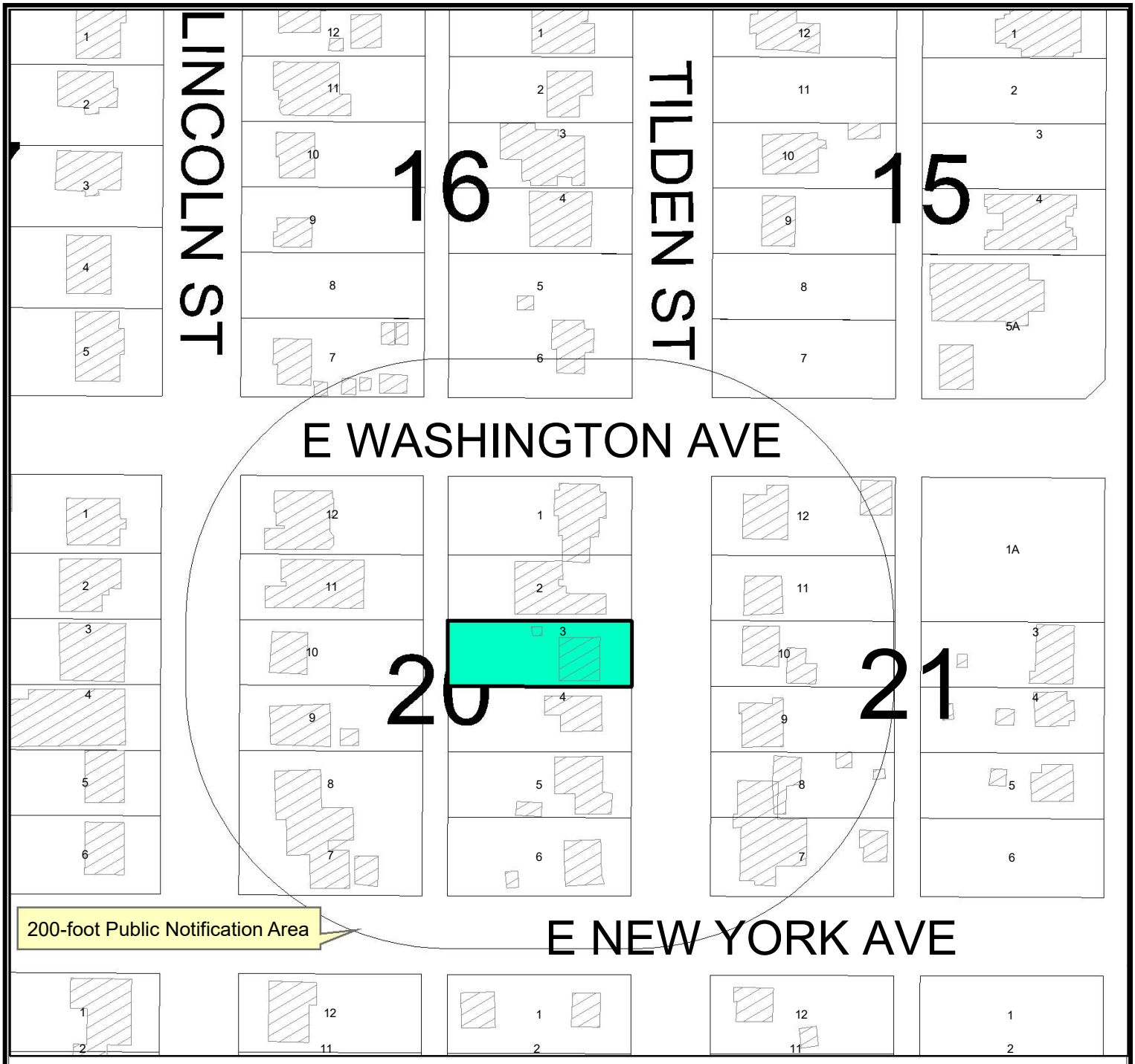
DRAWINGS PROVIDED BY:
Legado Construction Group

DATE: 9/9/2024

SCALE:

SHEET: P-1


Addition
37'-11 3/8"
25'-10 1/2"
12'-0 7/8"
3'-9 15/16"
2'-5"
6'-10 5/16"
6'-3"
3'-1"
3'-2"
3 1/4"
2'-1 7/8"
BEDROOM
11'-5" X 10'-11"
2 - 2 X 12 12'
CLOSET
3'-11" X 2'-5"
CLOSET
3'-9" X 2'-5"
2 - 2x12 11'-3"
KITCHEN
10'-10" X 11'-0"
LAUNDRY
10'-1" X 11'-0"
BATH
5'-10" X 7'-4"
BEDROOM
9'-5" X 11'-0"
5'-3 1/2"
23'-7 7/16"
12'-2 7/16"
4'-10 7/16"
4'-11"
2'-5"
11'-5"
4'-6"
2'-5"
4'-7 15/16"
11'-6 15/16"
2'-9 7/8"
4'-7 7/16"
2'-5"
11'-4 1/2"
4'-4 1/16"
25'-9 5/16"
1'-5 1/16"
2'
1'-7 3/4"
3'-2"
3'-0 3/16"
10'-5"
11'-3"
6'-2 11/16"
10'-0 11/16"
LIVING AREA
922 SQ FT
REVISION TABLE
NUMBER DATE REVISED BY DESCRIPTION
DRAWINGS PROVIDED BY:
DATE:
9/9/2024
SCALE:
SHEET:



Location Map

Z-24-0390 **Scale: 1" = 1,307'**

Consider a request by Legado Construction Group LP, for a zone change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District on Lot 3, Block 20, Greenwood Addition, Third, Fourth, And Fifth Sections, City and County of Midland, Texas.

Generally located on the west side of South Tilden Street, approximately 110 feet south of East Washington Avenue. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

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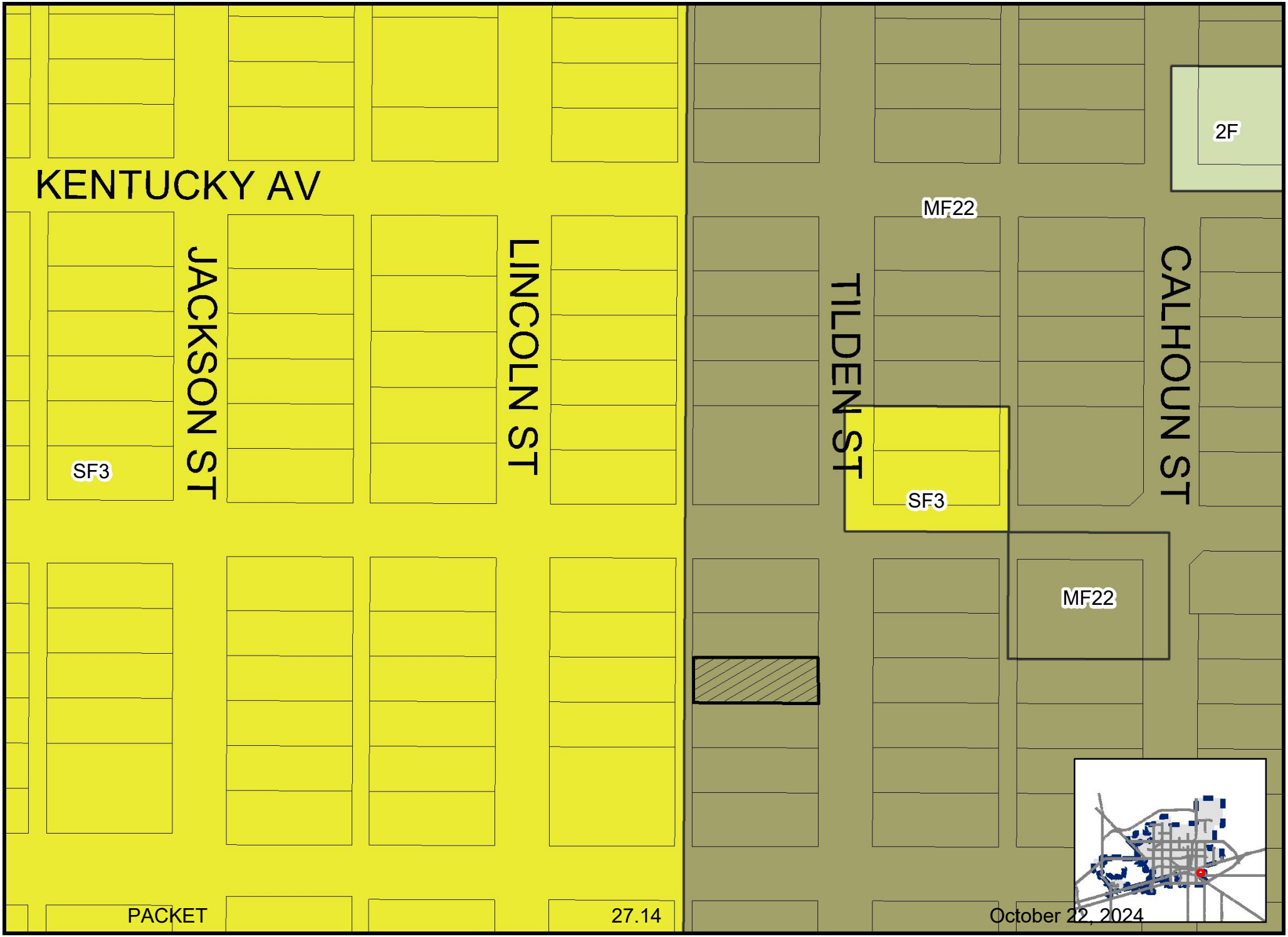
THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY AND NOR IS IT DESIGNED TO BE USED AS THE ONLY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.



Map BQ, 09/25/2024

Z-24-0390

Scale: 1" = 1,606'

ZONING MAP

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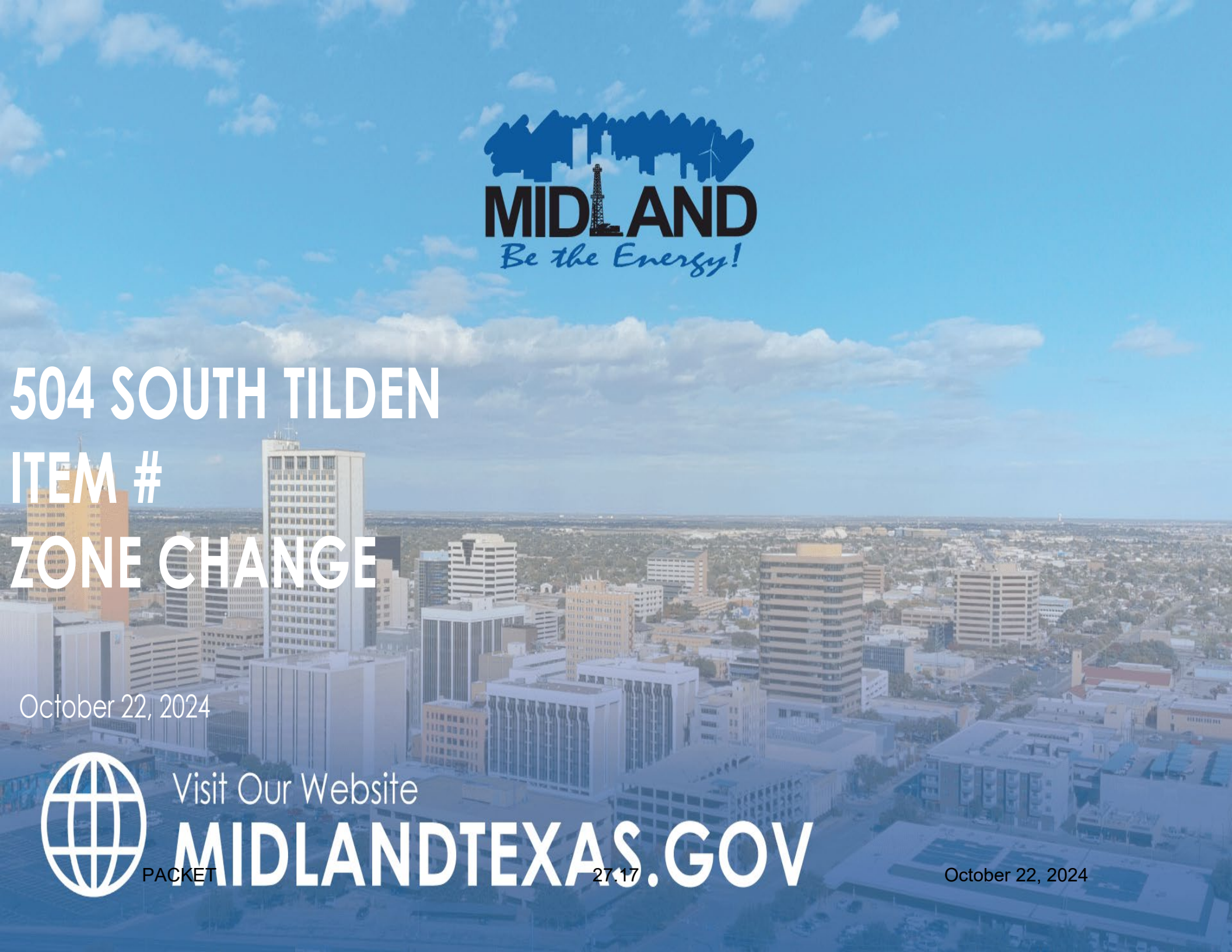
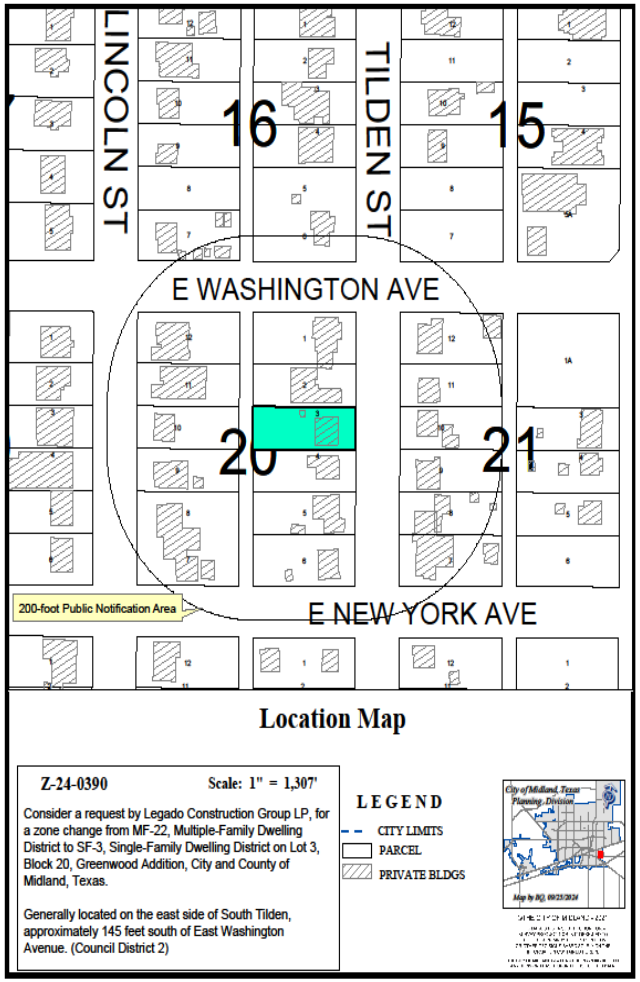
JACKSON ST
LINCOLN ST
TILDEN ST
CALHOUN ST
18
17
16
15
50
19
20
21


MIDLAND
Be the Energy!
504 SOUTH TILDEN
ITEM #
ZONE CHANGE
October 22, 2024
Visit Our Website
MIDLANDTEXAS.GOV

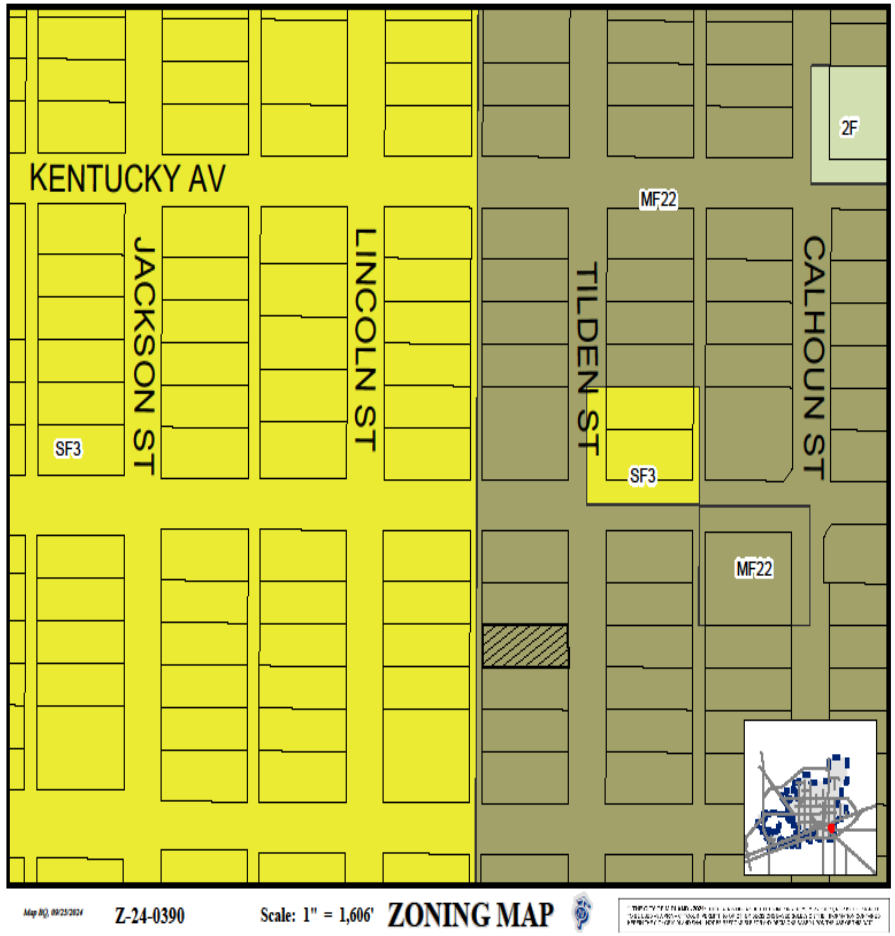
Application Summary

- **Property Owner:** Maribel G. Tavarez
- **Applicant:** [Legado Construction Group LP (acting on property owners' behalf)]
- Initial Zoning
- **Address:** 504 South Tilden (District 2)
- **Reason for Request:** To construct an addition to the current residential structure.



Zoning

- **Current Zoning:** MF-22, Multiple-Family Dwelling
- **Surrounding Zoning:**
  - North/East: MF-22, Multiple-Family Dwelling, SF-3, Single-Family Dwelling District, 2F, Two-Family Dwelling District
  - South: MF-22, Multiple-Family Dwelling, SF-3, Single-Family Dwelling District
  - West: SF-3, Single-Family Dwelling District
- **Proposed Zoning:** SF-3, Single-Family Dwelling District



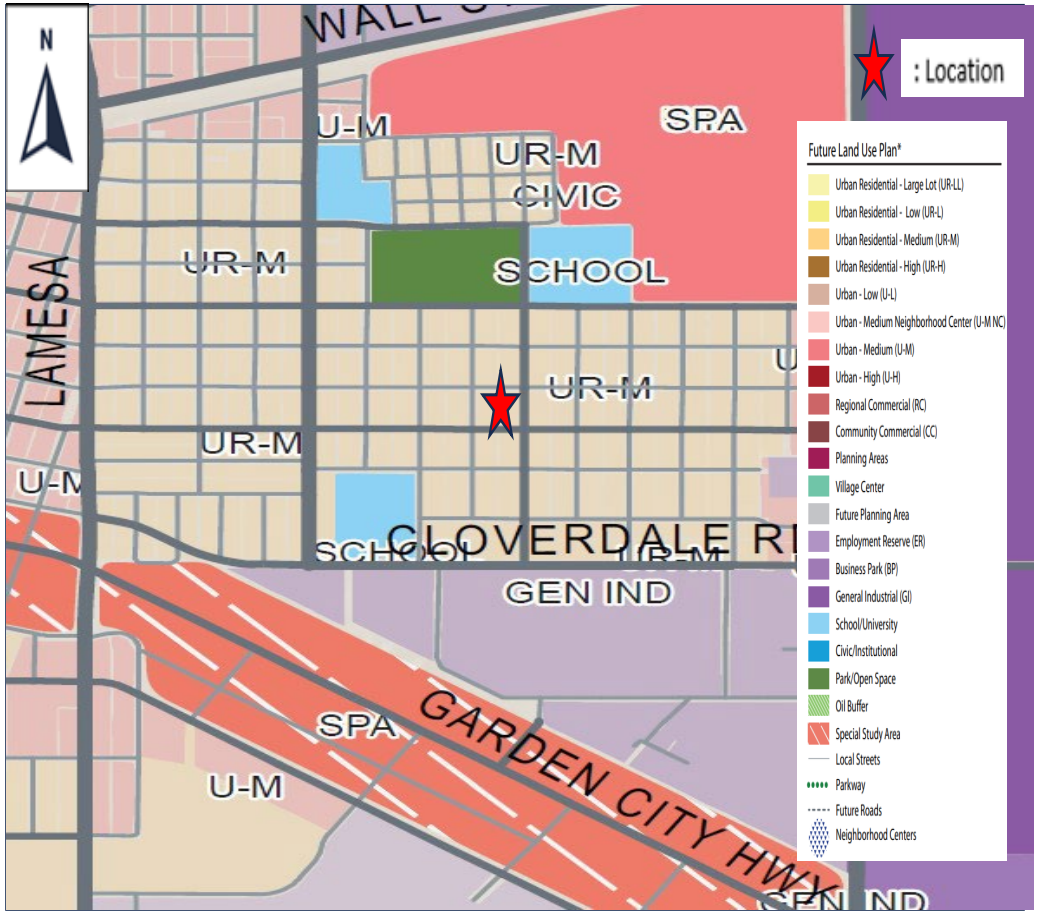
Land Use

- **Current Use of the Property:** Residential
- **Proposed Use of the Property:** Residential
- **Surrounding Uses:**
  - North: Residential
  - South: Residential
  - East: Residential
  - West: Residential

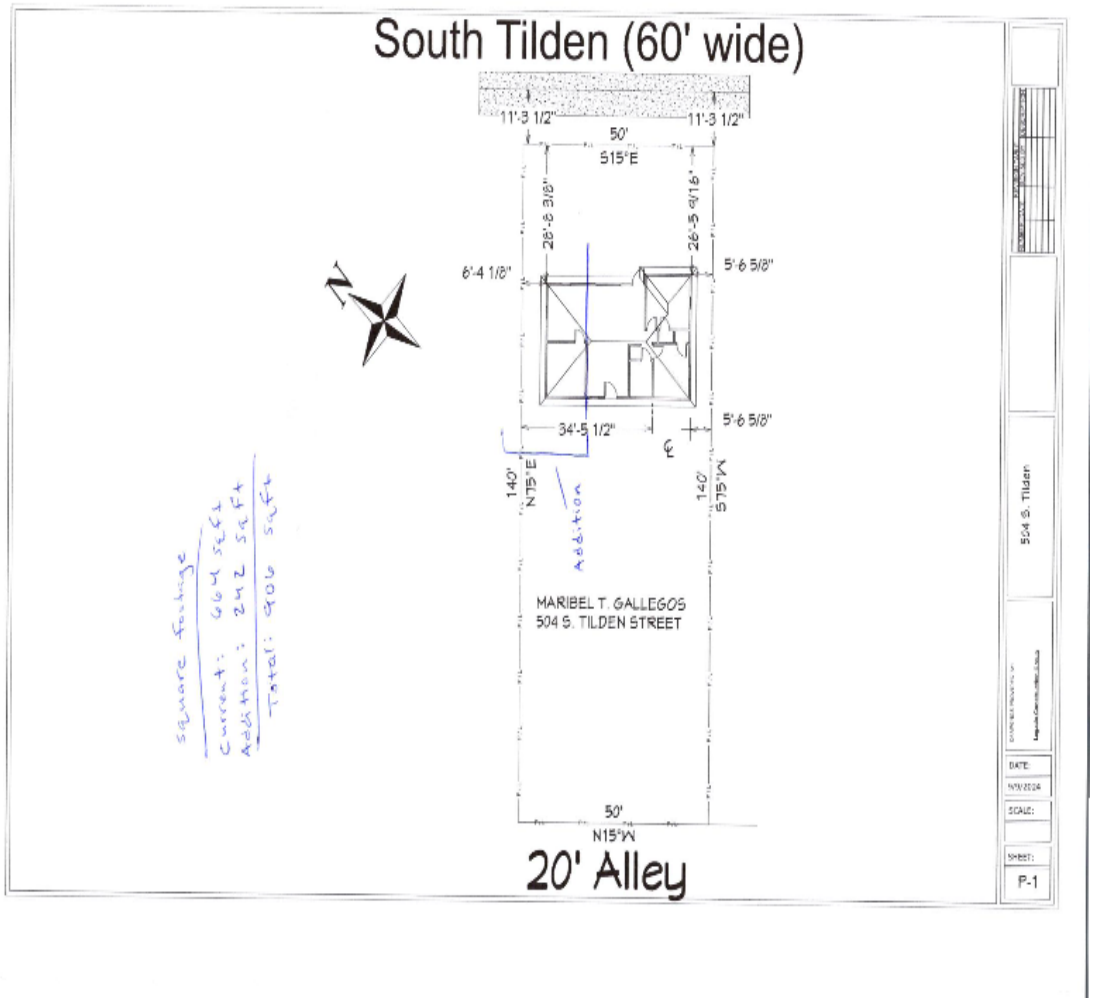
On South Tilden, Looking South

COMPREHENSIVE PLAN ANALYSIS

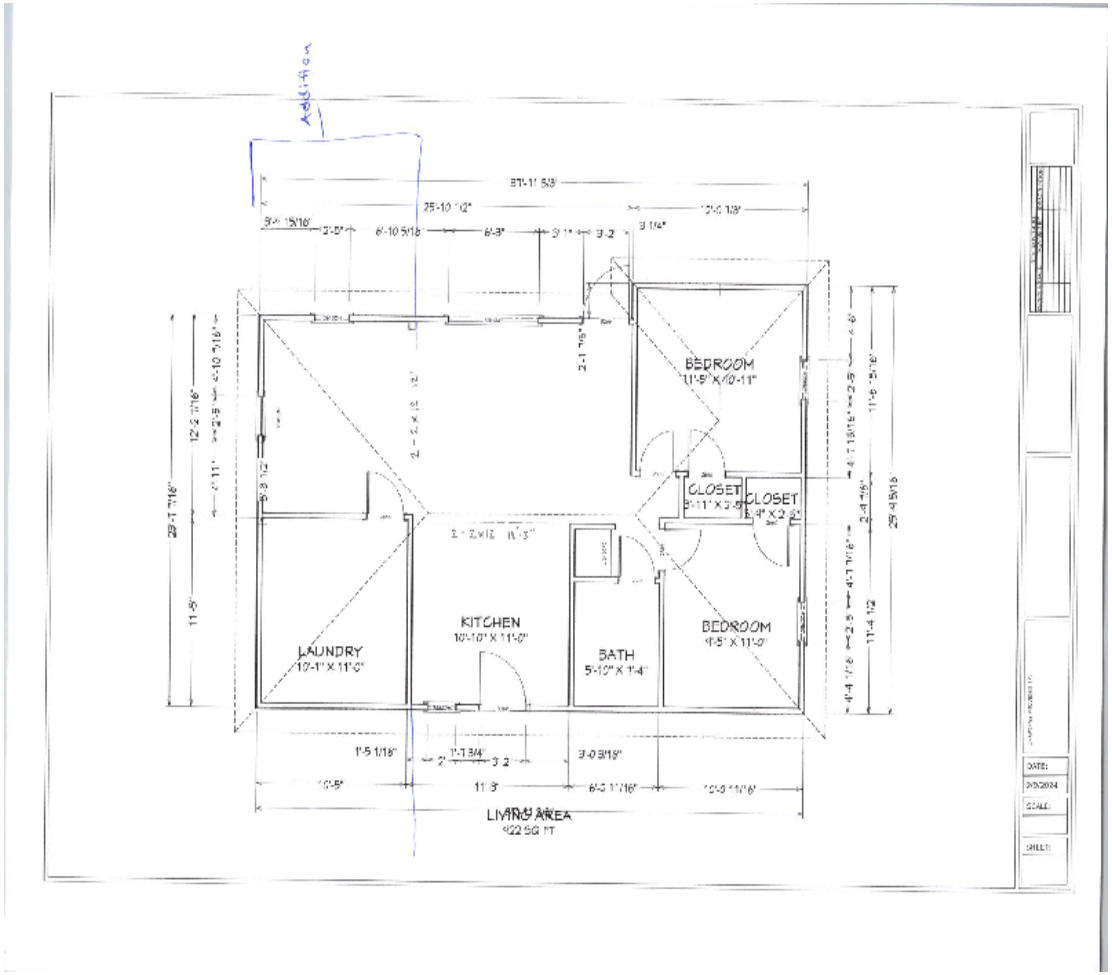
- **TCT Land Use Designation:** UR-M, Urban Residential - Medium
- **Supported Uses:**
  - Supports a mix of housing styles including single-family detached, single-family attached and town houses with limited multi-family developments with special review.
- **Request is compatible with the surrounding area and the Tall City Tomorrow Plan.**



MIDLAND Be the Energy!


South Tilden (60' wide)
11'-3 1/2"
11'-3 1/2"
50'
S15°E
28'-8 3/8"
26'-5 9/16"
6'-4 1/8"
5'-6 5/8"
5'-6 5/8"
34'-5 1/2"
140'
N75°E
140'
S75°W
ADDITION
MARIBEL T. GALLEGOS
504 S. TILDEN STREET
50'
N15°W
20' Alley
Square footage
Current: 664 sqft
Addition: 242 sqft
Total: 906 sqft
504 S. Tilden
DATE:
SCALE:
SHEET:
P-1

Site Plan


BEDROOM
CLOSET
CLOSET
KITCHEN
BATH
BEDROOM
LAUNDRY
LIVING AREA

Floor Plan

Staff's Recommendation

- No objections received.
- The Planning & Zoning Commission recommended approval of this request on October 7, 2024.
- Staff recommends APPROVAL of this zone change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

MISSION

Deliver exceptional services and promote a high quality of life and place for ALL our citizens.

City Council Meeting

Item Number: 28

Meeting Date: October 22, 2024

To: City Council / City Manager

From: Madelim Jaquez, Planner

Subject: **AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 18, BLOCK 61, PARK AVENUE HEIGHTS 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 ON THE EAST SIDE OF SOUTH LEE STREET, APPROXIMATELY 171 FEET SOUTH 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) (QUALITY OF LIFE AND PLACE)**

Purpose:

The applicant, George Bell, is requesting a Zone Change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District for future single-family residential development located at 805 South Lee Street.

Recommended City Council Action:

Approve

Fiscal Impact:

The request has no significant impact on the City’s budget.

Strategic Priority:

Quality of Life and Place

Discussion:

Current Zoning:

MF-22, Multiple-Family Dwelling District

Surrounding Zoning and Land Use:

The properties to the north are zoned MF-22, Multiple-Family Dwelling District, and are currently residential and vacant lots. The properties to the south are zoned SF3, Single-Family Dwelling District and MF-22, Multiple-Family Dwelling District and are currently vacant lots. The property to the east is zoned MF-22, Multiple-Family Dwelling District with some SF3, Single-Family Dwelling District, and are currently all vacant lots. The west properties are SF3, Single-Family Dwelling District and MF-22, Multiple-Family Dwelling District and are currently vacant lots.

Analysis:

The subject property is zoned MF-22, Multiple-Family Dwelling District. The applicant is seeking this zone change in in order to construct a single-family home, which is not allowed in the MF-22 district. This vacant lot is located in a residential neighborhood that is developed with single-family homes. Changing this zoning would help the future residential development of this area. This lot does meet the requirements for the SF-3, Single-Family Dwelling District zoning.

This request is consistent with the Tall City Tomorrow Comprehensive Plan, which designated this area as Urban Residential-Medium (UR-M). This designation calls for any single-family zoning 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 comments

Oil and Gas: (Approved)

No Oil & Gas well concern for Zoning. Informational: Future plats will need to identify any Oil or Gas wells and include 500 ft. radius for a city permitted well or the 135 ft. radius for non-permitted well radius on plat. Please note if oil & gas wells are not identified or left off a plat, this could prevent receiving city permits for structures. Any plugged and abandoned (P&A) well would need to be identified with comments-No structure shall be built over an abandoned well.

Engineering: (Approved)

No objections to zone change. [For Applicant's Information Only.] 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. [For Applicant's Information Only.]

Code: (Approved)

No issues. All future structures must adhere to the 2018 International Building Codes, the 2015 International Energy Code, the 2023 NEC requirements, the 2015 International Fire Codes, local city ordinances, zoning requirements, established setbacks, oil and gas considerations, and floodplain requirements if necessary. Code versions are subject to change depending on the time of new code editions adopted in the City of Midland and date of permit application.

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. [For the Applicant's information only.] No objection to zone change. [For the Applicant's information only.]

Planning: (Approved)

The Planning and Zoning Commission recommended approval of this request on October 7, 2024.

Therefore, staff recommends approval of this Zone Change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

Letters of Objection:

As of October 18, 2024, staff has received zero letters of objection for this request.

Attachments:

Application
Survey
Maps
PowerPoint

City Manager's Office

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP OF THE CITY OF MIDLAND TO REZONE LOT 18, BLOCK 61, PARK AVENUE HEIGHTS 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 ON THE EAST SIDE OF SOUTH LEE STREET, APPROXIMATELY 171 FEET SOUTH 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 18, Block 61, Park Avenue Heights Addition, Section 2, City and County of Midland, Texas (the "Property") to SF-3, Single-Family Dwelling District, as set out hereinafter;

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

SECTION ONE. That the Zoning District Map of the City of Midland, Texas, is hereby amended to rezone the Property from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as

that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2024; 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., 2024, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2024.

_____
Lori Merritt Blong, Mayor

ATTEST:

_____
Marcia Bentley-German, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Elizabeth Triggs, Planning and Development Officer

APPROVED ONLY AS TO FORM:

_____
John Ohnemiller, City Attorney

MIDLAND
Planning Division

Zone Change/Planned District Amendment/Site Plan Approval

Project Number: _____

Case Number: Z-24-0393

Applicant *(if acting as Agent, see affidavit on page 2)* Printed Name: George A. Bell		Phone (432) 296-1106 Email Pastorbell1@juno.com	
Address 409 S Main	City Midland	State TX	Zip 79701

Property Owner Printed Name: St. Andrews Investments		Phone (432) 296-1106 Email Pastorbell1@juno.com	
Address 409 S Main St.	City Midland	State TX	Zip 79701

Representative *(if different from Applicant or Property Owner)* Firm: _____ Printed Name:		Phone ( ) Email	
Address	City	State	Zip

Street Address: 805 S Lee St.

Legal Description
Lot: 018 Block: 061 Subdivision: Park Avenue, Heights Sec 2

Current Zoning: MF22

Proposed Zone: SF3
(List by tracts if more than one district is requested)

Reason for Zone Change Request: Lots are zoned for MF, But this zoning is outdated, the lots are sized for SF, and are not big enough for MF.

Present Use of Property: Vacant Lot

Proposed Use of Property: Build New Home - Affordable Housing

How would this zone change affect the public health, safety and welfare? Improve the community by providing affordable housing.

Describe how conditions affecting the property have changed since present zoning designation: Zoning is out dated lots are not big enough for Multible family housing.

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): George A. Bell	Date: 9-10-2024
Applicant (printed): George A. Bell	
Property Owner (signature): George A. Bell	Date: 9-10-2024
Property Owner (printed) : St. Andrews Investments	

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 George A. Bell who, being by me duly sworn, upon oath says: That (s)he is the owner of _____ or authorized by St. Andrews Inv., 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.

George A. Bell
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 10th day of September, 2024, to certify which witness my hand and seal of office.

ROSALIND PERKINS
Notary Public, State of Texas
Comm. Expires 09-26-2027
Notary ID 124554482

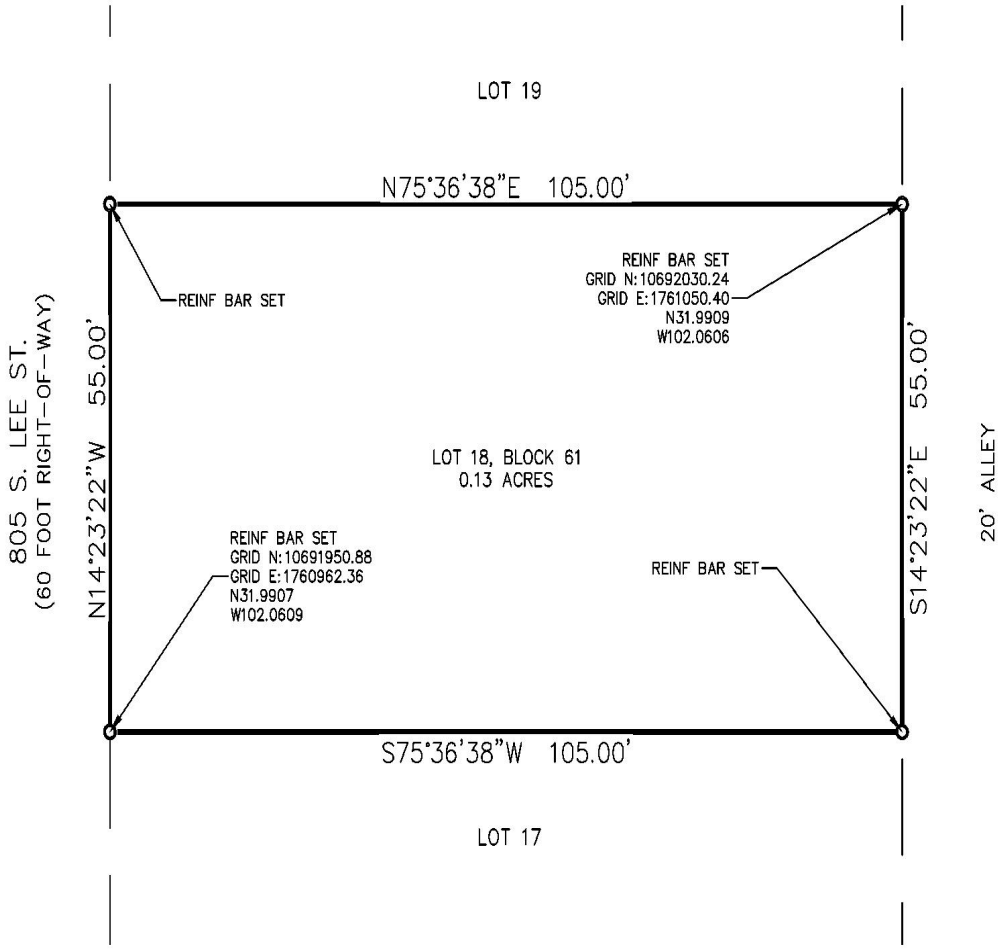
Rosalind Perkins
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

☐ Property Owner Authorization
☐ ~~Application Fee~~ Waived.
Check #_____
☐ Dimensioned Site Plan
☐ Plans in Digital Format (PDF/JPEG)

Received By: [signature]
Date: RECEIVED SEP 10 2024 BY:

Application will not be considered for scheduling until reviewed by a planner.



NOTES:

BEARINGS AND DISTANCES SHOWN ARE BASED ON GPS OBSERVATIONS AND CONFORM TO THE "TEXAS COORDINATE SYSTEM" TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.

THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF TITLE COMMITMENT. NOT ALL EASEMENTS OR MATTERS OF TITLE MAY BE SHOWN.

MONUMENTS ARE A REINFORCING BAR SET WITH PLASTIC CAP STAMPED "SCHUMANN" UNLESS OTHERWISE NOTED.

Surveyor Certification

TO THE LIENHOLDERS, GREATER IDEAL BAPTIST CHURCH

(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, 2024

STATE OF TEXAS
REGISTERED
RJ DAUM
4826
PROFESSIONAL
LAND SURVEYOR

RJ DAUM
TEXAS RPLS 4826

LEGEND:

- MONUMENT AS DESCRIBED
- PROPERTY LINE
- ADJOINING PROPERTIES

MAGRYM

800 N. MARIENFELD STREET
SUITE 100
MIDLAND, TEXAS 79701

TEXAS FIRM No. 10149500
Office (432) 684-5548

SURVEY

LOT 18, BLOCK 61,

PARK AVENUE ADDITION

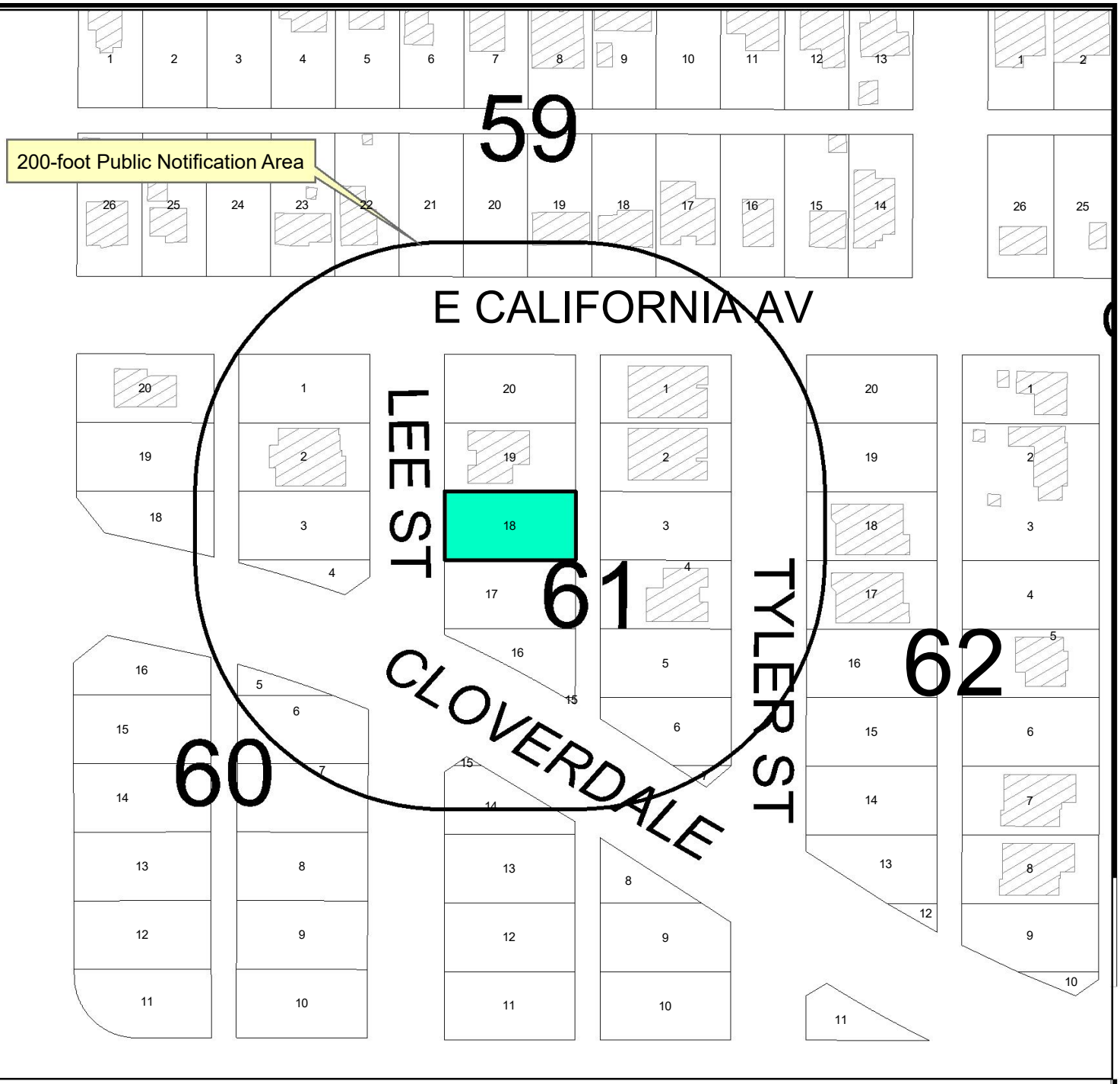
SECTION 2.

AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN THE OFFICE OF THE COUNTY CLERK OF

MIDLAND COUNTY, TEXAS

SCALE: 1" = 20'

PROJECT: 24-505
JOB NO.: 24-505



Location Map

Z-24-0393 **Scale: 1" = 117'**

Consider a request by George A. Bell for a zone change from MF22, Multiple-Family Dwelling District to SF3, Single-Family Dwelling District on Lot 18, Block 61, Park Avenue Heights Addition, Section 2, City and County of Midland, Texas.

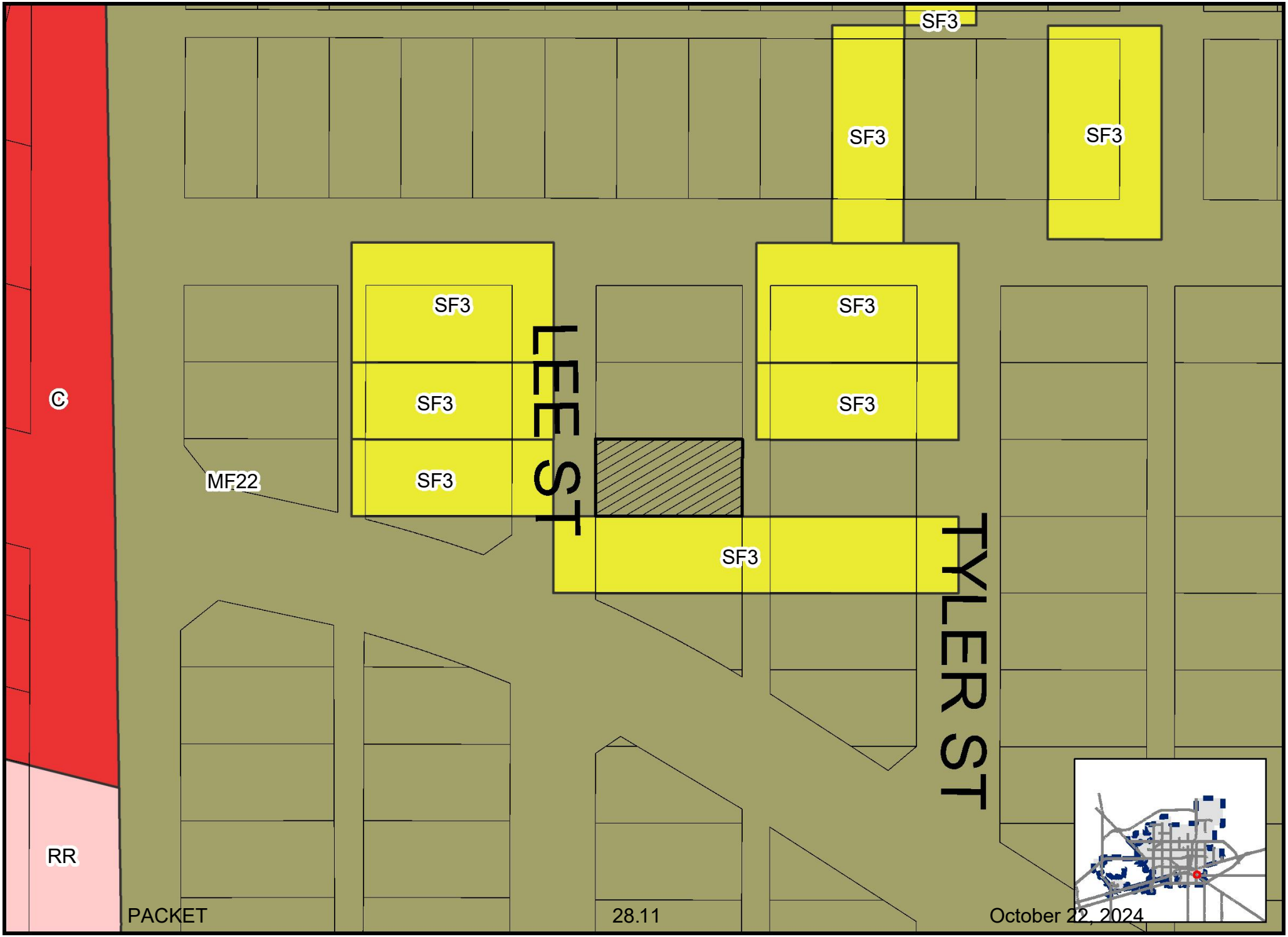
Generally located on the east side of South Lee Street, approximately 171 feet south of East California Avenue. (Council District 2)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS

©THE CITY OF MIDLAND - 2021
THIS DATA IS NOT A SUBSTITUTION FOR A [illegible] NOR IS IT DESIGNED TO [illegible] 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.

October 22, 2024



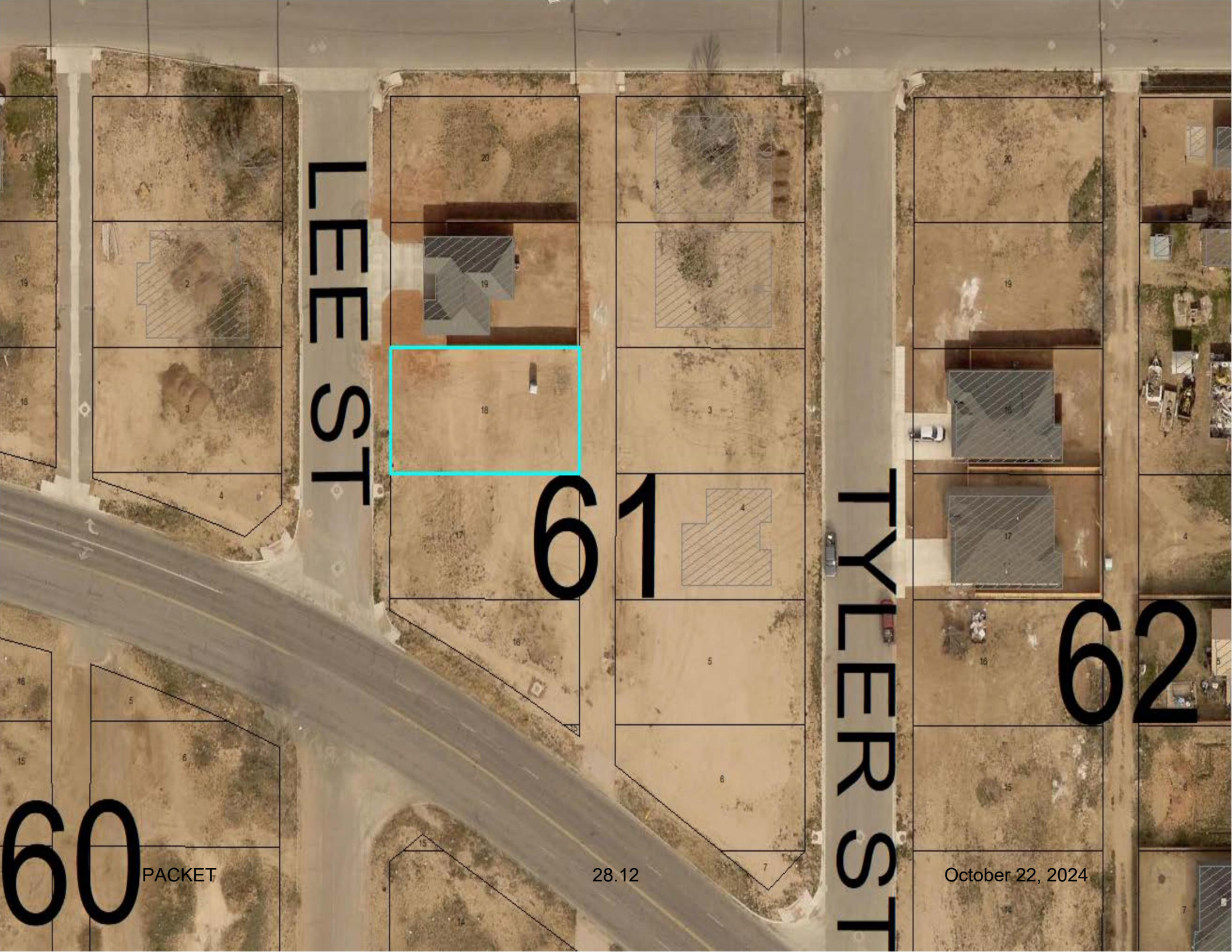
Map by MJ, 09/23/2024

Z-24-0393

Scale: 1" = 86'

ZONING MAP

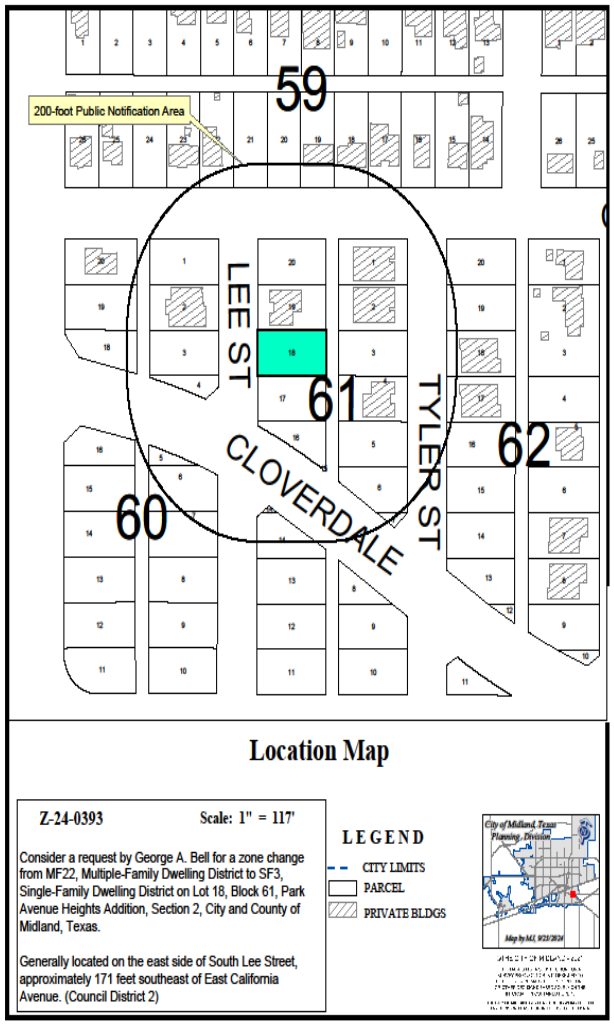
© THE CITY OF MIDLAND - 2021: THIS DATA IS NOT A SUBSTITUTION FOR A SURVEY PRODUCT, NOR IS IT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA


LEE ST
61
TYLER ST
62
60

MIDLAND
Be the Energy!
805 SOUTH LEE STREET
ZONE CHANGE
October 22, 2024
Visit Our Website
MIDLANDTEXAS.GOV

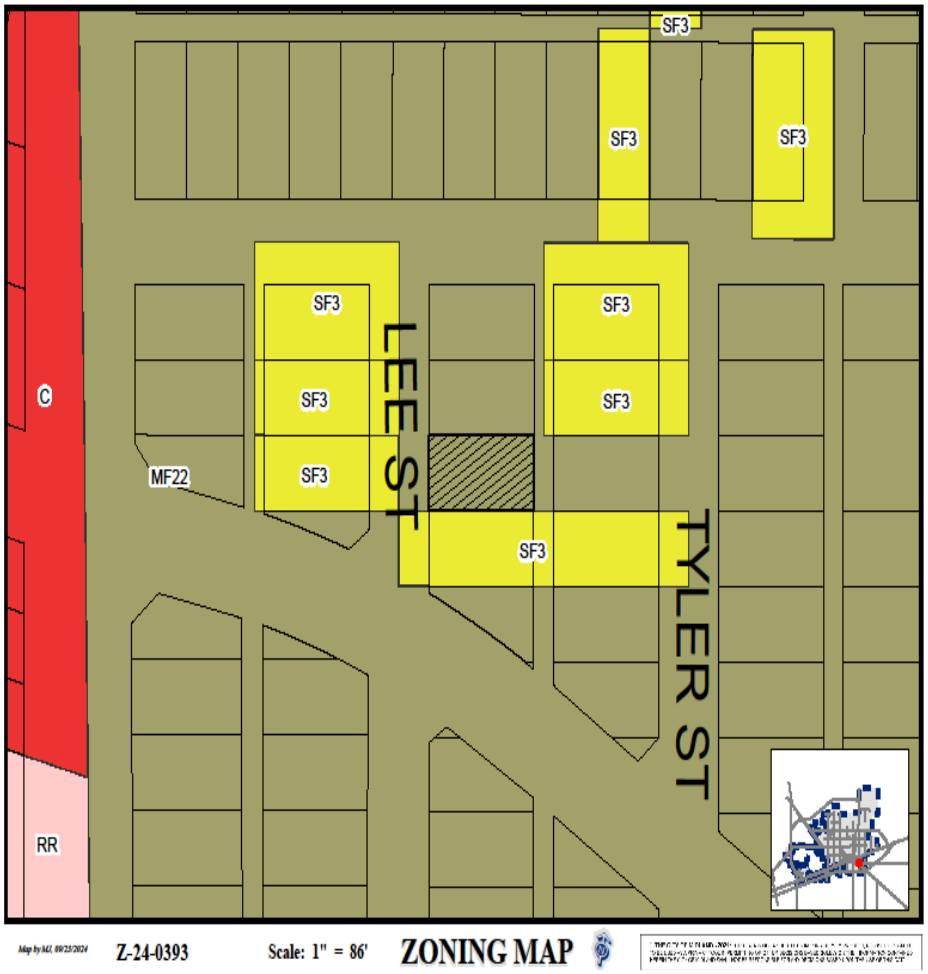
Application Summary

- **Property Owner:** St. Andrews Investments
- **Applicant:** George A. Bell
- Zone Change
- **Address:** 805 South Lee Street (District 2)
- **Reason for Request:** To allow for future single-family residential development



Zoning

- **Current Zoning:** MF-22, Multiple-Family Dwelling District
- **Surrounding Zoning:**
  - North: MF-22, Multiple-Family Dwelling District
  - South: SF-3, Single-Family Dwelling District
  - East: MF-22, Multiple-Family Dwelling District
  - West: SF-3, Single-Family Dwelling District
- **Proposed Zoning:** SF-3, Single-Family Dwelling District



Land Use

- **Current Use of the Property:** Vacant

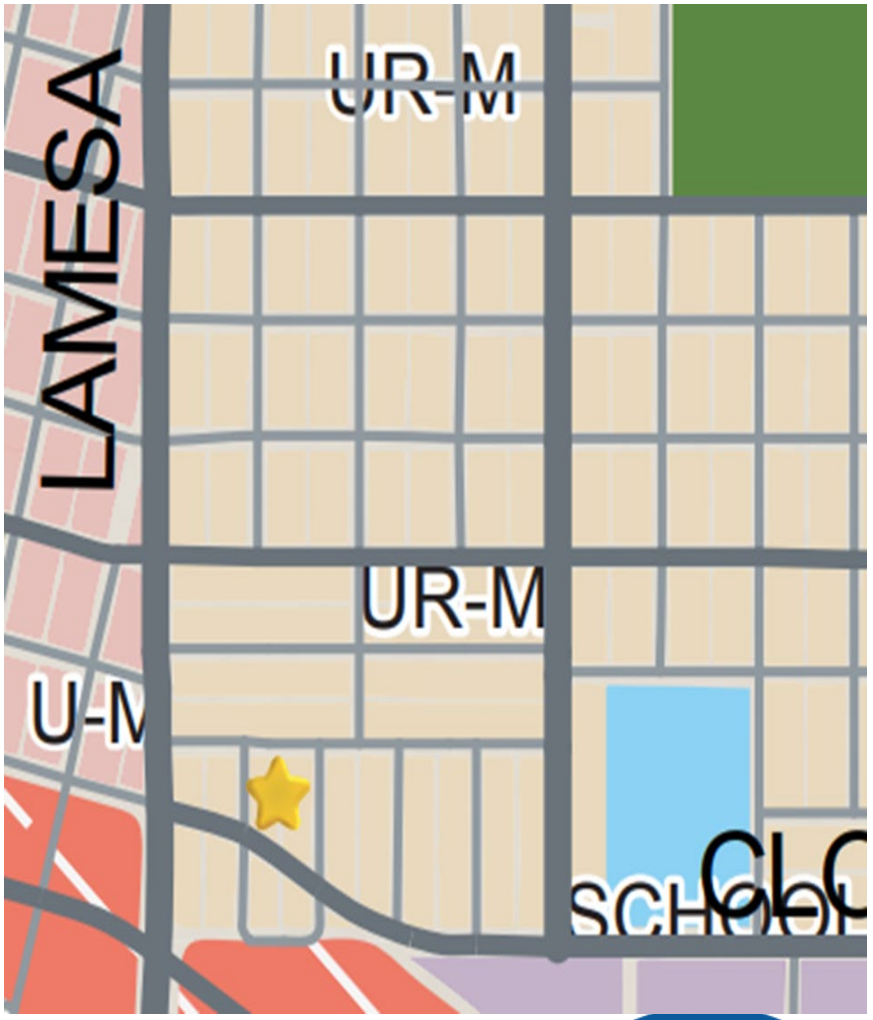
- **Proposed Use of the Property:** Single-family dwelling
- **Surrounding Uses:**
  - North: Residencial
  - South: Vacant
  - East: Vacant
  - West: Vacant

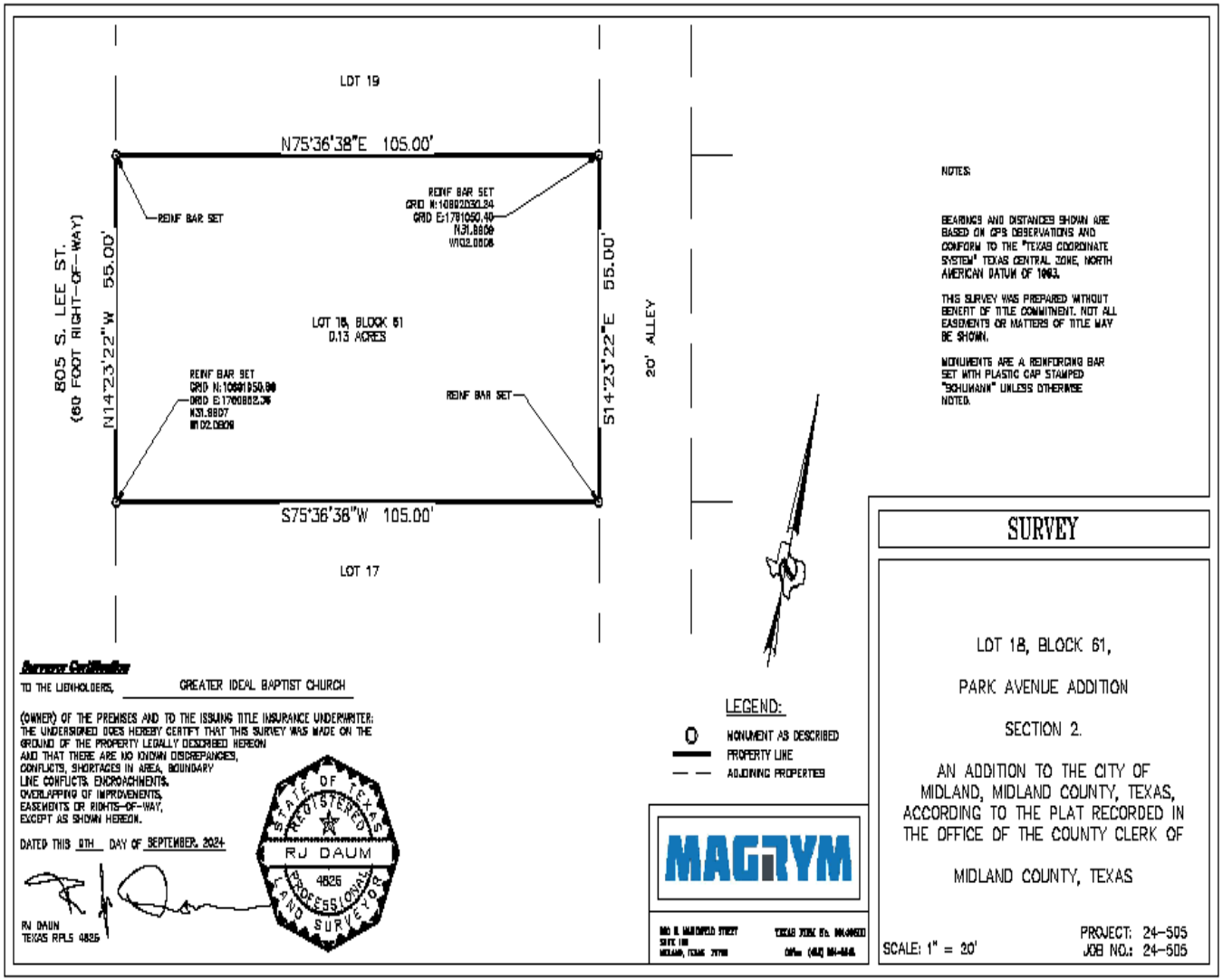
On South Lee Street, looking east.

Comprehensive Plan

- **TCT Land Use Designation:** Urban-Residential-Medium (UR-M)
- **Supported Uses:**
  - •Supports Restrictive land use, emphasizing a mix of housing styles including single-family detached, single-family attached, and townhouses.
  - •Limited multi-family development may be allowed with special review and criteria.
  - •Civic uses are generally allowed, with special permission for higher intensity uses.

•Request is compatible with the surrounding area and the Tall City Tomorrow Plan.




LOT 19
N75°36'38"E 105.00'
REINF BAR SET
REINF BAR SET
GRID N:10802030.34
GRID E:1781050.40
N31.8806
W102.0806
805 S. LEE ST.
(60 FOOT RIGHT-OF-WAY)
N14°23'22"W 55.00'
LOT 18, BLOCK 61
0.13 ACRES
REINF BAR SET
GRID N:10801850.88
GRID E:1780882.36
N31.8807
W102.0806
REINF BAR SET
S14°23'22"E 55.00'
20' ALLEY
S75°36'38"W 105.00'
LOT 17
NOTES:
BEARINGS AND DISTANCES SHOWN ARE BASED ON GPS OBSERVATIONS AND CONFORM TO THE "TEXAS COORDINATE SYSTEM" TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.
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Surveyor Certificate
TO THE LIENHOLDERS, GREATER IDEAL BAPTIST CHURCH
(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, 2024.
STATE OF TEXAS
REGISTERED
RJ DAUM
4825
PROFESSIONAL
LAND SURVEYOR
RJ DAUM
TEXAS RPLS 4825
LEGEND:
MONUMENT AS DESCRIBED
PROPERTY LINE
ADJOINING PROPERTIES
MAGRYM
SURVEY
LOT 18, BLOCK 61,
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SECTION 2.
AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN THE OFFICE OF THE COUNTY CLERK OF
MIDLAND COUNTY, TEXAS
SCALE: 1" = 20'
PROJECT: 24-505
JOB NO.: 24-505

Survey

Staff's Recommendation

- No objections received.
- The Planning & Zoning Commission recommended approval of this request on October 7, 2024.
- Staff recommends APPROVAL of this zone change from MF-22, Multiple-Family Dwelling District to SF-3, Single-Family Dwelling District

MISSION

Deliver exceptional services and promote a high quality of life and place for ALL our citizens.

City Council Meeting

Item Number: 29

Meeting Date: October 22, 2024

To: City Council / City Manager

From: Daniel Humbert, Senior Planner

Subject: MOTION GRANTING PRINCE SIGNS, LLC'S APPEAL AND REVERSING THE BUILDING OFFICIAL'S DENIAL OF A SIGN PERMIT FOR LOT 1D, BLOCK 1, PAVILION PARK, SECTION 14, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH BIG SPRING STREET AND PAVILION PARKWAY) (DISTRICT 1) (DEVELOPMENT SERVICES) (QUALITY OF LIFE AND PLACE)

Purpose:

The applicant, Prince Signs, LLC, is requesting a variance to exceed the maximum signage allowance on a property located at 5514 North Big Spring Street.

Recommended City Council Action:

No action

Fiscal Impact:

No City funds are required to process this request.

Discussion:

Per the proposed sign plan, the applicant is requesting to place one additional wall sign to the previously approved plans. The currently approved signage on the property totals 346.18 square feet and consists of four wall signs and one freestanding sign. The proposed sign is 35.83 square feet.

The request does not meet the requirements per the City of Midland Zoning Ordinance Section 11-7a-7.- Sign Standards.
(3) In the NS District and less restrictive district, except for buildings in the C-1 District:

(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.

The cumulative area of all signs shall not exceed 360 square feet. The applicant is proposing one sign to the five existing with a cumulative sign area of 382.01 square feet, which exceeds the maximum allowed area by 22.01 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 no action of this application for a variance to the cumulative area of all signs exceeding the maximum sign area.

Attachments:

Appeal Request
Building Official's Denial Letter
Application
Proposed Sign
Maps

City Manager's Office

MIDLAND
Code Administration

PERMANENT SIGN
PERMIT APPLICATION

1. PROJECT INFORMATION

Project Address: 5514 N Big Spring St.	Project Description: Urgent care
Name of Business: Westex Urgent Care	
Valuation of Job: $ 30,000.00	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: 319.18 Facade: Height: _____ Width: _____

Number of Signs:	Height Above Grade: 30'3"	Overhang Permitted: 30'3"	Other:

2. BUILDING OWNER INFORMATION

Name: The Kent Companies	Address: 3510 N A St. Midland, TX	
Phone: 432.520.4000	Fax: N/A	Email: permits@princesigns.com

3. SIGNAGE / CONTRACTOR INFORMATION

Name: Prince Signs LLC	Address: 6432 Winningham Rd. Houston, TX 77041	
Phone: 281.345.4488	Fax: N/A	Email: permits@princesigns.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: Jennifer Flores	Date: 8/21/2024
Printed Name of Applicant: Jennifer Flores	Phone: 281.345.4488
Email: permits@princesigns.com	Fax: N/A

Planning and Zoning Compliance Plan Review Letter

October 3, 2024

Jennifer Flores

Permit Number: SGN-063325-2024
Project Address: 5514 N Big Spring
Project Name: Westex Urgent Care

The plan review for planning and zoning code compliance for this project has been completed. The following comments or conditions must be addressed before 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 reviewer.

This letter is not a letter of denial. The permit application is still under review but will not proceed through the review process until the following issues, and any other issues from other departments, are addressed. A written response to each comment shall accompany revised plans, and all change/corrections shall be "clouded" on the resubmitted plans. All amended plans must be submitted simultaneously; no partial resubmittal will be accepted.

General Comments:

Zoning: RR-Regional Retail

Specific Comments:

1. The total allowable sign area is 360 sq. ft. The proposed total signage for the property amounts to 382.01 sq. ft. The additional signage amounts to 22.01 sq. ft.

If you have any other questions or concerns about the comments in this review, please contact the undersigned.

Very respectfully,

Jeremy Mills

Permit Review Manager

(432) 685-7389

300 N. Loraine Midland, TX | PO Box 1152

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PRINCE SIGNS
DESIGN | FABRICATION | INSTALLATION

October 4, 2024

Prince Signs LLC

6432 Cunningham Rd

Houston, TX 77041

This letter serves as an appeal for denial of a previous application requesting a permit for the proposed wall sign at Westex Urgent Care, located at 5514 N Big Spring St. Midland, TX 79705. The City of Midland denied the proposed installation of one additional wall sign with a square footage of 35.83. The total allowable sign area is 360 sq. ft. And this additional signage would exceed that limit by 22.01 sq. ft.

Westex Urgent Care would like to add the additional sign to the North elevation of the building to let all oncoming traffic along Pavilion Parkway clearly identify the urgent care location when seeking medical attention.

Sincerely,

Kevin Fryer

SCOPE

MFG. & INSTALL ONE SET OF CHANNEL LETTERS

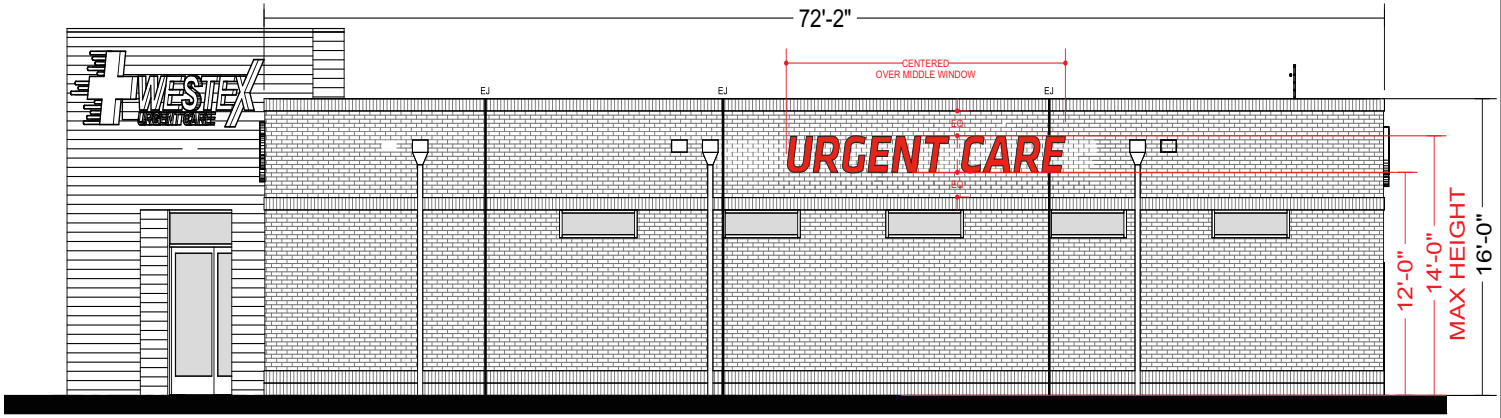
MATERIAL SPECS

A1 ACRYLIC TRANSLUCENT

AL1 ALUMINUM

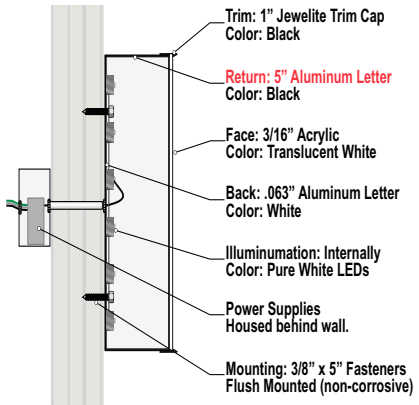
VINYL SPECS

V1 3630-143 POPPY RED



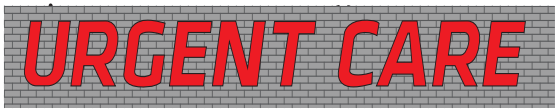
F NORTH ELEVATION - PARTIAL ELEVATION

SCALE: 1/8" = 1'-0"



ILLUMINATED CHANNEL LETTERS

SCALE: NTS



NIGHT

SIZE DETERMINED BY SQ. FT. LIMITATIONS

A1
AL1
V1

CHANNEL LETTERS 5"
BLACK RETURNS
W/ VINYL TRANSLUCENT
VINYL APPLIED
TO ACRYLIC FACES TO
BE DIRECT MOUNTED

F URGENT CARE - CHANNEL LETTER SET 35.83 SQ.FT.

SCALE: 3/8" = 1'-0"

THIS IS ONLY AN ARTIST RENDERING. FINISHED PROJECT MAY VARY SLIGHTLY IN SIZE AND COLOR.

PERMIT

PRINCE SIGNS
DESIGN | FABRICATION | INSTALLATION
6432 Cunningham Rd Houston, TX 77041
281-345-4488
2160 Commerce Dr Midland, TX 79703
432-505-4056
info@princesigns.com

PROJECT INFO

CLIENT: WESTEX 9112 EXTERIOR
ADDRESS: 5514 N BIG SPRING ST
CITY/STATE: MIDLAND, TX
DATE: 07/31/2024
SALES: TRACY S
DESIGN: TJM

W.O. NUMBER: 6031-P4b2

OTHER W.O.: 6022

#	REVISION	
08/09/24	UPDATED SQ FOOTAGE	TJM
08/14/24	NOTES FOR FUTURE UPDATES	VT
08/15/24	ADDED ELECTRICAL TO BOTTOM RIGHT AREA	TJM

THIS SIGN IS INTENDED TO BE INSTALLED IN ACCORDANCE WITH THE REQUIREMENTS OF ARTICLE 600 OF THE NATIONAL ELECTRICAL CODE AND/OR OTHER APPLICABLE LOCAL CODES. THIS INCLUDES PROPER GROUNDING AND BONDING OF THE SIGN. A DISCONNECT SWITCH AFTER INSTALLATION SHALL COMPLY WITH ARTICLE 600.6 (A) (1) OF THE NATIONAL ELECTRICAL CODE.

ILLUMINATED

ELECTRIC SIGNS E320516

ELECTRICAL REQUIRMENTS
PRIMARY CIRCUIT
120 VOLT/ 20 AMP
TOTAL AMP DRAW
2.5 AMP
TSCL#: 18895

PAGE 1

PACKET 29.7 October 22, 2024

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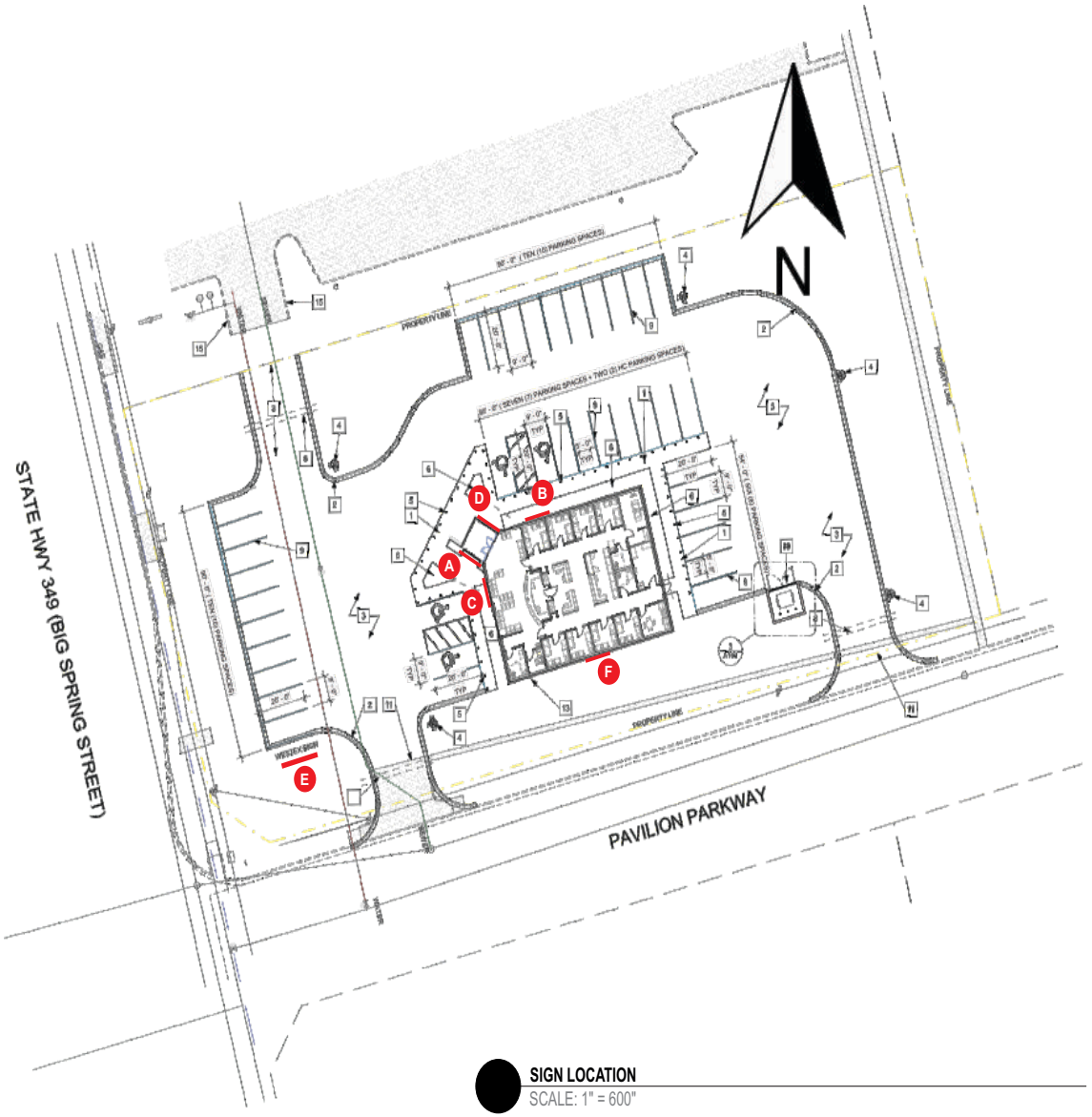
PERMIT

APPROVED WITH PERMIT NUMBER
#SGN-063315-2024

SIGN A - 59.33
SIGN B - 48.73
SIGN C - 48.73
SIGN D - 30.75
SIGN E - 158.64

PROPOSING EXTRA SIGNAGE
SIGN F - 35.83

GRAND TOTAL OF 382.01 SQ FT



SIGN LOCATION
SCALE: 1" = 600"

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P E R M I T

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DESIGN: TJM

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OTHER W.O.: 6022

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☐ ILLUMINATED

ELECTRIC SIGNS E320516
ELECTRICAL REQUIRMENTS
PRIMARY CIRCUIT
TOTAL AMP DRAW
TSCL#: 18895

PACKET 29.8 October 22, 2024

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SCOPE

MFG. & INSTALL ONE SET OF CHANNEL LETTERS

MATERIAL SPECS

A1 ACRYLIC TRANSLUCENT

AL1 ALUMINUM

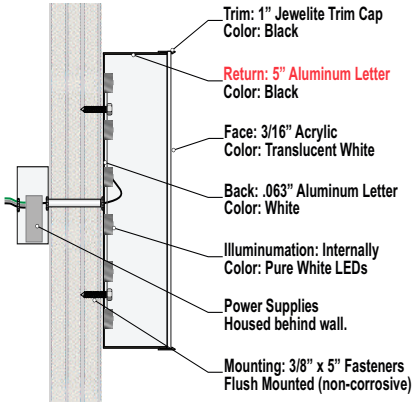
VINYL SPECS

V1 3630-137 EUROPEAN BLUE

V2 3630-143 POPPY RED

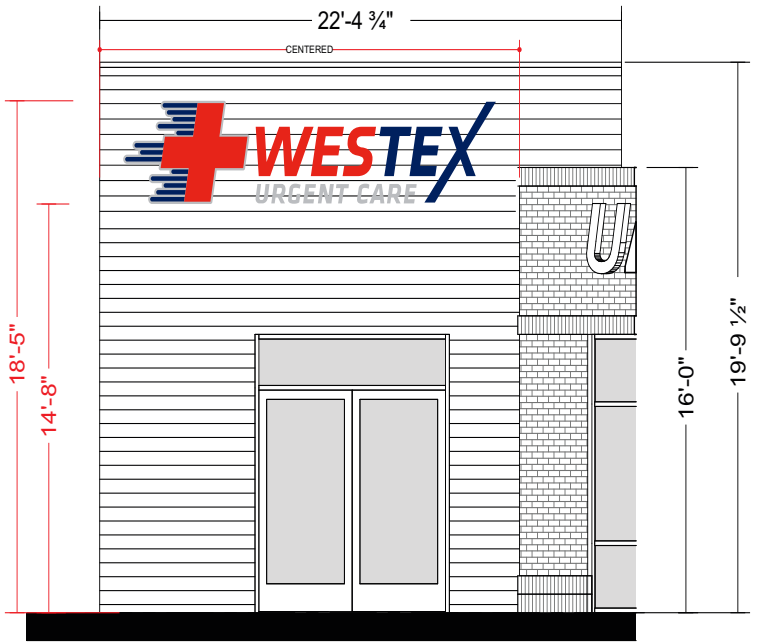
V3 3630-51 SILVER GREY

SURVEY REQUIRED



ILLUMINATED CHANNEL LETTERS

SCALE: NTS

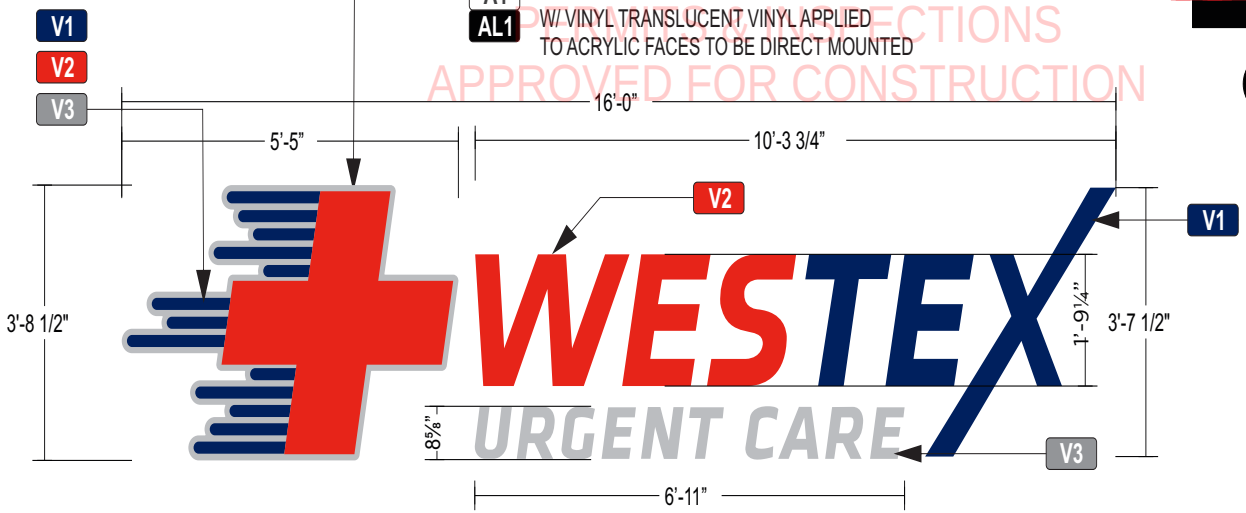


A NE - ELEVATION - PARTIAL ELEVATION

SCALE: 3/16" = 1'-0"

A1 CHANNEL LETTERS 5" BLACK RETURNS

AL1 W/ VINYL TRANSLUCENT VINYL APPLIED TO ACRYLIC FACES TO BE DIRECT MOUNTED



NIGHT

A CHANNEL LETTER SET - PARTIAL EXT ELEVATION 59.33 SQ.FT.

SCALE: 1/2" = 1'-0"

MIDLAND Code Administration
PERMIT CORRECTIONS
APPROVED FOR CONSTRUCTION

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281-345-4488
2160 Commerce Dr Midland, TX 79703
432-505-4056
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ADDRESS: 5514 N BIG SPRING ST
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DATE: 07/31/2024
SALES: TRACY S
DESIGN: TJM

W.O. NUMBER: 6031-P5a

OTHER W.O.: 6022

#	REVISION	
08/09/24	UPDATED SQ FOOTAGE	TJM
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08/21/24	UPDATED LTS WITH LATEST 4 PYLON	TJM

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ILLUMINATED

ELECTRIC SIGNS E320516

ELECTRICAL REQUIRMENTS
PRIMARY CIRCUIT
120 VOLT/ 20 AMP
TOTAL AMP DRAW
5.0 AMP
TSCL#: 18895

PAGE 1

PACKET 29.9 October 22, 2024

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SCOPE

MFG. & INSTALL ONE SET OF CHANNEL LETTERS

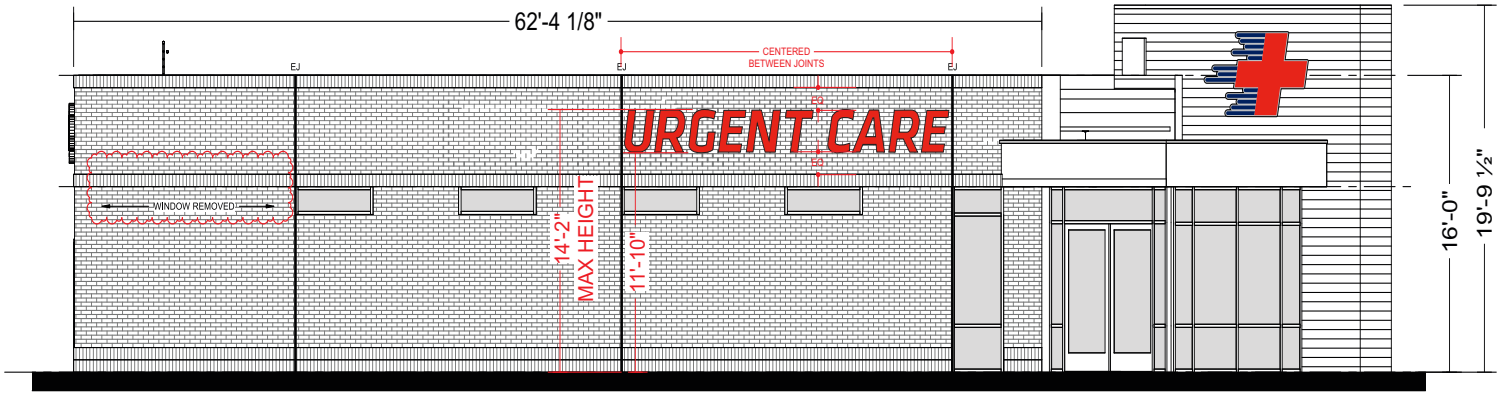
MATERIAL SPECS

A1 ACRYLIC TRANSLUCENT

AL1 ALUMINUM

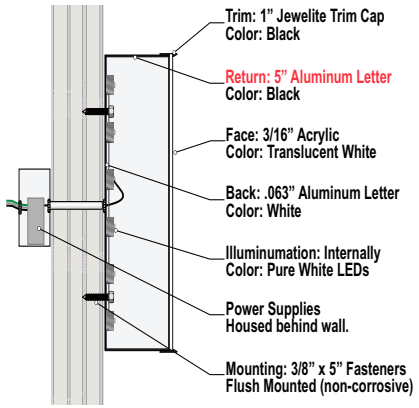
VINYL SPECS

V1 3630-143 POPPY RED



B SOUTH ELEVATION - PARTIAL ELEVATION

SCALE: 1/8" = 1'-0"



ILLUMINATED CHANNEL LETTERS

SCALE: NTS

MIDLAND Code Administration
PERMITS & INSPECTIONS
APPROVED FOR CONSTRUCTION

NIGHT

20'-10 5/8"

2'-4"

URGENT CARE

TYP. HEIGHT & WIDTH OF SIGN

A1
AL1
V1

CHANNEL LETTERS 5"
BLACK RETURNS
W/ VINYL TRANSLUCENT
VINYL APPLIED
TO ACRYLIC FACES TO
BE DIRECT MOUNTED

B URGENT CARE - CHANNEL LETTER SET 48.73 SQ.FT.

SCALE: 3/8" = 1'-0"

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info@princesigns.com

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DESIGN: TJM

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OTHER W.O.: 29.10 6022

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ILLUMINATED

ELECTRIC SIGNS E320516

ELECTRICAL REQUIRMENTS
PRIMARY CIRCUIT
120 VOLT/ 20 AMP
TOTAL AMP DRAW
2.5 AMP
TSCL#: 18895

PACKET October 22, 2024

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SCOPE

MFG. & INSTALL ONE SET OF CHANNEL LETTERS

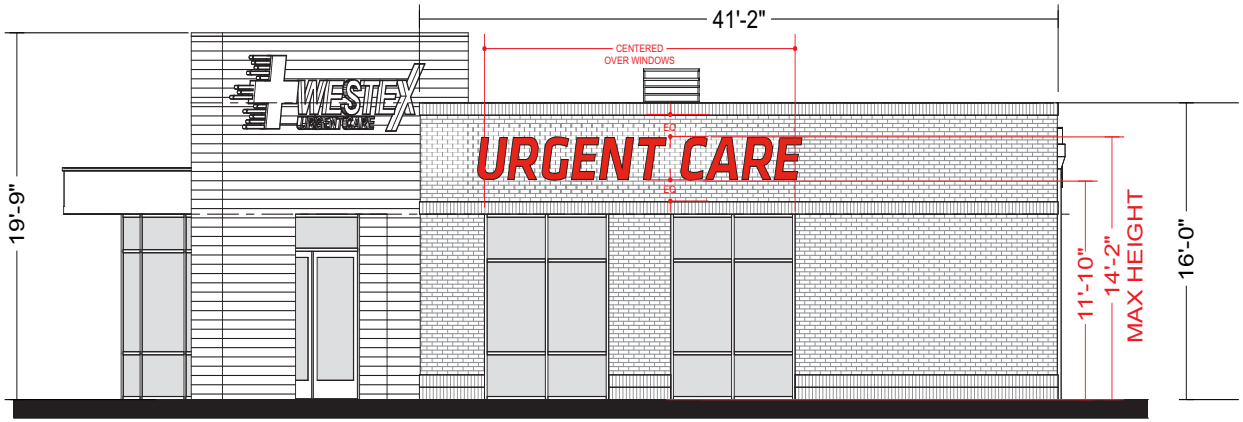
MATERIAL SPECS

A1 ACRYLIC TRANSLUCENT

AL1 ALUMINUM

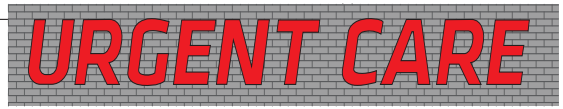
VINYL SPECS

V1 3630-143 POPPY RED

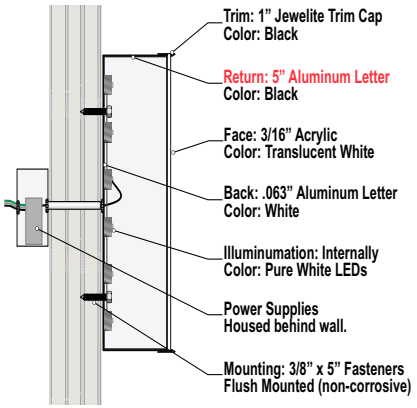


C EXTERIOR ELEVATION - WEST

SCALE: 1/8" = 1'-0"



NIGHT



ILLUMINATED CHANNEL LETTERS

SCALE: NTS

MIDLAND Code Administration
PERMITS & INSPECTIONS
APPROVED FOR CONSTRUCTION

20'-10 5/8"

2'-4"

TYP. HEIGHT & WIDTH OF SIGN

URGENT CARE

A1
AL1
V1

CHANNEL LETTERS 5"
BLACK RETURNS
W/ VINYL TRANSLUCENT
VINYL APPLIED
TO ACRYLIC FACES TO
BE DIRECT MOUNTED

C URGENT CARE - CHANNEL LETTER SET 48.73 SQ.FT.

SCALE: 3/8" = 1'-0"

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281-345-4488
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432-505-4056
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CITY/STATE: MIDLAND, TX
DATE: 07/31/2024
SALES: TRACY S
DESIGN: TJM

W.O. NUMBER: 6031-P5a

OTHER W.O.: 29.11 6022

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ILLUMINATED

ELECTRIC SIGNS E320516

ELECTRICAL REQUIRMENTS
PRIMARY CIRCUIT
120 VOLT/ 20 AMP
TOTAL AMP DRAW
2.5 AMP
TSCL#: 18895

PACKET October 22, 2024

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SCOPE

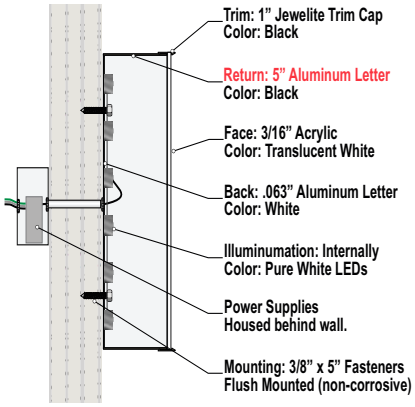
MFG. & INSTALL ONE LOGO CAPSULE

MATERIAL SPECS

- A1 ACRYLIC TRANSLUCENT
- AL1 ALUMINUM

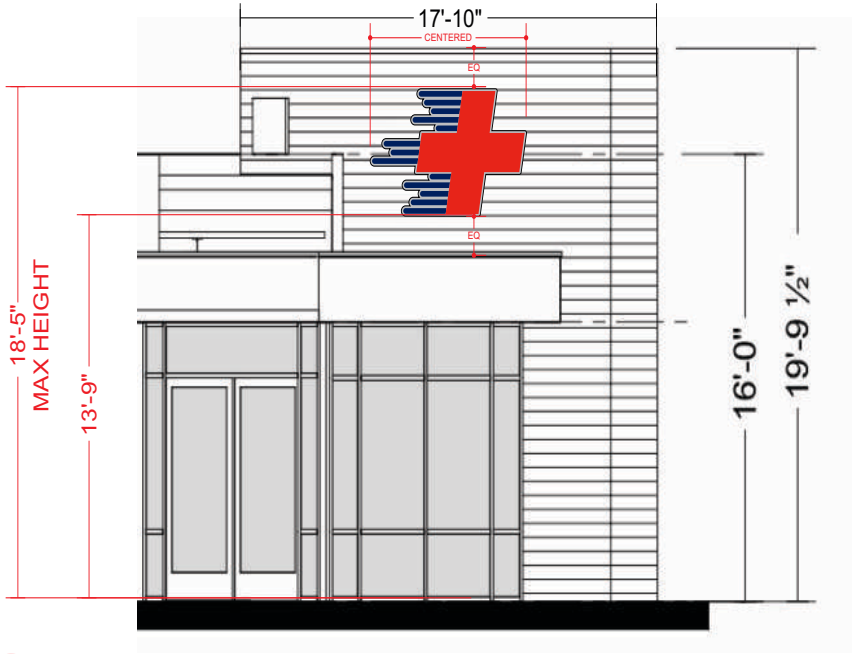
VINYL SPECS

- V1 3630-137 EUROPEAN BLUE
- V2 3630-143 POPPY RED
- V3 3630-51 SILVER GREY



ILLUMINATED CAPSULE

SCALE: NTS

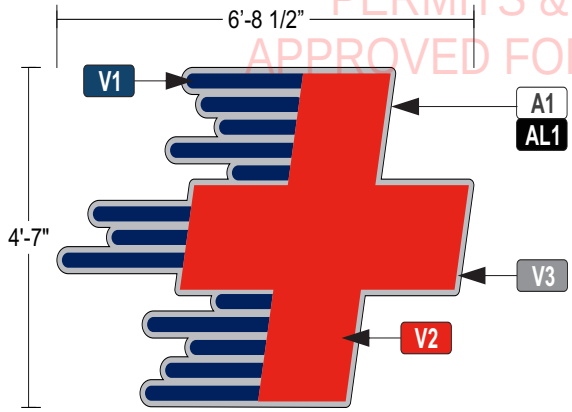


SOUTHWEST ELEVATION - PARTIAL ELEVATION

SCALE: 3/16" = 1'-0"

MIDLAND Code Administration

PERMITS & INSPECTIONS APPROVED FOR CONSTRUCTION



A1 AL1 CHANNEL LETTERS 5" BLACK RETURNS W/ VINYL TRANSLUCENT VINYL APPLIED TO ACRYLIC FACES TO BE DIRECT MOUNTED

D LARGE LOGO CAPSLE - WEST PARTIAL EXT ELEVATION 30.75 SQ.FT.

SCALE: 1/2" = 1'-0"

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ILLUMINATED

ELECTRIC SIGNS E320516

ELECTRICAL REQUIRMENTS
PRIMARY CIRCUIT
120 VOLT/ 20 AMP
TOTAL AMP DRAW
2.5 AMP
TSCL#: 18895

PAGE 4

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SCOPE

- (2) FABRICATED & INSTALLED D/F CABINETS W/ FLEX FACES
- (1) FABRICATED & INSTALLED CABINET W/ (2) S/F WATCHFIRE EMC BOARDS PROVIDED
- FABRICATED & INSTALL ALUMINUM POLE
- BASE COVER FOR VANEER STONE BASE

MATERIAL SPECS

FF1	FLEX FACE
AL1	ALUMINUM
CAP1	CAP STONE
ST1	VANEER STONE (TBD)

COLOR SPECS

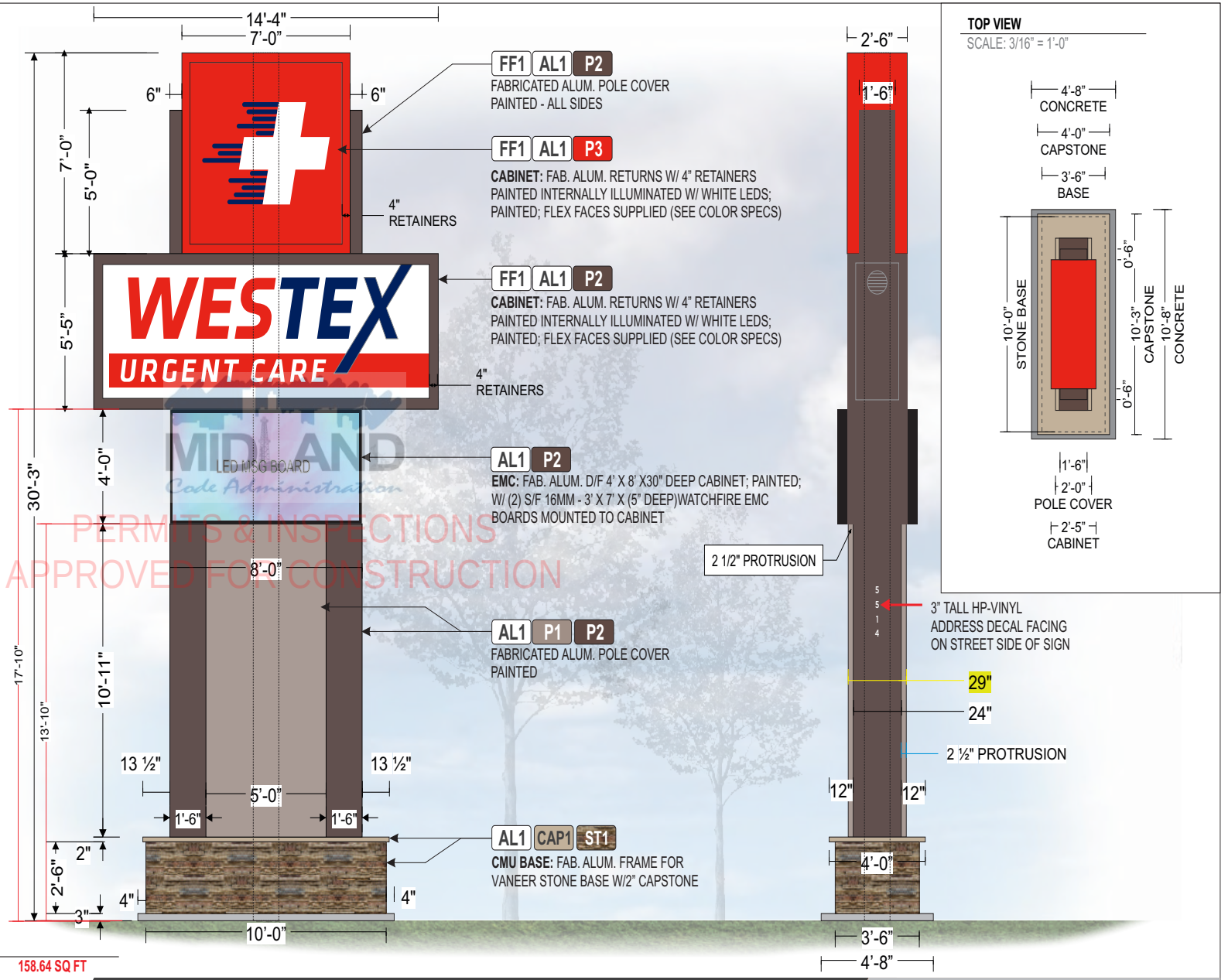
D1	EUROPEAN BLUE PMS 2757 C
D2	POPPY RED PMS 485 C

VINYL SPECS

V1	HP-VINYL

PAINT SPECS

P1	PANTONE WARM GREY 6 C
P2	PANTONE 411 C
P3	POPPY RED PMS 485 C



E GROUND SIGN
SCALE: 1/4" = 1'-0"

158.64 SQ FT

PERMITS & INSPECTIONS
APPROVED FOR CONSTRUCTION

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P E R M I T

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info@princesigns.com

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SALES: TRACY S
DESIGN: TJM

W.O. NUMBER: 6031-P5a
OTHER W.O.: 6022

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☐ ILLUMINATED

ELECTRIC SIGNS E320516
ELECTRICAL REQUIRMENTS
PRIMARY CIRCUIT
TOTAL AMP DRAW
TSCL#: 18895

PACKET 29.13 October 22, 2024

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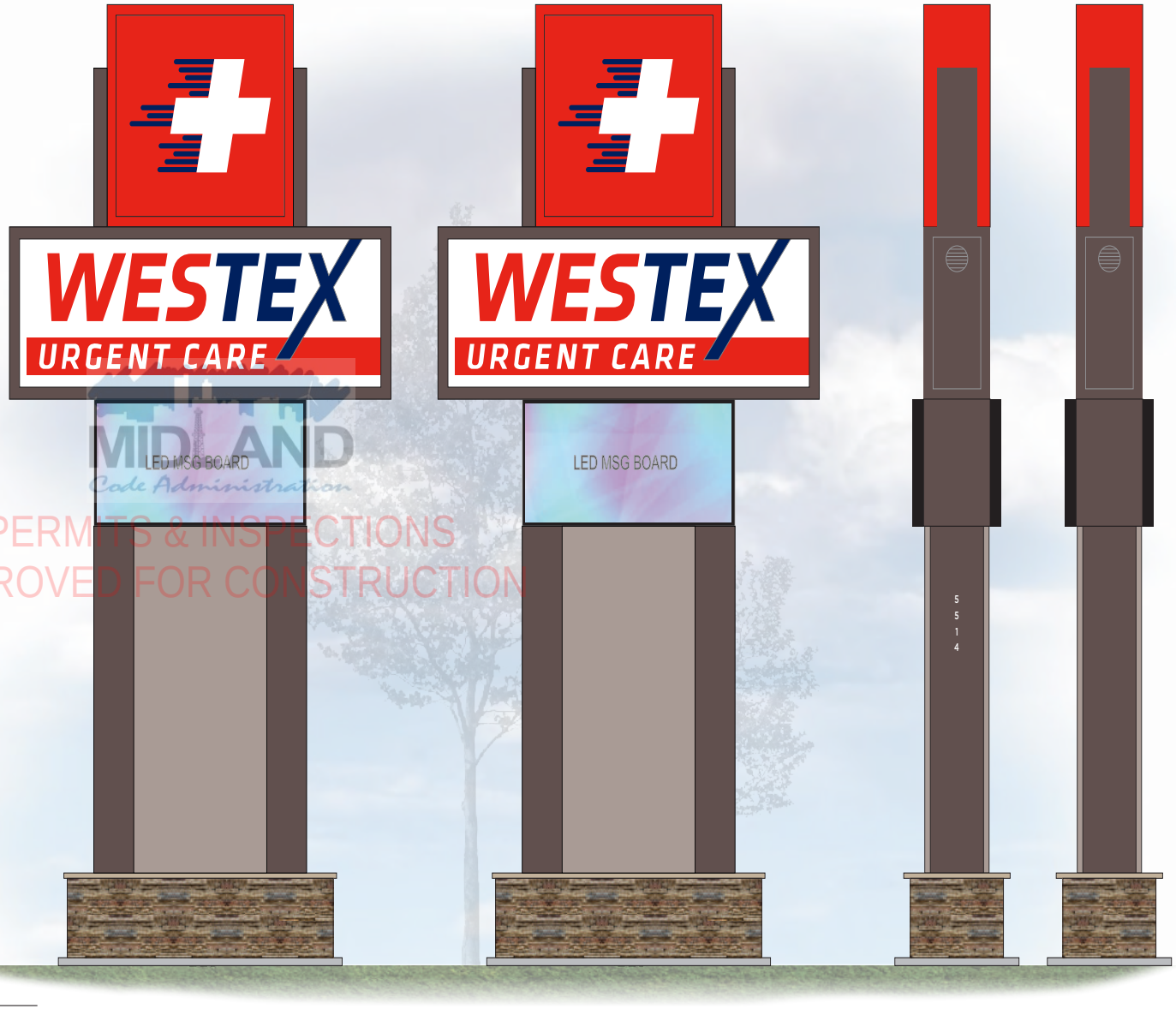
SIDE A

SIDE B

FACES STREET



MIDLAND Code Administration
PERMITS & INSPECTIONS
APPROVED FOR CONSTRUCTION

E GROUND SIGN
SCALE: 1/4" = 1'-0"

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6432 Cunningham Rd Houston, TX 77041
281-345-4488
2160 Commerce Dr Midland, TX 79703
432-505-4056
info@princesigns.com

PROJECT INFO

CLIENT: WESTEX 9112 EXTERIOR
ADDRESS: 5514 N BIG SPRING ST
CITY/STATE: MIDLAND, TX
DATE: 07/31/2024
SALES: TRACY S
DESIGN: TJM

W.O. NUMBER: 6031-P5a

OTHER W.O.: 6022

#	REVISION	
08/09/24	UPDATED SQ FOOTAGE	TJM
08/14/24	NOTES FOR FUTURE UPDATES	VT
08/15/24	ADDED ELECTRICAL TO BOTTOM RIGHT AREA	TJM
08/21/24	UPDATED LTS WITH LATEST 4 PYLON	TJM

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ELECTRIC SIGNS E320516
ELECTRICAL REQUIRMENTS
PRIMARY CIRCUIT
TOTAL AMP DRAW
TSCL#: 18895

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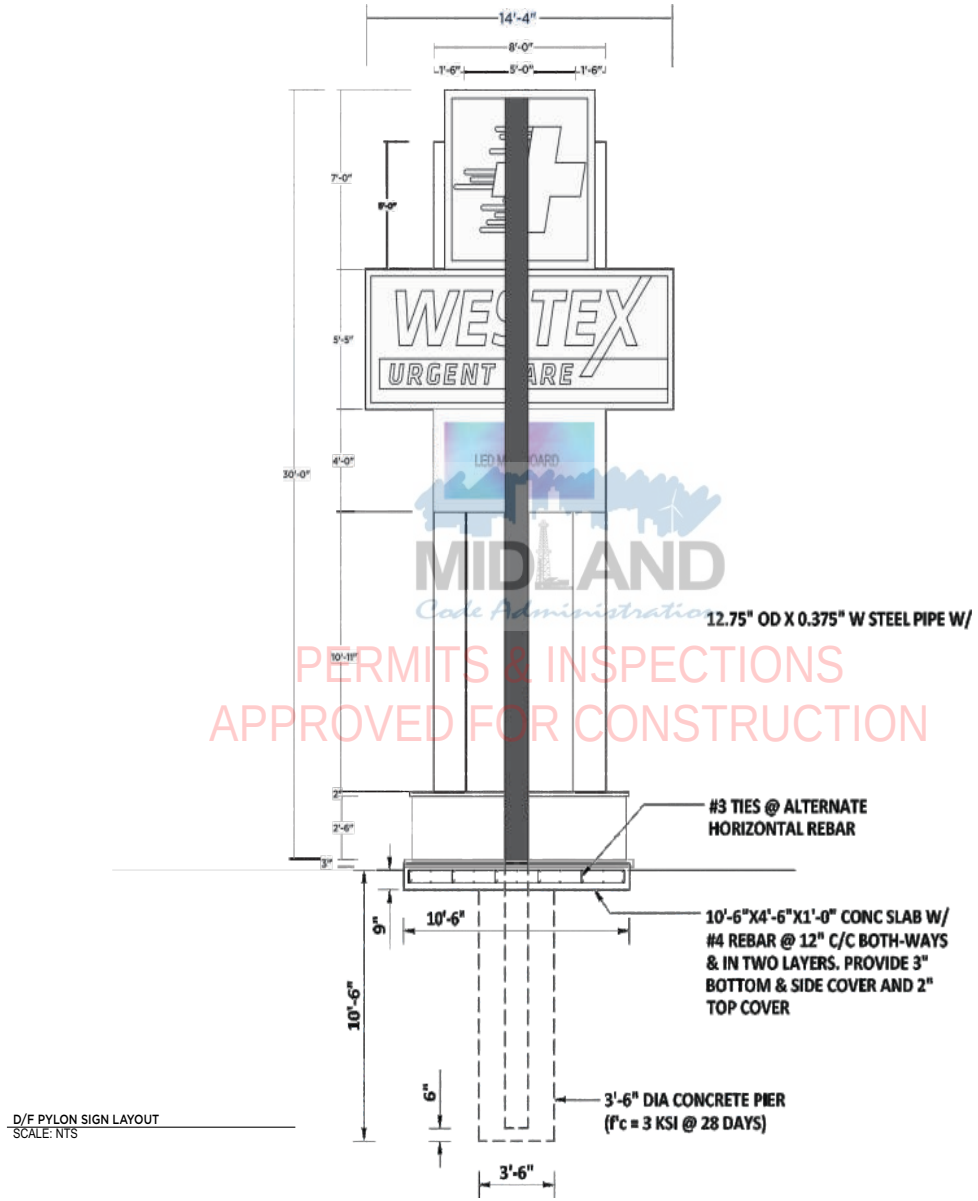
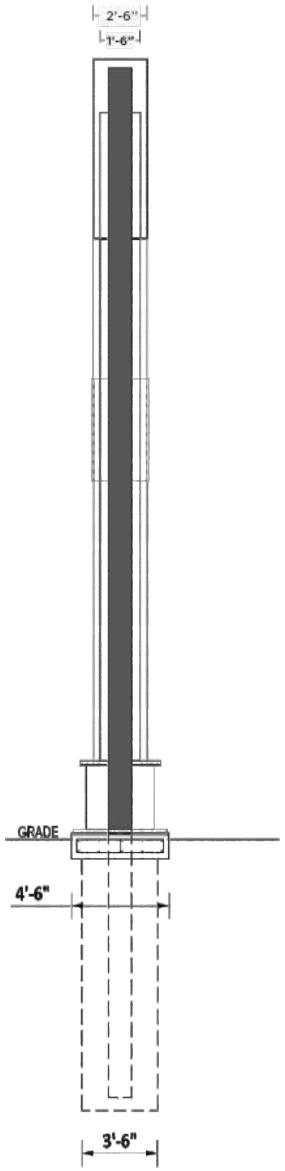


D/F PYLON SIGN LAYOUT
SCALE: NTS

ELEVATION



SIDE ELEVATION

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PACKET

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ELECTRIC SIGNS E320516
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PAGE 7

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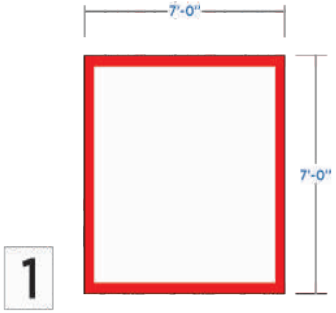

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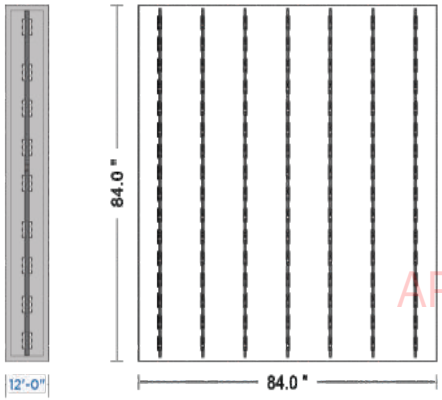
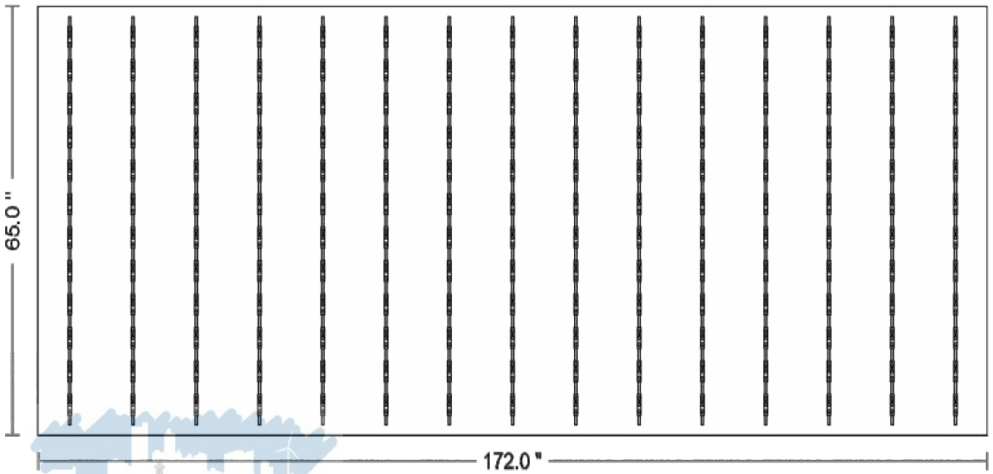


Lighting LED Module	**Module** (7) Tap Out Stik Double Sided 84	**Can Depth** 12.00 in		
Layout Type Face Lit	**Module Part Number** PL-OP2-TO3-P/ST-DS-84-TW	**Area** 49.0 sq ft		
Power Supply (7) Universal 60W	**Module SKU** B-TO-D32-08470	**Perimeter** 28.0 feet		
Power Supply Part Number PL-60-12-U	**Total Watts** 295.68 watts	**Max Modules per PS** 1		
Power Supply SKU P-OH060-12-PL	**Row Spacing** 12.0 in			



2

Lighting LED Module	**Module** (15) Tap Out Stik Double Sided 64	**Power Supply** (10) Universal 60W	**Total Watts** 475.20 watts	**Area** 77.6 sq ft
Layout Type Face Lit	**Module Part Number** PL-OP2-TO3-P/ST-DS-64-TW	**Power Supply Part Number** PL-60-12-U	**Row Spacing** 11.5 in	**Perimeter** 39.5 feet
	Module SKU B-TO-D24-06470	**Power Supply SKU** P-OH060-12-PL	**Can Depth** 12.00 in	**Max Modules per PS** 1

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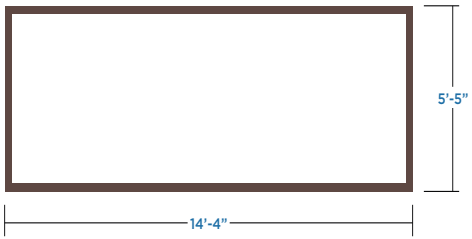

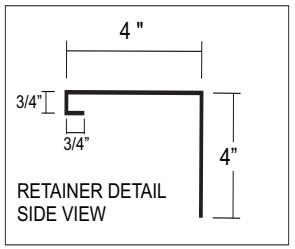

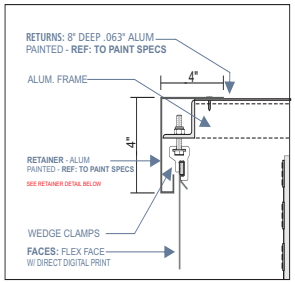

CABINET SECTION SHOWING FLEX FACE W/ CLIPS & RETAINERS
SCALE: NTS

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ELECTRICAL REQUIRMENTS
PRIMARY CIRCUIT
TOTAL AMP DRAW
TSCL#: 18895

PACKET 29.16 October 22, 2024

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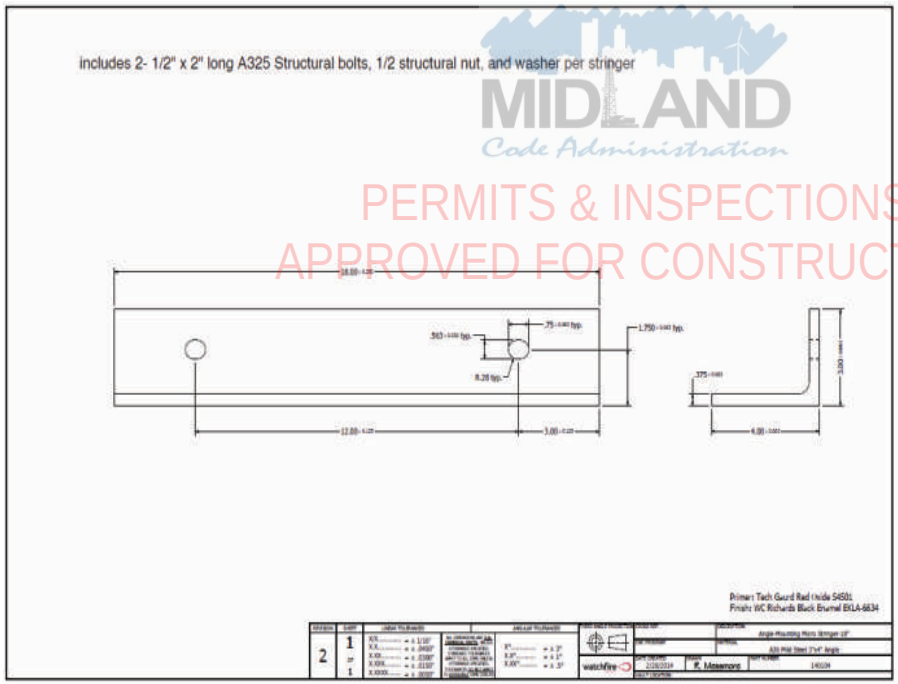
3

(1) 16mm - 3’ X 7’ x 5”(deep) Watchfire EMC
On a fabricated 4’ x 8’ cabinet



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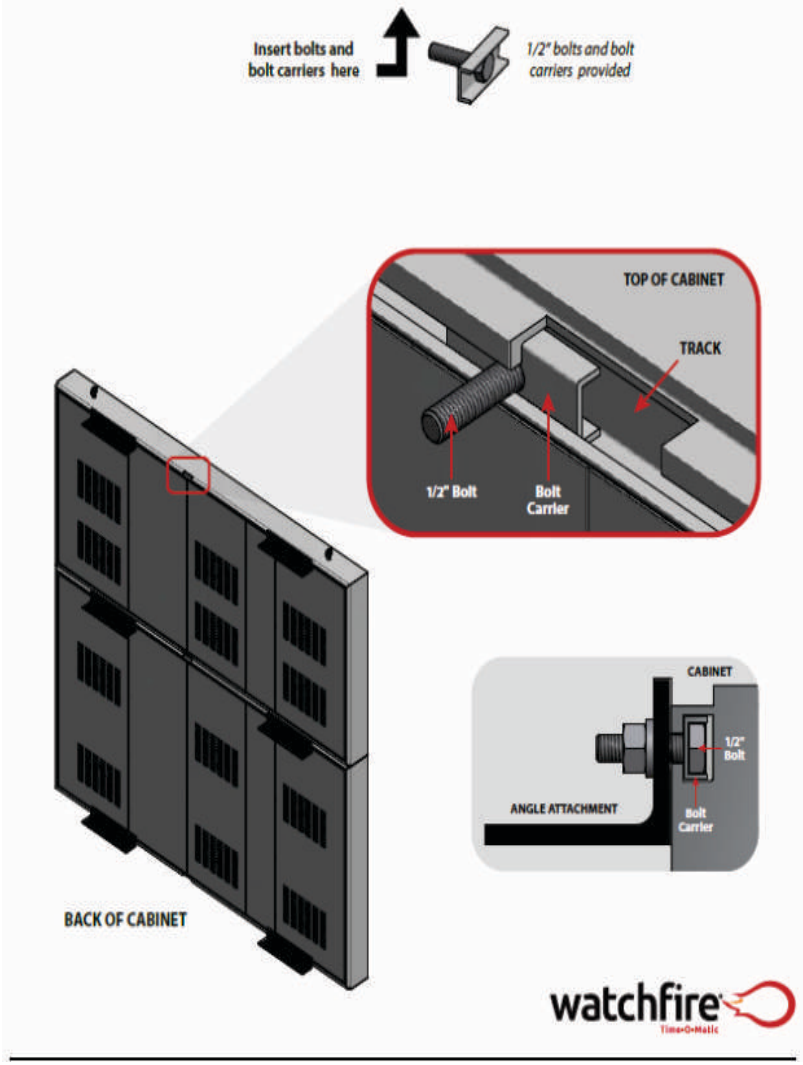

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PACKET 29.17 October 22, 2024

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PAGE 9

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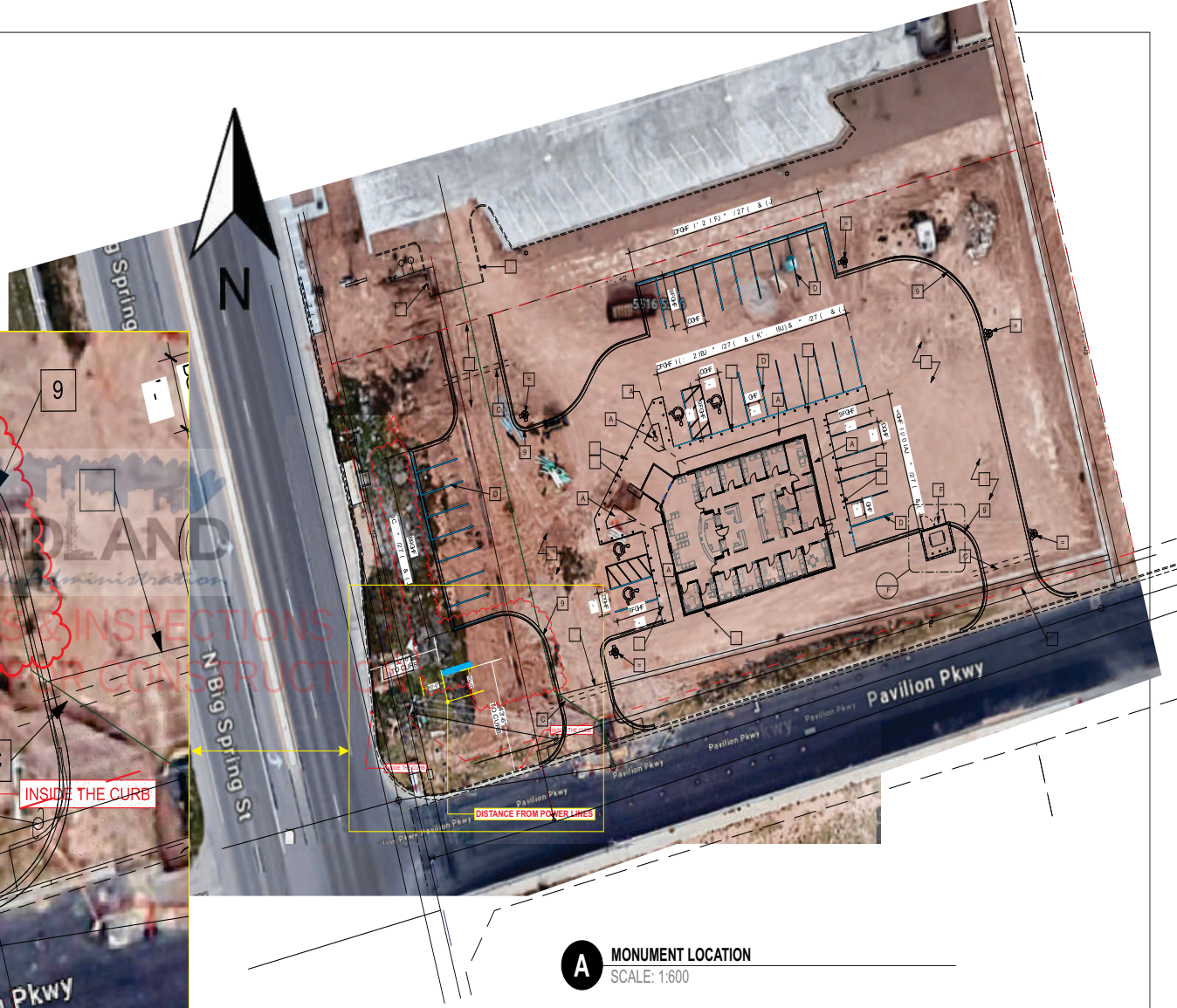
PYLON LOCATION DETAILS ONLY



A MONUMENT LOCATION
SCALE: 1:600

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UL ELECTRIC SIGNS E320516
ELECTRICAL REQUIRMENTS
PRIMARY CIRCUIT
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PACKET 29.18 October 22, 2024

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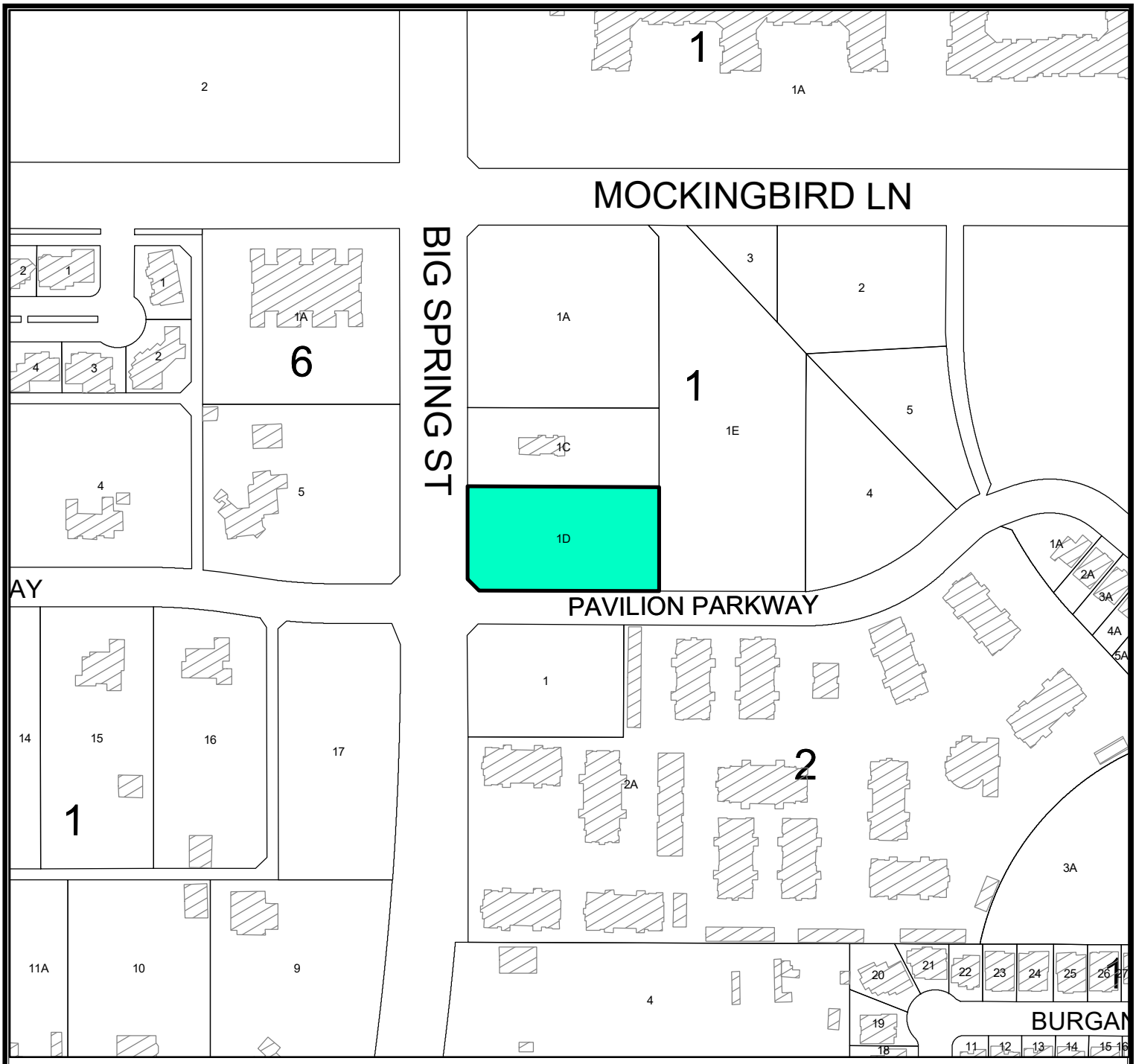


Location Map

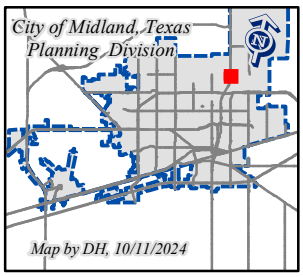
SGN-063315-2024 **Scale: 1" = 253'**

Motion granting Prince Signs, LLC's appeal and reversing the Building Official's denial of a sign permit for Lot 1D, Block 1, Pavilion Park, Section 14, City and County of Midland,Texas

Generally located at the northeast corner of the intersection of North Big Spring Street and Pavilion Parkway (Council District1)

LEGEND

- CITY LIMITS
- PARCEL
- PRIVATE BLDGS



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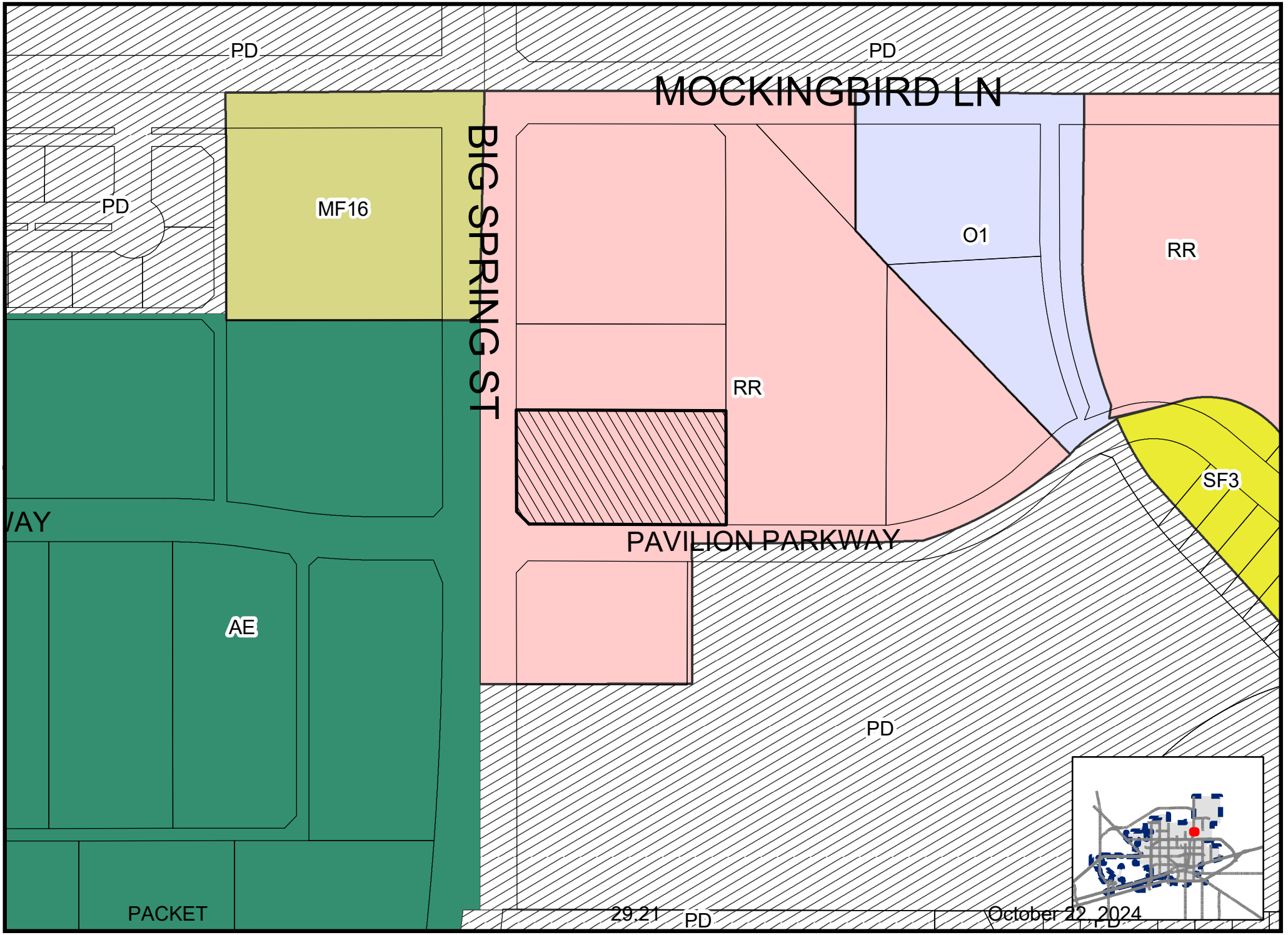

Map DH, 10/11/2024

SGN-063315-2024 **Scale: 1" = 194'**

ZONING MAP

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MOCKINGBIRD LN
BIG SPRING ST
PAVILION PARKWAY
6
1
1E
1D
2
16
17

MIDLAND
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WESTEX URGENT CARE
ITEM –
SIGN APPEAL
October 22, 2024
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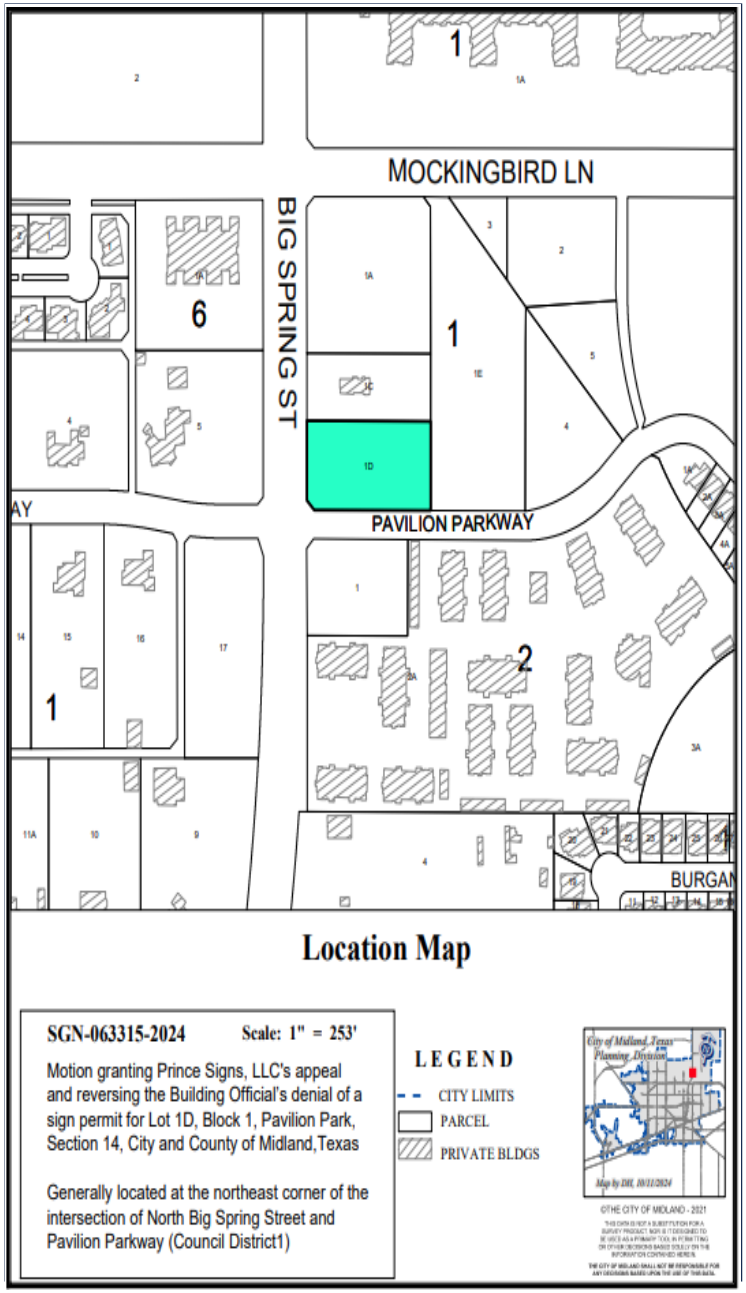
APPLICATION SUMMARY

- **Property Owner & Developer:** Kent Lubrication Centers LTD
- **Representative:** Jennifer Flores with Prince Signs LLC
- **Application Type:** Sign Appeal
- **Address:** Generally located at the northeast corner of the intersection of North Big Spring Street and Pavilion Parkway. (Council District1)



MIDLAND
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SIGN APPEAL DETAILS

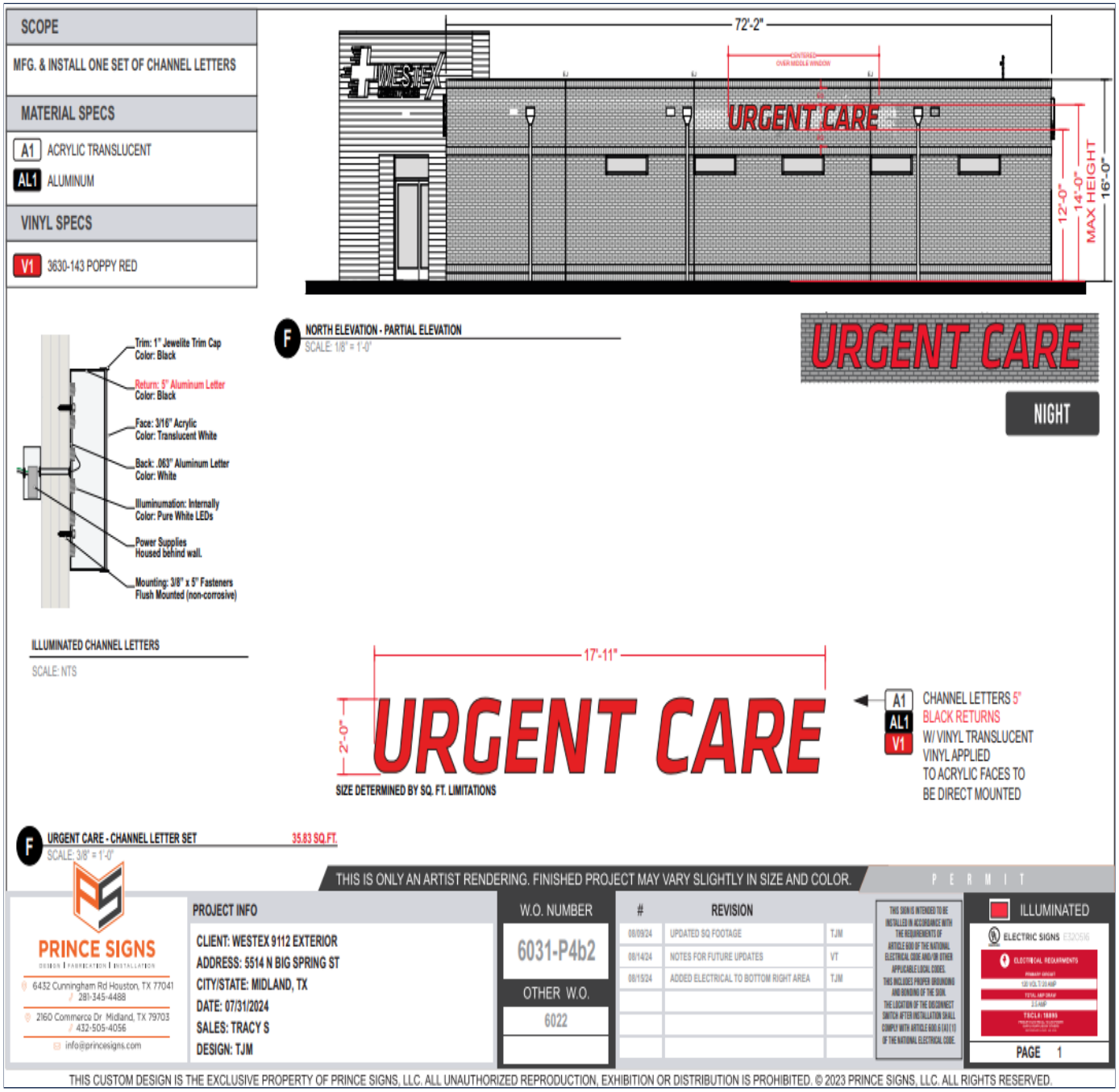
- This request for a variance from the Midland City Code Revised Outdoor Sign Regulations to exceed the maximum signage allowance of 360 square feet by 22.01 square feet.
- There is currently four wall signs and one freestanding sign on the property that were previously approved on August 27, 2024, by the Code Enforcement Department.

SIGN APPEAL DETAILS

- **Current Cumulative Signage:** 346.18 sq ft
- **Current Number of Signs: 5**

- **Number of Proposed Signs:** 1
- **Proposed Sign Area:** 35.83 sq ft
- **Proposed Cumulative Signage:** 382.01 sq ft

PROPOSED SIGN DETAILS



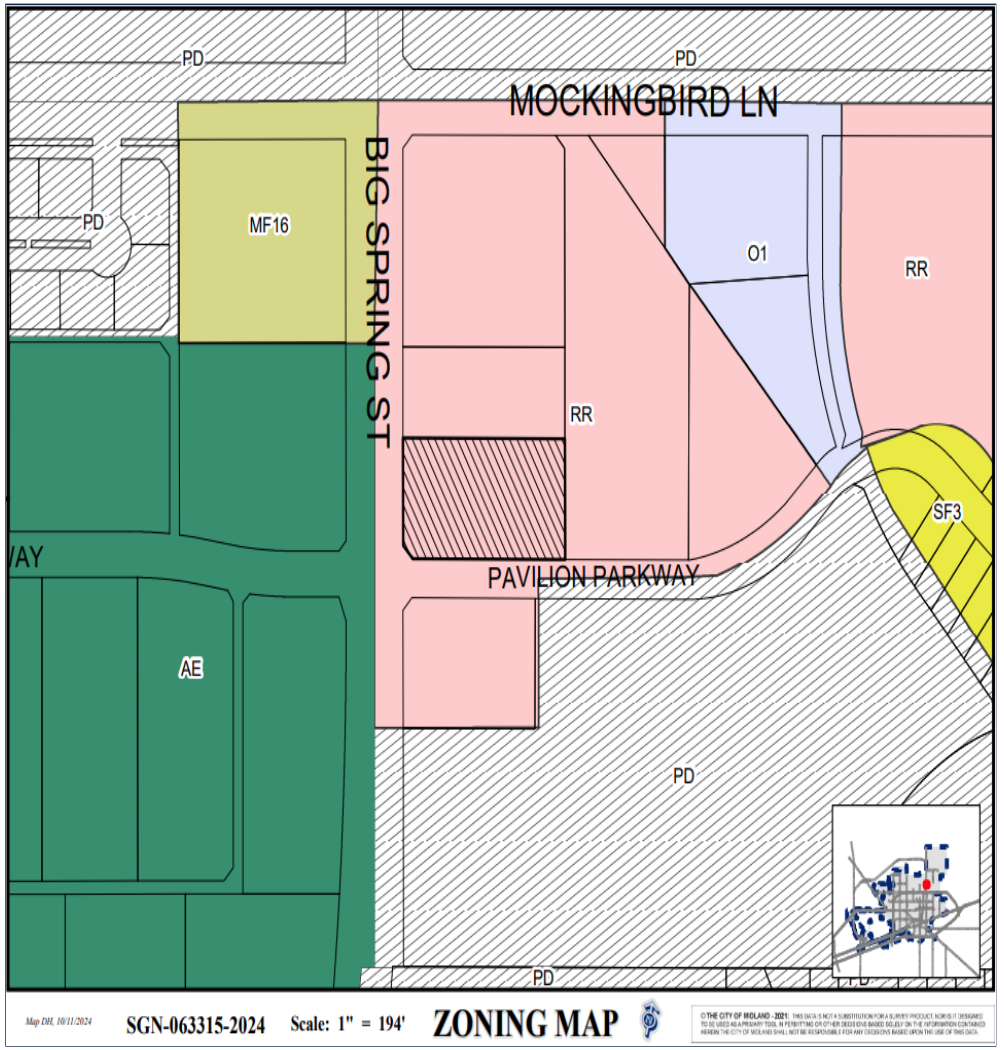
PROPOSED CUMULATIVE SIGNAGE DETAILS (Proposed is Sign F)

ZONING

Current Zoning: Retail (RR)

Surrounding Zoning:

- **North & East:** Retail (RR)
- **South:** Retail and Planned Development for Housing Development (RR & PD)
- **West:** Agricultural Estate (AE)



LAND USE

- **Current Use:** Westex Urgent Care

- **Surrounding Uses:**
  - North: Fast food restaurant
  - West: Single-family dwelling
  - South: Retail stores and apartment complex
  - East: Vacant lot

RELATED ITEMS

- The original plans were approved on August 27, 2024, by the Code Enforcement Department.

STAFF RECOMMENDATION

Staff recommends **NO ACTION** of this application for a variance to the cumulative area of all signs exceeding the maximum sign area as this request represents a deviation from the existing sign regulations and no hardships have been shown to exist

MISSION

Deliver exceptional services and promote a high quality of life and place for ALL our citizens.